

Supreme Court of India

Chief Inspector Of Stamps vs Indu Prabha Vachaspati (Smt) And ... on 22 July, 1997

Equivalent citations: JT 1998 (7) SC 610, (1998) 9 SCC 157

Bench: S V Manohar, M J Rao

ORDER

1. This is a cross-appeal filed by the Chief inspector of Stamps in respect of a judgment of the High Court of Allahabad dated 10-4-1979 in CR No. 559 of 1972. The appeal filed by the respondent in respect of the same judgment regarding valuation, on a question which was decided against her by the High Court has been allowed by this Court (CA No. 2220 of 1982).

2. In the present appeal, the appellant contends that prayer (c) of the plaint has been wrongly valued for the purpose of court fees. Prayer (c) is as follows: "that the plaintiff's one-third share in the properties left by late Dr. B.N. Prasad as detailed in Schedule 'A' attached to the plaint be partitioned and the plaintiff be put in separate possession of her share (valued at Rs 1,03,880.25p.)"

3. According to the appellant, the plaintiff must be presumed to have parted with possession of the property in question and hence court fees should have been paid on the full value of her share, in the property instead of 1/5th value of her share as has been done by her. This contention has been rightly negated by the High Court. Valuation of a claim for the purposes of court fees depends on the prayers in the plaint. In paragraph 10 of the plaint, the plaintiff has clearly stated that the immovable properties in question are at present in the occupation of tenants and the plaintiff has got constructive possession of the same. The High Court has rightly held that the plaint does not disclose anywhere that the plaintiff had divested herself of the possessory right in the said properties or that she was out of possession after the execution of the documents which are impugned in the plaint. The plaintiff's case is that she is in constructive possession through her tenants. Hence the High Court has rightly held that the court fees would be payable on the 1/5th value of her share as has been done by her.

4. The appeal is, therefore, dismissed with costs.