

Binode Behari Mukherjee and ors. Vs. K.C. Biswas and Co. and ors.

Binode Behari Mukherjee and ors. Vs. K.C. Biswas and Co. and ors.

SooperKanoon Citation : sooperkanoon.com/862689

Court : Kolkata

Decided On : Jun-21-1940

Reported in : AIR1940Cal552

Appellant : Binode Behari Mukherjee and ors.

Respondent : K.C. Biswas and Co. and ors.

Judgement :

Derbyshire, C.J.

1. In my view this rule must be made absolute. It seems to me that the provision of law which applies is Section 7(iv)(d), Court-fees Act, and that the suit should be valued accordingly. The original valuation put upon it by the plaintiffs of Rs. 10 was, in my view, the correct valuation. There will be no order as to costs.

B.K. Mukherjea, J.

2. I agree and desire to add a few words. The suit as it is framed is one for obtaining a permanent injunction as contemplated by Section 7(iv)(d), Court-fees-Act. Even if the Court of Appeal below is right, that the injunction prayed for was in the nature of a consequential relief of a declaration that defendant 1 had only the rights of a darkorfa tenant that does not, in my opinion, make any difference as in both these cases the plaintiffs have a right to put their own valuation upon the relief which they claim in the suit. The Courts below have obviously interfered with

the valuation made by the plaintiffs under the provisions of Section 8-C, Court-fees Act, but in my opinion the objective standard which they purported to apply cannot possibly be applicable to the facts of the present case, It may be true that the property would be worth Rs. 7500 if defendant 1 was held to have a mourashi mukarari interest in the same with a right to build permanent structures upon it whereas the value would be in the neighbourhood of Rs. 700 to Rs. 800 if he is held simply to be an under-raiyat. But the difference in the value of the two interests, so far as defendant 1 is concerned, affords no criterion for valuing the relief which the plaintiffs claim in the suit. Even if defendant 1 is a mere under-raiyat that does not entitle the plaintiffs to take possession of the land and the increase in the value of the land, if defendant 1 be held to be a mourashi tenant, does not really mean any proportionate gain to the plaintiffs. Under these circumstances, I think, that it is a case to which no objective standard is applicable and, consequently, there are no materials upon which the Court could have revised the valuation made by the plaintiffs under the provisions of Section 8-C, Court-fees Act. The result is that I agree with my lord the Chief Justice that this rule should be made absolute.