

Supreme Court of India

Ram Narayan Prasad vs Atul Chander Mitra on 29 March, 1994

Equivalent citations: 1994 SCC (4) 349, JT 1994 (3) 148

Author: B S.P.

Bench: Bharucha S.P. (J)

PETITIONER:

RAM NARAYAN PRASAD

Vs.

RESPONDENT:

ATUL CHANDER MITRA

DATE OF JUDGMENT 29/03/1994

BENCH:

BHARUCHA S.P. (J)

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BHARUCHA S.P. (J)

KULDIP SINGH (J)

JEEVAN REDDY, B.P. (J)

CITATION:

1994 SCC (4) 349 JT 1994 (3) 148

1994 SCALE (2) 470

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by S.P. BHARUCHA, J.- The appellants were the plaintiffs in a suit filed against the first respondent in the Court of the Munsif 1st, Gaya (being TS No. 278 of 1971). It was alleged in the plaint that the appellants were the sons and daughters of one Jaikishun Lal who died on 1-7-1962, leaving them behind as his sole heirs. The late Jaikishun Lal had purchased the suit property from the defendant under a registered sale deed dated 30-4-1960. After the late Jaikishun Lal became the owner of the property, the first respondent had requested him to let the suit property to him on a monthly rental of Rs 90. The proposal was accepted and the first respondent was inducted as a tenant on 1-5-1960. On 18-5-1960, the first respondent had executed a "Kirayanama" in favour of the late Jaikishun Lal in the aforementioned terms. The first respondent paid some rent to the late Jaikishun Lal and thereafter to the plaintiffs, the last of such payments having been made on 7-8-1962. The first appellant was a minor when Jaikishun Lal died. Upon attaining majority the first appellant had filed a petition for mutation of the Municipal Register in

respect of the suit property. The first respondent had filed objections thereto, which had been rejected. The appellants were the owners of the suit property, the first respondent was their tenant and he was in arrears of rent. Being a defaulter he was liable to be evicted from the suit property. The appellants needed the suit property for personal use. For the purposes of Jurisdiction and court fees, the suit was "valued at Rs 1080 being the monthly rent of the house in suit for 12 months" and the appellants, on payment of court fees of Rs 157.50, prayed for the following reliefs:

"(i) That a decree for ejectment of the defendant from the house in suit be passed.

(ii) That the defendant be ordered to vacate the house in suit within the period fixed by the court failing which the plaintiffs be put in possession over the house in suit through the processes of the court."

2. The first respondent filed a written statement in which he claimed that in April 1960 he was in need of money and had approached the late Jaikishun Lal for a loan. The late Jaikishun Lal had insisted that the security for the loan should be in the form of a sale deed with a clause for reconveyance as also a "Kirayanama" showing a monthly rent for the suit property of Rs 90. The first respondent being in urgent need of money had executed these documents under undue influence and compulsion. The first respondent denied that there was a relationship of landlord and tenant between the appellants and himself.

3. The first respondent moved a petition in the trial court averring that the court "in view of the pleadings of the parties has to decide in respect of the title not incidentally but in a full-fledged manner" and, therefore, the appellants could not proceed with the suit unless ad valorem court fees on the market value of the suit property were paid. Reliance was placed upon the judgment reported in Sheo Shankar Prasad v. Barhan Mistry<sup>1</sup>. Upon this petition, the trial court ordered thus:

"In view of the pleadings of the parties. I am of the opinion that the Court has to decide title, not incidentally but in a full-fledged manner. Under such circumstances, in view of the reported decision in Sheo Shankar Prasad v. Barhan Mistry<sup>1</sup> the plaintiffs have to pay ad valorem court fee on the market value of the suit property. According (?) the plaintiffs are directed to pay ad valorem court fee on the market value of the suit property. If the plaintiffs are so advised, they may file petition for amendment of the plaint in the light of declaration of their title to the suit property."

4. The appellants carried the matter to the Patna High Court by way of a civil revision application. The same was dismissed in limine. From the order thereon the appellants have preferred this appeal by special leave.

5. It is necessary immediately to refer to the judgment of the Patna High Court reported in Sheo Shankar Prasad v. Barhan Mistry<sup>1</sup>. Paragraph 2 of the judgment, of a learned Single Judge, reads:

"The plaintiff alleges that rent was paid up to December 1978 only and the defendants have defaulted thereafter. The plaintiff alleges personal necessity also. The

defendants have seriously denied the title of the plaintiff to the katras in question. Although initially the suits were filed as between the landlord and tenant and court fee paid accordingly, but as a result of the defence, the parties led evidence on the question of title to the property, - and the courts have dealt with the question at 1 1985 PLJR 358 considerable length. It has been repeatedly held by this Court, and I may mention a recent case on the point, being SA No. 467 of 1981, allowed on 17-4-1984, that before the Court goes into the question of title not incidentally, but in a full-fledged manner the plaintiff should be asked to pay ad valorem court fee. This has not been done."

6. Learned counsel for the appellants submitted that the suit had been valued for the purposes of court fees upon the basis that the appellants were the landlords of the suit property, that the first respondent was the tenant thereof, that he was in arrears of rent and, therefore, was liable to be evicted therefrom. The relief that was sought in the suit was the relief of eviction. The plaint had, therefore, been correctly valued. The trial court was in error in requiring the appellants to pay ad valorem court fees on the suit on the basis of the market value of the suit property. Learned counsel for the respondents relied upon the judgment of the Patna High Court referred to above.

7. Section 7 of the Court Fees Act, 1870, sets out how court fees are to be computed upon certain suits. By reason thereof, on a suit between a landlord and tenant for the recovery of immovable property from the tenant, court fees are to be paid "according to the amount of the rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint".

8. In *Sathappa Chettiar v. Ramanathan Chettiar*<sup>2</sup> this Court noted that the question of court fees had to be considered in the light of the allegations made in the plaint and its decision could not be influenced either by the pleas in the written statement or by the final decision of the suit on the merits. Though this was stated upon a concession, we have no doubt that the statement lays down the law correctly. For the purposes of valuation of the suit for determination of the court fees payable thereon, what is relevant is the plaint. The averments made and relief sought in the plaint determines the character of the suit for the purposes of the court fees payable thereon. What is stated in the written statement is not material in this regard. This view has also been taken by many High Courts.

9. The plaint in this case sought the relief of eviction of the first respondent from the suit property upon the averments that the appellants were the landlords and the first respondent was their tenant and he was in arrears of rent. The suit could only be valued as an eviction suit, regardless of the fact that the first respondent had denied the appellants' title to the suit property so that this became an issue in the suit.

10. The appeal is, accordingly, allowed. The order of the High Court dismissing the plaintiffs' civil revision application and the order of the trial court allowing the first respondent's petition for seeking payment of ad valorem court fees on the market value of the suit property are set aside. The said petition is dismissed. 2 1958 SCR 1024 : AIR 1958 SC 245

11. There shall be no order as to costs.