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Luharo and ors. Vs. Lafiya and ors.

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Court : Himachal Pradesh

Decided On : Mar-15-1955

Reported in : AIR1955HP61

Judge : Ramabhadran, J.C.

Acts : Court-fees Act, 1870 - Section 7; ;Himachal Pradesh Court-fees (Amendment) Act, 1952 - Schedule - Article 17

Appeal No. : Second Appeal No. 5 of 1953

Appellant : Luharo and ors.

Respondent : Lafiya and ors.

Advocate for Def. : Kedar Ishwar, Adv. for;Contesting

Advocate for Pet/Ap. : D.R. Chaudhary, Adv. for; I.D. Abrol, Adv.

Judgement :
ORDER

Ramabhadran, J.C.

1. I have heard learned counsel for the parties on the question of court-fee. Learned counsel for the appellants argued that the suit, giving rise to this appeal, was really one for declaration and the prayer for correction of the entries in the revenue records was an unnecessary surplusage. In fact, he pointed out that the

civil court could not legally direct the correction of the revenue record. He, therefore, contended that as a suit for declaration, the court-fee paid, i.e., Rs. 15/-, was in accordance with Schedule II, Article 17 (iii), Court-fees (Himachal Pradesh Amendment) Act, 1952.

2. Learned counsel for the respondents, on the other hand, argued that we must look to the plaint as it stands. He urged that it was immaterial whether the consequential relief, claimed in the plaint, could be granted by the civil Court or not.

3. It seems to me that, in construing the plaint, the Court must look at the substance of the plaint rather than at its mere form. I am supported in this view by-- 'Verkata Ranga Rao v. Sitarama Chandra Rao', AIR 1941 Mad 91 (A), where Wadsworth, J., observed as follows:

'In matters of court-fee and pecuniary jurisdiction, the real substance of the suit and not the form in which it has been clothed, should be looked to.'

4. In--Tewary Kora v. Bhupat Mander', AIR 1919 Pat 13 (1) (B), the facts were that the plaintiffs sued for a declaration that they were occupancy tenants and not mere tenure-holders. They further prayed for a declaration that the entry in the revenue records, describing them as tenureholders, was wrong. It was held by the Patna High Court that the second relief was redundant and the suit was one for declaration without consequential relief. In--'Ram Singh v. Bakhshi', AIR 1917 Lah 411 (C), the plaintiffs alleged that the entries in the revenue papers in respect of certain khasra number were incorrect, inasmuch as they were shown as the property of the defendants whereas, in reality, they formed part of the 'shamilat deh'. The relief prayed for was that the mutation proceedings in respect of the land in question be held null and void and the entries in the record of rights be corrected. It was held by the former Chief Court of the Punjab that on a liberal interpretation of the plaint, it was reasonable to hold that the real object of the plaintiffs was to obtain a declaration to the effect that the entries relating to the land in question were incorrect and the land did not belong exclusively to the defendants.

5. On the same analogy, on a liberal construction of the plaint, I would hold that the suit was, in substance, one for declaration and as such the court-fee paid (Rs. 15/-) is sufficient; vide Schedule II, Article 17 (iii), Court-fees (Himachal Pradesh Amendment) Act, 1952. The appeal may be fixed for regular hearing.

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