

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1596 of 2019

Ashok Kumar Singh Son of Lakshman Singh @ Late Laxman Singh,
Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District Buxar, at
present B.D.O. Block Road Buxar Nai Bazar, Ward No. 4, P.S. Buxar Town,
District- Buxar.

... .. Plaintiffs/Petitioner(s)

Versus

1. Ambika Singh @ Phulan Singh Son of late Laxman Singh, Resident of Village- Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar.
2. Ram Chunni Devi, Wife of late Ramnath Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar, At Present Resident of Pandey Patti, P.S. Buxar, (M), District- Buxar.
3. Arvind Singh, Son of late Ramanath Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar, At Present Resident of Pandey Patti, P.S. Buxar, (M), District- Buxar.
4. Sonu Singh, Son of late Ramanath Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar, At Present Resident of Pandey Patti, P.S. Buxar, (M), District- Buxar.
5. Bikrama Singh, Son of late Ramanath Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar, At Present Resident of Pandey Patti, P.S. Buxar, (M), District- Buxar.
6. Bir Bahadur Singh, Son of late Ramanath Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar, At Present Resident of Pandey Patti, P.S. Buxar, (M), District- Buxar.
7. Subhash Singh, Son of late Chandra Shekhar Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar.
8. Kishan Singh, Son of late Chandra Shekhar Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar.
9. Kaushal Singh, Son of late Chandra Shekhar Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar.
10. Chunu Singh, Son of late Chandra Shekhar Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar.
11. Rinku Singh, Wife of Santosh Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar.
12. Rima Devi, Wife of Mantu Singh, Resident of Village Karmi, P.O. Kukudha, P.S. Itarhi, District- Buxar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Varun Kumar
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN



ORAL JUDGMENT

Date : 09-12-2019

The present petition has been filed *“for setting aside the order dated 26.09.2019 passed in T.S. No. 193/2019 passed by the learned Sub Judge Ist-cum-ACJM Ist-cum-A.S.J.Ist, Buxar whereby and whereunder he has directed the plaintiff to pay ad-valorem Court fee on the valuation given for the purpose of jurisdiction and Court fee according to report of Seristedar.”*

2. The plaintiff/petitioner filed title suit number 193/19 for the following reliefs --

*“(i) A preliminary decree of partition be passed over Schedule-4 property and ½ share of the plaintiff be declared and carved out by survey knowing pleader;
(ii) Gift deed dated 07.09.2015 executed by Laxman Singh in favour of defendants (4th set) details of which given in Schedule-5 of the plaint be declared null and void and not binding on plaintiffs;
(iii) Temporary injunction be issued on Schedule 4 land so that the property may not destroy;
(iv) Cost of suit be awarded against defendants;
(v) Any other relief/reliefs which deem fit and proper.”*

3. On the basis of a report of the seristedar, the impugned order dated 26.09.2019 has been passed directing the plaintiff/petitioner to pay *ad valorem* court fee on the valuation given for the purpose of jurisdiction and court fee.



4. Learned counsel for the petitioner submits that the learned court below has erred in directing payment of *ad valorem* court fees, without appreciating that the suit had been filed for partition and for declaration of the gift deed executed by his father as null and void and not binding on the plaintiff. It is the contention of the plaintiff/petitioner that he has rightly paid fixed court fee along with Rs. 100/- for temporary injunction, inasmuch as he has neither sought relief of partition of the Schedule 5 land gifted by his father in favour of the defendants (4th set), nor has he sought the relief of permanent injunction. As such, the relief of temporary injunction was not consequential in nature and thus only fixed court fee was payable. The demand for payment of *ad valorem* court fee in terms of section 7(4)(c) of the Court Fees Act on the basis of the decision reported in *Amarendra Nath Verma and others versus Bimleshwar Nath Verma and others, AIR 1999 Patna 10*, is wholly illegal, inasmuch as in that case the prayer had been made for grant of permanent injunction.

5. Heard learned counsel for the petitioner and considered the materials on record. Section 7(4)(c) of the Court Fees Act contemplates payment of *ad valorem* court fees in respect of a declaratory decree or order where consequential relief has been prayed. In the instant case, the plaintiff has prayed for declaration of the gift deed to be null and void, and for



partition of the suit property. From perusal of the plaint, it would appear that the gifted property described in Schedule 5 comprises a substantial part of the suit property described in Schedule 4. It therefore follows that the relief of partition as claimed by the plaintiff cannot be granted unless the gift deed is first set aside. In other words, the claim of partition becomes consequential in nature and would depend upon the gift deed being declared illegal. As observed in the impugned order, the gift deed in the instant case is voidable and not void. In *Amarendra Nath Verma's case (supra)*, it was held that where plaintiffs appear to claim in effect a declaration of their title in the guise of filing a partition suit, the plaintiff must be directed to pay *ad valorem* court fee. The contention of the petitioner that no prayer has been made for grant of permanent injunction is therefore of little relevance.

6. The petition is devoid of merit and is dismissed as such.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.12.2019
Transmission Date	NA

