iswar Chandra Saha and anr. Vs. Chulo Garo and ors.

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SooperKanoon Citation : sooperkanoon.com/855446

Court : Kolkata

Decided On : Apr-16-1940

Reported in : AIR1940Cal375

Appellant : iswar Chandra Saha and anr.

Respondent : Chulo Garo and ors.

Judgement :

Mohamad Akram, J.

1. This rule is directed against an order of the third Subordinate Judge of Mymensingh affirming on appeal the order of the second Munsif of Mymensingh (sadar) returning the plaint of 4he petitioners under Order 7, Rule 10, Civil P.C., on the ground that the Court had no pecuniary jurisdiction to entertain it. The suit was for declaration of title and recovery of possession of certain lands and for mesne profits. The plaint stated inter alia that the net profit from the land was Rs. 350-14-6 per year but that the market value of the land was only about Es, 1200; the claim for mesne profits was made at Rs. 1000 and the total valuation of the suit was thus laid at Rs. 2200. The defendants filed a written statement contesting the suit and took the plea inter alia that the lands were much under-valued and that the court-fee paid was also insufficient. Issue No. 1 framed in the suit was as follows:

Has the suit been properly valued and stamped? Has the Court pecuniary jurisdiction to try the suit?

2. This issue was taken up for trial first and upon a consideration of the evidence adduced the learned Munsif came to the conclusion that the correct valuation of the disputed property was Rs. 6000. In that view of the matter, he returned the plaint under Order 7, Rule 10, Civil P.C., to be presented to the proper Court as his own jurisdiction did not extend beyond Rs. 3500. Upon appeal by the plaintiffs the Subordinate Judge held that:

According to the estimate of net profits in the valuation statement the suit ought to have been valued at Rs. 8250,

and confirmed the order of the Munsif. Against that order the petitioners obtained the present rule. No one appears for the opposite party. It is now contended before us that the petitioners were entitled under Section 7, para. 5, Clause (a), Court-fees Act, to value the suit at the market value of the land which according to their estimate was worth Rs. 1200 only. Looking at Section 7, para. 5, Clause (a) I find that it consists of two parts : Under the first part, the valuation is to be according to the value of the subject-matter, that is, under the prescribed method of calculation at 15 times the net profit from the land in the year next before the date of presenting the plaint. Under the second part the valuation is to be made by the Court if it has reason to think that the valuation given is wrong. In such a case the valuation is to be fixed at 15 times the net profit which the Court may assess or the market value of the land, whichever is lower. It seems to me therefore that so far as the petitioners are concerned, they have to value the subject-matter for the purposes of court-fee in the manner indicated in the first part of Section 7, para. 5, Clause (a), Court-fees Act. This however is a matter which relates to the sufficiency or otherwise of the court -fee. The question for consideration that is now before us is whether the Munsif has jurisdiction to try the suit. For the purpose of determining jurisdiction the valuation has to be made according to the market value of the subject-matter of the suit under the Suits Valuation Act and not according to the artificial rules under the provisions of the Court-fees Act. Both the Courts below have come to the conclusion that the market value of the lands in suit exceeds far beyond the pecuniary jurisdiction with which the learned Munsif is vested. The Court of Appeal below has found the correct valuation of the suit lands to be Rs. 5250. I see no valid reason to interfere with the order passed by the

Court below. I accordingly discharge this rule. There will be no order as to costs.

B.K. Mukherjea, J.

3. I agree.