

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.943 of 2018Order reserved on: 7-12-2018Order delivered on: 2-1-2019

1. Parwati, Widow of Baishakhu, aged about 78 years,
2. Sukai Bai, Widow of Late Ladaru, aged about 53 years,
3. Ghasiya, S/o Baishakhu, aged about 41 years,

All R/o Village Sambalpur, Tehsil and District Kondagaon, C.G.

4. Phulobai, D/o Baishakhu, aged about 48 years, R/o Village Bamhani, Tehsil and District Kondagaon, C.G.
5. Ghasnin, S/o Baishakhu, aged about 63 years, R/o Dongaripara, Kondagaon, Tehsil and District Kondagaon, C.G.

(Plaintiffs)  
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Versus

1. 1.1 Shridhar, S/o Badrinath, aged about 60 years,
- 1.2 Sudani, D/o Late Baldhar, aged about 55 years,
- 1.3 Vinay, S/o Late Baldhar, aged about 23 years,
- 1.4 Chikani, S/o Late Baldhar, aged about 35 years,
- 1.5 Manoj, S/o Late Ramdhar, aged about 23 years,
- 1.6 Champesh, S/o Late Ramdhar, aged about 15 years,
- 1.7 Rupesh, S/o Late Ramdhar, aged about 12 years,

Respondent No.1.6 and 1.7 through natural guardian elder brother Manoj, S/o Late Ramdhar, aged about 23 years,

2. Tilakchand, S/o Dileshwar, aged about 38 years,
3. Raghunath Singh, S/o Dhansingh, aged about 48 years,
4. Lembati, Wife of Narendra, aged about 50 years,

All R/o Village Sambalpur, Tehsil and District Kondagaon, C.G.

5. Secretary, Gram Panchayat Sambalpur, Tehsil and District Kondagaon, C.G.

For Petitioners: Mr. Shobhit Koshta, Advocate.  
For Respondents No.1 to 4: -  
Mr. P.K. Tulsyan, Advocate.  
For Respondent No.6 / State: -  
Mr. Arun Sao, Deputy Advocate General.

C.A.V. Order

1. The petitioners/plaintiffs filed a suit for declaration of title and for possession as well. The trial Court decreed the suit so far as declaration of title of the suit land in favour of the plaintiffs is concerned and also declared the mutation to be illegal and declared the sale deed executed by original defendant No.1 in favour of defendants No.2 to 4 null and void, but also held that suit has not been valued properly and no sufficient court fees has been paid. While deciding issue No.2 the trial Court held that relief of possession has not been valued properly and no sufficient court fees has been paid against which first appeal has been preferred by the petitioners/plaintiffs before the first appellate Court in which they also preferred an application under Section 12(ii) of the Court-fees Act for accepting the court fees which the plaintiffs were required to pay. That application has been rejected by the first appellate Court by the impugned order holding that for removing the error, application under Section 12(ii) of the Court-fees Act cannot be granted against which this writ petition has been preferred.
2. Learned counsel for the plaintiffs/petitioners submits that the first appellate Court is absolutely unjustified in rejecting the application and relied upon the decision of the Supreme Court in the matter of **Sardar**

**Tajender Singh Ghambhir and another v. Sardar Gurpreet Singh and others<sup>1</sup>.**

3. Learned counsel appearing for respondents No.1 to 4, relying upon a decision of the East Punjab High Court in the matter of **Ram Singh v. Barbara Singh**<sup>2</sup> would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.
5. The question that falls for consideration is, whether the first appellate Court is justified in rejecting the application filed by the petitioners / plaintiffs under Section 12(ii) of the Court Fees Act, 1870 (for short, 'the Act of 1870').
6. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice the provision contained in Section 12 of the Act of 1870 which reads as under: -

**“12. Decision of questions as to valuation.—(i)** Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

**(ii)** But whenever any such suit comes before a Court of Appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of Section 10, paragraph (ii), shall apply.”

7. A focused perusal of Section 12(i) of the Act of 1870 would show that the decision of the court of first instance relating to valuation for the purpose of determining the amount of court fee chargeable on plaint

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1 AIR 2015 SC 242

2 AIR 1949 East Punjab 336

on memorandum of appeal shall be final as between the parties to the suit. (See S. Rm. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar<sup>3</sup>, Sri Rathnavarmaraja v. Smt. Vimla<sup>4</sup> and Shamsher Singh v. Rajinder Prashad and others<sup>5</sup>.)

8. The Allahabad High Court in the matter of Ram Krishna Dhandhanial and another v. Civil Judge (Sr. Division), Kanpur Nagar and others<sup>6</sup> concluded as under: -

“18. ... that the defendant has a right to raise all objections on the valuation and deficiency of the court-fees. The matter is to be adjudicated upon and decided by the Court under Section 12 of the Act, 1870 and the decision so taken by the trial Court shall be final. The defendant cannot raise the grievance against the said decision unless the valuation suggested by him affects the jurisdiction of the Court. However, the appellate or revisional Court always can test the issue suo motu and make the deficiency good as the purpose of the Act is not only fixing the pecuniary jurisdiction of the Court but also creating revenue for the State.”

9. Section 12(ii) of the Act of 1870 empowers the appellate court to consider the question of court-fee and if that court finds that the said question has wrongly been decided to the detriment of revenue, direct that party by whom such fee has been paid to pay additional court-fee payable on the plaint. In case the plaintiff fails to pay the additional court-fee, payable by him, within the time fixed by the court, the suit shall be dismissed as provided in Section 10(ii) of the Court-fees Act. The Supreme Court also in Sardar Tajender Singh Ghambhir (supra) considering Section 12(ii) of the Act of 1870 held as under: -

“14. The above provision clearly empowers the appellate court to direct a party to make up deficit court-fee in the plaint at the appellate stage. The power exercised by the first appellate court can be traced to clause (ii) of Section 12 of 1870 Act as well.”

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3 AIR 1958 SC 245

4 AIR 1961 SC 1299

5 AIR 1973 SC 2384

6 AIR 2005 Allahabad 291

10. Reverting to the facts of the present case, the trial Court while deciding preliminary issue No.2 has held that the plaintiffs / petitioners have not valued the suit properly for the purpose of relief of recovery of possession and not paid the requisite court-fee and that finding has been assailed by the plaintiffs / petitioners by preferring an appeal under Section 96 of the Code of Civil Procedure, 1908 which is pending consideration before the first appellate Court, and what was the proper court-fee payable on the plaint, is a question to be decided by the first appellate Court in view of Section 12(ii) of the Act of 1870 after considering the issue of valuation of suit and payment of court-fee, but before the matter could be taken-up by that Court to consider and decide the said issue; the plaintiffs / petitioners herein filed an application under Section 12(ii) of the Act of 1870 stating that though they have properly valued the suit and paid the court-fee qua the relief of possession, yet, the trial Court decided the issue of court-fee wrongly against them, therefore, they be allowed to pay requisite court-fee (₹ 44/-) which the first appellate Court has rejected holding that the plaintiffs failed to pay the requisite court-fee despite time having been granted by the trial Court to pay the requisite court-fee and the plaintiffs cannot be allowed to make the deficiency at the appellate stage. In my considered opinion, since the issue regarding valuation of suit qua relief of possession and court-fee thereupon is an issue which the first appellate Court is called upon to decide in the pending appeal while deciding the appeal finally, therefore, the question of payment of additional court-fee is depended upon the finding which the first appellate Court is required to decide finally and that point cannot be adjudicated at interim stage that too on an interlocutory application filed by the plaintiffs / petitioners. In my

considered opinion, the first appellate Court ought to have postponed the decision on such an application and ought to have decided the same while deciding the issue finally raised in appeal, as such, the order impugned passed by the first appellate Court is set aside. The first appellate Court is directed to decide the issue while deciding the appeal finally. The said appeal shall be decided within three months from the date of receipt of a copy of this order.

11. The writ petition is allowed to the extent sketched herein-above. No order as to cost(s).

12. A copy of this order be sent to the first appellate Court by fax / Email.

Sd/-  
(Sanjay K. Agrawal)  
Judge

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