

CASE NO.:
Appeal (civil) 7952 of 2001

PETITIONER:
KAMALESHWAR KISHORE SINGH

Vs.

RESPONDENT:
PARAS NATH SINGH & ORS.

DATE OF JUDGMENT: 22/11/2001

BENCH:
R.C. Lahoti & Brijesh Kumar

JUDGMENT:

Leave granted.

Kamaleshwar Kishore Singh, the appellant and his two minor sons suing through the appellant as next friend, have filed a suit for partition of movable and immovable properties registered as T.P. Suit No. 489 of 1993 in the Court of Sub-Judge-I, Patna. A perusal of the plaint shows that the parties are alleged to be members of joint Hindu Mitakshara family and the properties forming subject matter of the suit, set out in the two schedules annexed with the plaint (Schedule-I listing the immovable properties and Schedule II listing the movable properties) are alleged to be joint family properties of the parties. The source of acquisition of properties is alleged to be joint family funds. The share claimed by the plaintiffs is 25/3 paise out of 100 paise. The remaining shares belong to the defendants. The reliefs sought for are: (i) a preliminary decree defining plaintiffs share at 25/3 paise in the suit properties described in Schedule I & II of the plaint, (ii) appointment of a commissioner to divide the properties by metes and bounds, and (iii) placing the plaintiffs in exclusive possession over the property falling in their share. The suit is valued at Rs.16 lakhs for the purpose of jurisdiction but according to the plaintiffs it being a simple suit for partition a fixed court fee of Rs.29.25 p. only is liable to be paid which has been affixed on the plaint.

It appears that the defendant No.20 moved an application on 3.10.96 submitting that the properties exclusively belonging to her, being her self-acquired properties, as evidenced by the documents filed by her with the written statement, have been included in the suit for partition and so either the defendant No.20 be deleted from the array of the parties or in the alternative the plaintiffs be directed to pay ad-valorem court fee on the market value of the properties standing in the name of this defendant amounting to Rs.30,50,000/-. By order dated 17.12.96 the trial court allowed the objection petition filed by the defendant No.20 and directed as under:-

the petition of defendant no.20 dt. 3.10.96 is allowed and the plaintiffs directed to first pay ad-valorem court fee over the properties standing in the name of defendant no.20 which were included in the suit property on the value of 10% above as given in the sale deeds of these properties

the photo copy of which has been filed on behalf of the defendant no.20. Put up on 9.1.97.

After the passing of the above order, the defendant no.20 moved yet another petition submitting that the plaintiffs should have been directed to pay ad-valorem court fee on Rs.29,39,760/-, the value of the land and the houses standing thereon, included in the suit property and that there was a typing mistake in the order dated 17.12.96 wherein the direction should have been to pay court fee on 10 times of the value of the properties given in the sale deeds (filed by the defendant no.20) and not 10% as typed in the said order. By order dated 1.3.97 the trial court directed as under:-

.. the petition of the defendant no.20 dated 9.1.97 is allowed and the order passed by this court dated 17.12.96 is also corrected and modified and the plaintiff is directed to pay ad valorem court fee over the value of Rs.29,39,760/-. Put up on 10.5.97 for filing the same.

A perusal of the above order shows the trial court having been persuaded to hold that 10 times of the value of the properties calculated on the basis of deeds filed by defendant No.20 with her written statement comes to Rs.10,39,760/- to which should be added value of 4 storeyed constructed pucca house which is Rs.19 lacs and thus the suit should have been valued at Rs.29,39,760/- and ad-valorem court fee paid thereon by the plaintiffs.

Feeling aggrieved by the order dated 1.3.97 the plaintiff No.1 filed a civil revision under Section 115 of the C.P.C. before the High Court of Patna. The principal grievance raised by the appellant before the High Court was that the order dated 1.3.1997 was passed without affording him any opportunity of hearing and hence was liable to be set aside. By the impugned order dated 20.8.97 the High Court has dismissed the revision forming an opinion that the order dated 1.3.97 was an order directing only a clerical error to be corrected which the court was empowered to do and hence no fault could be found with the impugned order. The plaintiff has filed this petition seeking special leave to appeal.

In our opinion the appeal deserves to be allowed and the matter deserves to be remitted back to the High Court for decision afresh. Without going into the question whether the order dated 17.12.96 suffered from only a clerical error it is clear that the order dated 1.3.97 was in substantial departure from the order dated 17.12.96. By order dated 1.3.97 the trial court directed the plaintiffs to value the suit at 10 times of the value given in the sale deeds of the properties, the photocopies whereof were filed by the defendant no.20 with the written statement. A reading of the order dated 1.3.97 shows that this order could not have been construed as the one correcting a clerical/typing error only; it substantially modified the earlier order dated 17.12.96 and in effect was the real order causing grievance to the plaintiffs. The order dated 1.3.1997 is not to be read in isolation. The revision filed by the plaintiff/appellant before the High Court could not have been disposed of without testing correctness of both the orders dated 17.12.1996 and 1.3.1997.

It is well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall

begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fees and fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit. These principles of law were over-looked by the trial court in passing the impugned order which was put in issue before the High Court. We are further of the opinion that though the revision preferred by the plaintiff was directed against the order dated 1.3.97, the real question arising before the High Court was to find out whether the suit was properly valued and proper court fee was paid thereon in accordance with law. While doing so if the High Court was required to examine the correctness or otherwise of the order dated 17.12.96 it should not have felt inhibited from doing so. In the facts of the present case we are clearly of the opinion that the High Court was not justified in dismissing the revision on the ground that the order dated 1.3.97 was an order correcting a clerical or typing error only.

The two orders of the trial court do not refer to any relevant provision of law or a binding precedent based on which the trial court was persuaded to take the view which it did.

The learned counsel for the defendant-respondent pointed out that during the course of arguments, on 17.12.1996, the plaintiff had agreed to pay the ad-valorem court fees on the properties and asked the defendant-applicant to file the deeds of the said properties in order to ascertain the valuation of the said property. What is the effect of such concession shall also be taken into consideration by the High Court and we express no opinion thereon.

The appeal is allowed. The impugned order of the High Court dated 20.8.97 is set aside. The Civil Revision No.901 of 1997 shall stand restored on the file of the High Court. The High Court shall after affording the contesting parties an opportunity of hearing decide the revision afresh and expeditiously, consistently with the observation made hereinabove. A short point is arising for decision and much time has already been lost. Further the pendency of the revision has stalled progress of the suit pending before the trial Court.

. J.
(R.C. Lahoti)

. J.
(Brijesh Kumar)

November 22, 2001.