

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6018 of 2013

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1. Sanjay Kumar Sinha S/O Late Ramchandra Prasad Sinha Resident Of Mohalla - Sarswati Lane, East Lohanipur, Police Station - Kadamkuan, District - Patna

.... Petitioner/s

Versus

1. Sudha Sharma W/O Late Sheochanda Sharma Resident Of Village - Deshrajpur, Police Station - Mahna, District - Vaishali, At Present Resident Of - 128 Sidheshwar Nagar, Mainpura, Near Devi Ashthan Police Station - Patliputra, District - Patna

2. Deepak Kumar S/O Late Sheochandra Sharma Resident Of Village - Deshrajpur, Police Station - Mahna, District - Vaishali, At Present Resident Of - 128 Sidheshwar Nagar, Mainpura, Near Devi Ashthan Police Station - Patliputra, District - Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Singh, Advocate
For the Respondent/s : Mr. Mukesh Kumar-1, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 14-03-2016 Heard learned counsel for the petitioner as well as learned counsel for the respondents.

2. Petitioner is the defendant who, after his appearance prayed before the learned lower court to return back the plaint as the Court lacks pecuniary jurisdiction to entertain, proceed with the suit.

3. Objection was invited at the end of the respondent/plaintiff and after hearing both the sides, vide order dated 07.01.2013 the learned lower court rejected the prayer, hence this petition.

4. Learned counsel for the petitioner has submitted



that question of payment of court-fee affecting upon pecuniary jurisdiction of the court does not relate under exclusive domain of plaintiff as well as Court and further, where the value of the suit property inconsonance with the relief so sought for crosses the barrier of declaratory title suit, as identified under Section 7 (IV) (C) of the Court Fee Act, then in that event, the *ad valorem* court-fee has to be paid and to perceive the same, adequate materials were available before the learned lower court. In order to substantiate such plea, learned counsel for the petitioner also relied upon **1983 BLJR 525**

5. On the other hand, learned counsel for the respondent referred **2010(1) PLJR 991** and has submitted that valuation happens to be under exclusive domain of plaintiff and on account thereof, it cannot be challenged at the end of the defendant. Furthermore, it has also been submitted that nature of relief so sought for, happens to be a declaratory one covering as well as attracting application of Section 7 (IV) (C) of the Court Fee Act and the other reliefs, in the aforesaid background is the consequential relief thereto, hence the finding recorded by the learned lower court is legal, just and correct and does not require interference.

6. Whenever a suit is filed, two aspects are to be taken



note of. The first one, with regard to valuation of the suit and the latter one with regard to payment of court-fee. The suit valuation is for identification of pecuniary jurisdiction of court while the court-fee happens to be relating to adjudicate upon the relief so claimed. Section 6 of the CPC does speak regarding the same.

7. Now coming to the present episode, it is evident that in para-8 of the plaint, it has been disclosed that plaintiff had paid full consideration amount i.e., Rs. 6000/- and virtually, though not specified under para-18, but has been perceived by the plaintiff to show Rs. 6000/- as valuation of the suit. The aforesaid payment was made in the year 1972, the suit has been filed in the year 2007. So even considering the depreciated value of the Rupees and further, extraordinary hike certainly, the valuation so incorporated therein is not at all perceived to be the correct value whatever incorporated.

8. In order to adjudicate upon the issue in its right perspective, it looks justified to see the relief so sought for, which are as follows:-

(a) That a decree be passed against the defendants directing them not to make obstacles to the suit premises of Schedule I of this plaint within a period fixed by the Court and make over the possession of the land of the Schedule I to the plaintiff.

(b) That a decree be passed to declare the title of the land and confirmation of possession of the land of the suit Schedule I.

(C) That the Cost of the suit be also awarded to the plaintiff against the defendants.

9. Apart from this, relief as indicated above, so claimed on behalf of respondent/plaintiff, it is apparent that it is not a declaratory title suit rather it is a suit whereunder relief has been sought for directing the defendant to handover possession, that means to say, it happens to be a suit for restoration of possession.

10. From relief no. A, it is apparent that plaintiff had asked for relief relating to delivery of possession and that being so, it happens to be, for the purpose of payment of court-fee guided by Section 7(V) of the Court Fee Act.

11. In the aforesaid background, there would be application of Section 7(V) of the Court Fee Act.

12. The facts of the case as relied upon at the end of learned counsel for the respondent reported in **2010(1) PLJR 991**, it is evident that the aforesaid suit was declaratory in nature and during midst of trial, an amendment was sought for wherein the consequential relief was also sought for. Proposition of law was laid down in the background of aforesaid factual aspect.

13. As stated above, the facts of the present case is quite distinguishable and that being so, the learned counsel for the respondent would not get any sort of proper assistance under the

present controversy.

14. Accordingly, the order impugned is set aside.
Petition is allowed.

15. The matter is remitted back to the learned lower court to proceed afresh and decide the issue in accordance with law.

(Aditya Kumar Trivedi, J)

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