

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7568 of 2015

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Md. Sikander

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra

For the Respondent/s : Mr. Pandey S Sahay

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 07-04-2016 Heard, Mr. Pramod Kumar, appearing for the petitioner and learned A.C. to S.C.-31 appearing for the respondents.

2. The petitioner has filed this application under Article 227 of Constitution of India against the order dated 11.02.2015 passed by the Sub-Judge-IIIrd, Saharsa in T.S. No. 141 of 2011, whereby the court below agreed with the report of the Sheristedar requiring the petitioner to pay Advolerum Court fee on the valuation of the counter claim.

3. According to learned counsel for the petitioner, since the petitioner has filed the written statement –cum- counter claim, only praying for declaration of title and for declaration that wrong entry is not binding on the petitioner, the petitioner is required to pay fixed court fee and in fact, the petitioner has paid the fixed court fee. The petitioner is not required to pay Advolerum Court

fee but the court below without considering Section 7(C) of the Registration Act directed the petitioner to deposit the Advolerum court fee on the valuation of the counter claim.

4. Perused the order passed by the court below. The counter claim has been annexed as Annexure-2 to the writ application. From perusal of the same, it appears that the petitioner is claiming for declaration of title only and, therefore, the petitioner is liable to pay only declaratory fixed court fee. Since the petitioner is neither claiming for recovery of possession of the suit property nor is praying for setting aside any documents, in my opinion, the petitioner is not liable to pay Advolerum court fee on the valuation of the counter claim. In fact, the report of the Sheristedar is wrong. The court below should have directed the petitioner to pay the declaratory court fee and not the Advolerum court fee. Therefore, the impugned order is contrary to provision of law and, hence, it is unsustainable. Accordingly, this writ application is allowed and the impugned order is set aside and it is held that the petitioner is liable to pay only fixed court fee.

(Mungeshwar Sahoo, J)

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