

Mela Ram Vs. Mt. Pratibha Devi

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Court : Himachal Pradesh

Decided On : Jul-11-1952

Reported in : AIR1953HP4

Judge : Chowdhry, J.C.

Acts : Court-fees Act, 1870 - Section 7

Appeal No. : Second Appeal No. 22 of 1952

Appellant : Mela Ram

Respondent : Mt. Pratibha Devi

Advocate for Pet/Ap. : Tek Chand, Adv.

Judgement :

ORDER

Chowdhry, J.C.

1. The case is at the stage of admission, and there is an office report that the court-fee paid is deficient. I have heard learned counsel for the appellant and am of the opinion that the court-fee paid is deficient.

2. This was a suit for possession of a plot of land along with certain constructions put up thereon by the defendant and for recovery of Rs. 438 as mesne profits. On an objection raised in the trial Court by the defendant, the value of the property in

suit was determined. It was found that the market-value of the land (which fell in the category of land described in Clause (d) of para (v) of Section 7 of the Court Fees Act) was Rs. 900 and that of the building Rs. 1,750. The plaintiff was therefore made to pay a court-fee on the total of these two figures and the said mesne profits, i.e. on Rs. 3,088 in all. The suit was decreed for possession of the land and for recovery of Rs. 146-2-0 as mesne profits, and the defendant was allowed to remove the superstructure. The defendant went up in appeal to the District Judge, but the appeal was dismissed and the judgment and decree of the trial Court were maintained. The defendant has now filed this second appeal.

3. The defendant-appellant has paid court-fee on Rs. 149-2-0 awarded to the plaintiff-respondent as mesne profits. He has also paid court-fee on Rs. 900, the market-value of the land in suit. He has thus paid court-fee on Rs. 1,046-2-0 in all. He however questions his liability for payment of court-fee on Rs. 1,750, the market-value of the building. Now, the determination of the question of the correct court-fee payable on a memorandum of appeal depends on an answer to the question: What 'is the subject-matter in dispute in the appeal? In other words, so far as the building in question is concerned, whether the defendant-appellant does, or does not, claim any, if so what, right in respect thereto, and whether that right is the same which was litigated in the trial Court, or different?

4. The plaintiff claimed ownership in the land, and she pleaded that the defendant was in possession of the land, and had built the superstructure, on foot of a lease on condition that the construction will be removed within a month of the expiry of the lease. The lease was terminated by notice, and the plaintiff claimed possession of the superstructure as well as the land on the ground that the defendant had failed to remove the superstructure within the stipulated time. The defendant denied the plaintiff's title, and he pleaded that the lease filed by the plaintiff was a fictitious document. He also pleaded that the structure had been built more than 12 years before the suit and he had acquired title to the land by adverse proprietary possession. Confining the present consideration to the question of the building alone, the defendant-appellant has reiterated his pleas against the injunction whereby he has been directed to remove the material. True, he has also pleaded that the plaintiff-respondent was in any case not entitled to

that relief without payment of compensation to the appellant; but that does not take away from the fact that the building in suit is still the subject-matter in dispute in the appeal, as, it may incidentally be stated, it was in the lower appellate Court as well. I therefore hold that the right litigated in respect of the building is the same in the present appeal as it was in the trial Court.

5. The learned counsel for the defendant-appellant argued that there already exists a decree in favour of his client in regard to the superstructure in that he has been allowed to remove its material. That is no doubt true, but he is not satisfied with that decree. On the contrary, the defendant-appellant has reiterated the contentions put forward by him in the trial Court which, according to him, entitled him to retain possession of not only the land in suit but also of the building standing thereon, and he has prayed that the entire suit of the plaintiff-respondent be dismissed.

6. The learned counsel for the defendant-appellant further cited the ruling reported as -- '*Jogal Kishor v. Tale Singh*', 4 All. 320. That was a suit for possession of certain land and demolition of building erected thereon by the defendant, and it was held that the value of the building which might have to be demolished should not be taken into account in estimating the value of the suit for purposes of court fee. The case is clearly distinguishable since, unlike the present suit, that was a suit wherein the plaintiff did not pray for possession of the building as well as the land. In the present case the plaintiff having prayed for possession of both the land and building, she was required, and quite rightly, to pay ad valorem court-fees in respect of both the items of property under Section 7 (v) (d) and (e) of the Court-Fees Act. And since the building as well as the land are, for reasons recorded above, still the subject-matter of dispute in this appeal, the defendant-appellant must pay the same court-fee on the memorandum of appeal filed here. It has further to be stated that the deficiency in the court-fee paid by the appellant in the Court of the District Judge was the same as here.

7. The total amount on which court-fee is therefore payable on the present memorandum of appeal is Rs. 2,796-2-0. The same court-fee was also payable in the lower appellate Court. The defendant-appellant is, accordingly, directed to

make good the deficiencies on both the memoranda of appeal by 11-8-1952. If the court-fee is paid, the appeal will be put up within three days of the payment for admission and for orders on the application for stay of execution after due notice to the learned counsel for the defendant-appellant, otherwise for necessary orders consequent on non-payment of the deficiencies.

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