REFERENCE UNDER THE COURT-FEES ACT.

1930

Aug. 1.

Before Rankin C. J.

BASANTAKUMAR BISWAS

v.

PRASANNAKUMAR GUHA.*

Court-fees—Appeal—Reference to civil court under Bengal Alluvial Lands Act (Beng. V of 1920), s. 5.

In an appeal from a decree of the Subordinate Judge, passed on a reference by the Collector under the Bengal Alluvial Lands Act, section 5, the memorandum of appeal was stamped with a court-fee of Rs. 20.

Held, the memorandum was properly stamped.

Panna Lal Biswas v. *Panchu Ruidas* (1) and *Brojendra Kishore Roy Choudhury* v. *Sarojini Ray* (2) referred to.

This was a Reference to the Chief Justice, under section 5 of the Court-fees Act, 1870, as to whether the memorandum of appeal was sufficiently stamped.

The suit, out of which this appeal arose, was one arising from a Reference made by the Collector of Faridpur under section 5 of the Bengal Alluvial Lands Act, in respect of an extensive block of *char* land formed in the bed of the river Arialkhan, which was attached under the provisions of section 3 of the said Act. There were four rival party claimants to the land, but only three contested the suit before the trial court. The Subordinate Judge declared the title of certain members of the first party to certain *mouzâs* and declared that they should be in constructive possession, through the other members of that party as tenure-holders: he also declared the title of claimants Nos. 1 to 3 and 15 (*ka*) of the second party to certain other *mouzâs* and declared that they were entitled to *khâs* possession thereof, but, in respect of the other members of the second party, he declared that they were entitled to no relief, their

*Reference under section 5 of the Court-fees Act, 1870, in the matter of First Appeal, File No. 20870 of 1930.

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title having been extinguished by adverse possession. The third party—the Secretary of State for India—was declared entitled to the rest of the *mouzâs* and it was declared that his possession be confirmed.

Against that decree, the unsuccessful claimants of the second party filed this appeal and paid a court-fee of Rs. 20 only, as in a suit for a declaration, under Article 17 *iii* of the second schedule of the Court-fees Act. The Stamp Reporter considered that the frame of the suit, as well as the form of the decree, was in the nature of a decree declaring the title of a property with consequential relief of recovery of possession of land and the appeal, therefore, should be stamped with *ad valorem* court-fee under section 7 (*v*) *d*. On that, the Registrar, as the Taxing Officer, made this Reference to the Chief Justice.

Prakashchandra Majumdar for the appellant. The court-fees should be under Schedule II, Article 17 *iii*. This is for a declaration only and no consequential relief is sought. The Collector gives the relief under section 6 of the Bengal Alluvial Lands Act. This is not a suit for declaration and possession. *Panna Lal Biswas* v. *Panchu Ruidas* (1), *Brojendra Kishore Roy Choudhury* v. *Sarojini Ray* (2).

The Senior Government Pleader, Saratchandra Basak (with him *the Assistant Government Pleader, Nasim Ali*) for the Government. *Ad valorem* court-fee is payable and the provisions of Schedule I Article 1, are applicable.

RANKIN C. J. In my opinion, the contention of Mr. Majumdar on behalf of the appellants is right in principle and there is not enough in the language of the particular judgment and decree before me to prevent me from giving effect to what I consider to be the justice of the matter. This is a case in which the Collector took action under the recent statute—

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Bengal Act V of 1920, the Bengal Alluvial Lands Act—in respect of a certain *char*. Under that Act, where the Collector thinks that a dispute is likely to cause a breach of the peace, he may at once attach the land and take proper steps to refer the matter of the different claims to the civil court. By section 5, when the survey and map referred to in section 4 have been completed, the Collector shall, as soon as possible, pass an order making a Reference to the principal civil court of original jurisdiction in the district for a decision as to what person has a title to the land and shall state in such order the names of the parties whom he has reason to believe to be claimants to the said land. Thereupon, by sub-section (*2*) of the same section, the civil court may proceed to determine the matter. It shall issue notices to all the claimants mentioned in the Reference and general notices calling upon all other persons claiming interest in the land to appear and file statements of their claims. The court shall also determine which of the claimants has the right to begin at the hearing of the Reference. The proceeding is to be deemed to be a suit and the court has to make such order as it thinks fit with regard to costs, including such court-fees as are payable under the Court-fees Act on a plaint in a suit for the determination of title to land. Whenever the court makes an order, it is required to certify to the Collector its decision and the Collector, by section 6, shall, thereupon, put the person stated in such order to be entitled to the land in possession thereof.

In my opinion, the procedure which is contemplated by this statute is a procedure under which the civil court is to have before it a number of persons who are all claimants to the land or, as sub-section (*2*) says, "persons claiming interest in the "land." The different parties, although one of them only can begin, are really all in the position of plaintiffs and I see that the learned Subordinate Judge in this case has required those persons, who have succeeded before him, to pay court-fee upon the

market value of the land, as though it were a suit for possession of land.

Now, what the civil court has to do is to determine the matter; in other words, to give a decision as to what person has a title to the land; and it is to be noticed that when the court gives its decision the Collector is to put the person stated in such order to be entitled to the land in possession thereof. What, then, is the function of the civil court? It is to find out which of the claimants is entitled to the land. It is no doubt true that in civil courts we are very familiar with the distinction between "title" and "possession." A person may have title and another person may have possession. A person's title may come to an end by reason of his lack of possession and so forth. But when I consider the general scope of this Act, which is an Act to afford effective machinery for preventing a breach of the peace, it is quite clear that when the statute speaks of finding out the person entitled to the land it means not only that you are to find out a person with the general title, but you are to find out who is the person who is entitled to possession. The word "title" in itself includes the right to possession, though no doubt different people may have different title in the same land, and there may be room for distinction between one use of the word "title" and another. But, for the present purpose, the civil court has to find out what person has title to the land including, in particular, what person has the right to possession of it. It seems to me that while it is quite true that the court is to declare its opinion as to the persons who are entitled to possession, it is not intended that the court should do more. It may declare, for example, that so and so is the landlord, having the full general title to the property and that so and so is the tenant having the immediate right to possession under the landlord. In that case, after the court has declared its opinion, it is for the Collector to proceed accordingly. The land is in the possession of the law by reason that it is in the possession of the Collector under the statute.

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The Collector is not a party before the civil court and the duty of the Collector to give possession to the party declared to be entitled is a duty imposed upon him by section 6 and it is not a duty imposed upon him by the order of the civil court. It is in this last respect that the learned Subordinate Judge here has not been quite clear in his mode of thinking. It is not altogether surprising, as this is the first case, I understand, under the Act of 1920. It is quite true that, being accustomed to the usual language employed in suits for possession after declaration of title, he has expressed himself as though he is giving a direction to the Collector as to what he is to do. But when I come to look at the substance of the matter, I find that he says: "The title of the several "party claimants of the different sets shall be declared "and they shall be placed in possession of the lands "as determined." I do not think that it is necessary to take a mere form of expression too strictly, when it leads us away from the substance and the justice of the case, and I propose to read this judgment and decree as being intended under the Act as a declaration of the right to possession of the different parties and of title generally. I do not think it necessary to read this order and decree as being intended contrary to the Act to give a direction which it was no part of the business of the Subordinate Judge to have given. The duty of the Collector arises under the statute and it is not by reason of the direction of the court that his duty arises. In this view, it appears to me that the reasoning given in the cases, to which I have been referred, with reference to suits under section 146, Criminal Procedure Code, is applicable to the present case. Indeed, the language of the statute itself is not capable of any other interpretation. I refer to the cases of *Panna Lal Biswas* v. *Panchu Ruidas* (1) and *Brojendra Kishore Roy Choudhury* v. *Sarojini Ray* (2). It has been suggested that the expression to the effect that the Collector is to put

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so and so in possession should be regarded as being without jurisdiction on the part of the Subordinate Judge. I agree with the criticism that has been made by the Senior Government Pleader upon that way of looking at the thing. If the appellants here were not to be regarded as claimants, but were to be regarded merely as unsuccessful defendants, I do not think that they could ask the office or myself as the Taxing Judge to hold that part of the decree complained of was without jurisdiction and that therefore, they must be allowed, though they were really appealing against the whole, to appeal against a part of it and pay only a fixed court-fee of Rs. 20. It cannot be the business of this Court at this stage to make up its mind whether the decree of the Subordinate Judge was or was not without jurisdiction and, if the question depended entirely on the right to take that view, I should be in agreement with the Senior Government Pleader that that was a somewhat precarious attitude to adopt. It seems to me, however, that one is entitled to look at the expressions used by the learned Subordinate Judge in the light of the statute and I am of opinion that they were intended by him to be read in the light of the statute; and, in my judgment, all that he has meant to do is to say that he is making a decision as to the persons who are entitled to the land including a decision as to the persons who have the immediate right to possession. That decision is given in order that the Collector may act upon it. But the Collector, when he does act upon it, acts by virtue of section 6 of the Alluvial Lands Act and not by virtue of any direction which the learned Subordinate Judge may have given. I think, therefore, that the memorandum of appeal should be held to be sufficiently stamped in the present case.

N. G.