

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1574 of 2017

Balram Mishra Son of Late Anant Man Mishra, Resident of Village-Dudhani,
Post Officer-Turta, Police Station-Mali, District-Aurangabad, District-
Aurangabad.

... .. Petitioner/s

Versus

Basant Kumar Mishra Late Anant Man Mishra, Resident of Village-Dudhani,
Post Officer-Turta, Police Station-Mali, District-Aurangabad, District-
Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Singh, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 30-01-2025

Heard learned counsel for the petitioner.

2. Petitioner is aggrieved by the order dated 22.04.2017 passed by learned Sub Judge-7, Aurangabad in Title Suit No. 129 of 2015/ 250 of 2016 whereby and whereunder the petition dated 22.04.2017 filed by the defendant petitioner making prayer to decide the issue no. 6 and 7 about payment of proper Court fee as preliminary issue has been rejected by the learned trial court.

3. The learned counsel for the petitioner submits that the suit has been grossly undervalued as the suit ought to be valued at Rs.25,00,000/- whereas the plaintiff has valued the suit at Rs.2,00,000/-. This objection was taken up in the written statement. Therefore, before proceeding further with the suit, the Court fee matter was required to be decided as preliminary issue and not deciding the issue of Court fee may result in dismissal of the suit, if it was found to be grossly undervalued. Therefore, the

issue of valuation of suit ought to have been considered as preliminary issue and could not have been postponed till the final adjudication of the case. Therefore, the learned trial court has committed error of law as well as facts in rejecting the petition filed by the defendant petitioner for deciding the issue no. 6 and 7 regarding Court fee as preliminary issues.

4. Perused the record.

5. The issue of Court fee is between the party and the Court and the defendant petitioner could not insist on deciding the same as preliminary issue. Moreover, any issue which requires appreciation of facts as well as law could not be decided as a preliminary issue more so when the issue with regard to valuation of the suit has already been framed. Hence, I do not find any infirmity in the impugned order if the learned trial court has kept the matter pending for adjudication at the time of final disposal. Therefore, the order dated 22.04.2017 is affirmed.

6. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.02.2025
Transmission Date	N/A