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Court : Kolkata

Decided On : Nov-10-1938

Reported in : AIR1939Cal278

Appellant : Bagala Nanda Dutta and ors.

Respondent : Shrish Chandra Nandy, a Ward of Court Represented by the Manager, Court of Wards

Judgement :

S.K. Ghose, J.

1. This rule arises out of the following circumstances : The petitioners brought a suit being suit No. 190 of 1937 in the Court of the Munsif at Lal bagh against the opposite party for setting aside a sale held in a certificate case and for an injunction restraining the opposite party, who was a purchaser at such sale, from taking possession of the property. The petitioner's case as set forth in the petition is that the property had been found to be worth at least Rs. 12,000 in another proceeding inter partes, but that it had been purchased by the certificate holder himself for one pice. The petitioners however were in possession. In this suit they prayed that the sale might be held to be illegal and might be set aside and, further, that a permanent injunction should issue restraining the auction-purchaser

opposite party from taking possession on the basis of the said auction sale. The petitioners, accordingly, framed the suit under Section 7, Clause (iv), Sub-clause (c), Court-fees Act, and put the valuation at the price for which the opposite party had purchased, viz. one pice and paid court-fees thereon. The Munsif tried two preliminary issues viz:

(i)Has the suit been properly valued for purposes of jurisdiction and court-fees?
and (ii) Has the Court any pecuniary jurisdiction to try it?

2. By his order dated 21st March 1938, he held that the value of the suit should be the market value of the auction sold property, viz. Rs. 12,000, and that therefore the plaint should be returned for presentation to the Court of the Subordinate Judge. This order was upheld in appeal by the District Judge by his order dated 29th June 1938. Against this order the present rule has been obtained.

3. Here the question is whether the Courts below were justified, in the exercise of their power under Section 8(c), Court-fees Act, in revising the valuation given by the plaintiff on the ground that an objective standard of valuation was afforded by the admitted value of the property, viz. Rs. 12,000, as stated in the plaint. The learned advocate for the petitioner has contended that this reasoning is fallacious, because for the present purpose the Court has to look to the valuation, not of the subject-matter of the suit but of the relief claimed. From that point of view, it may be said that the fact that as the result of success in the suit the plaintiff would be entitled to the property is not relevant. Indeed the property would not be free from liability to sale. In this suit the plaintiff is not asking for possession of the property. Had he done so, it is conceded that he would be liable to pay court-fees on the market value of the property. But that is not the relief claimed. On the other hand, the plaintiff's case is that he is in possession of the property and all that he wants is that the sale should be set aside and the opposite party should be restrained from taking possession; cases of a similar nature raising the question of valuation have come before this Court from time to time, In the matter of Court-fees Act : AIR1930 Cal686 , Jogendra Nath v. Toriantessa Bibi (1922) 9 A.I.R. Cal 242 and Narayangunj Central Co-operativa Sale and Supply Society Ltd. v. Mafizuddin Ahmed : AIR1934 Cal448 . The fact that these were cases before the amendment

does not affect the question. Upon the pleadings in these cases it was held that the relief claimed was not capable of valuation and that therefore the plaintiff was entitled to put his own value. In the present case also the plaintiff has brought the suit while still in possession of the property. It is difficult to hold that an objective standard of valuation is available in so far as the reliefs claimed are concerned. That being the case, the plaintiff's valuation must be accepted and in that view we make the rule absolute, set aside the order complained against and direct that the suit be heard on the merits by the learned Munsif of Lalbagh before whom the suit was originally filed. We allow costs to the petitioner which we assess at two gold mohurs.

Lodge, J.

4. I agree.

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