

M/L.74.
November 4, 2024.
MNS.

FAT 199 of 2024
+
CAN 1 of 2024
&
CAN 2 o 2024

Smt. Basabi Maji
Vs.
Smt. Moumita Das and others

Mr. Krishan Das Poddar,
Mr. Arabinda Majhi

... for the appellant.

Mr. Avirup Mondal,
Ms. Ahana Ghgosh Mondal

...for the respondents.

1. At the outset, it is argued by learned counsel for the plaintiff/appellant that the valuation of the plaint was incorrectly made, taking it within the appellate domain of the District Court, whereas if proper valuation was attributed in consonance with the properties involved in the partition suit from which the present appeal arises, the appeal would lie before this Court.
2. Accordingly, the appellant submits that it intends to amend the plaint.
3. Learned counsel for the respondents opposes such prayer and submits that as per the clear averments in the plaint itself, the valuation was less than Rs.1,50,000/- and, as such, the appeal lay against the impugned deemed decree rejecting the plaint before the concerned District Judge and not this Court.

4. We are more convinced by the contention of the respondents insofar as the test would be what was the valuation of the suit at the juncture when the plaint was rejected. We find from the plaint that the plaintiff/appellant had made clear averments in the plaint to the effect that the valuation of the suit is to the tune of Rs.1,30,015/- and as such, an appeal against the decree rejecting the plaint in such a suit has to lie before the concerned District Judge as per the Bengal, Agra and Assam Civil Courts Act.

5. Accordingly, FAT No. 199 of 2024 and the connected applications are dismissed on the ground of lack of pecuniary jurisdiction, with liberty to the appellant to prefer an appeal before the appropriate court having jurisdiction. It is further made clear that in the event the appellant is otherwise entitled in law to do so, the appellant may make prayer for amendment of the plaint regarding the valuation of the suit before the appropriate appellate court. Needless to say, in such a case, the defendants shall be given ample opportunity to controvert such prayer.

6. The learned advocate on record for the appellant is granted leave to take back the certified copy of the impugned deemed decree upon furnishing an authenticated photostat copy thereof.

7. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)