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IN THE HIGH COURT OF ORISSA CUTTACK

W.P.(C) No.4667 of 2010

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Collector, Balangir

....

Petitioner

Versus

Hazi Md. Ayub Khan & Ors.

....

Opposite Parties

For Petitioner

...

Mr.S.P.Panda, Additional
Government Advocate

For Opposite Parties

...

None

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 14.12.2022

Biswanath Rath, J. Even after service of notice and appearance of set of counsel for contesting Opposite Party No.1 appearing for the Plaintiff in the Civil Suit No.67 of 2006, nobody is appearing to contest the matter.

2. The Writ Petition involves a challenge to the order of the Civil Judge (Senior Division), Titilagarh in C.S. No.67 of 2006 in allowing the application of the Plaintiff vide Annexure-4 requesting the trial court for disposing of the suit and passing the order for refund of the Court Fee. On a

combined reading of Section 89 of C.P.C. and Section 16 of the Court Fees Act, taking this Court to the nature of disposal of the suit involving a settlement outside the Court, Mr. Panda, learned Additional Government Advocate contended that the impugned order does not meet the contingency of Section 16 of the Court Fees Act. Particularly for there is no involvement of action in exercise of power under Section 89 of the C.P.C.

3. It is in the above circumstance, Mr. Panda, learned Additional Government Advocate requests this Court for interfering in the impugned order and setting aside the same. Considering the contention raised herein by the learned State counsel through the impugned order vide Annexure-5, this Court finds decision therein involved the application of the Plaintiff at Annexure-4, fact and relief sought for therein appears to be as follows:-

“1) That, out of court plaintiff and defendants have compounded the matter amongst themselves and the plaintiffs have received the agreed amount in full and financial of the claimx amount.

Hence prayed that the Hon'ble court be pleased to dispose of the suit and passed order for refund of court on a combined pleading of Section 89 of C.P.C. and Sec. 16 of the Court fees act.”

It is in consideration of the above application, getting into the pleadings and the requests, this Court finds, there remains no doubt that the Plaintiff and the Defendant have compounded the matter amongst themselves without aid of the Court and however there involves a request to the trial court for passing an order for refund of the Court Fee in terms of Section 89 of C.P.C. and Section 16 of the Court Fee Act. Considering application of the provision at Section 89 of C.P.C. and Section 16 of the Court Fee Act by the Plaintiff and the Trial Court also, the Plaintiff in filing the application and the trial court in passing the impugned order, this Court here likes to take reference to the provision referred hereinabove as follows:-

Section 89 of C.P.C.:- Application to set aside sale on deposit-

(1) Where immovable property has been sold in execution of a decree, any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person, may apply to have the sale set aside on his depositing in Court.

- (a) For payment to the purchaser, a sum equal to five percent of the purchase-money and
- (b) For payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which, may since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.”

Section 16 of Court Fee:- Refund the Fee- Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (5 of 1908) the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back from the Collector, the full amount of the fee paid in respect of such plaint.”

Reading the provisions from Section 89 of the C.P.C., this Court finds this involves a special proceeding declaring the manner of disposal of the Civil Suit without entering into the trial of the suit but under any of the modes stated therein. Looking to the pleadings and the prayer involved in Annexure-4, reading together with the provision contained in Section 89 of the C.P.C., this Court finds, the claim for disposal of the suit completely remaining outside the Court and in no circumstance comes under the disposal scope of Section 89 of the C.P.C. It is here taking into account the provision at Section 16 of the Court Fee Act and reading through the provision taken note hereinabove, this Court finds, this is a mechanism

providing refund of Court Fee only in the case, there is reference of a suit to be disposed of in one of the modes of settlement of dispute referred to in Section 89 of the C.P.C. For the nature of disposal/settlement of the dispute claimed by the Plaintiff as recorded also by the trial court, for the opinion of this Court the disposal of the suit does not attract any of the provisions under Section 89 of the C.P.C. It is in the circumstance, there is no question of application of the provision of Section 16 of the Court Fees Act, 1870 to the case at hand. This Court finds, the impugned order herein against the provision of law. As an outcome, this Court interferes in the impugned order, vide Annexure-5 and sets aside the same.

4. The Writ Petition succeeds. No cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 14th day of December, 2022/Swarna, Junior Stenographer*

