CIVIL REVISION.

Before S. K. Ghose and N. K. Bose JJ.

SATYAKRIPAL BANERJI

v.

SATYABIKASH BANERJI.*

1929

June 25.

Court-fees—Review—Review affecting only portion of entire claim in suit—Court-fees Act (VII of 1870), s. 15; Sch. I, Arts. 1, 4—Code of Civil Procedure (Act V of 1908), s. 151; O. XLI, r. 1.

The Court-fees on a petition for review are leviable on tho value of the entire claim in suit, and not on the value of the relief sought for in the review proceedings.

"The plaint" in the 3rd column of Article 4 of schedule I of the Court-fees Act means the plaint which was actually filed and has resulted in the judgment which is sought to be reviewed. A reference to Article 1 would not support any other construction.

The policy of the legislature was apparently to put a clog on possible *mala fide* applications for review.

Nobin Chundra Chuckerbutty v. *Mohamed Uzir Ali Sarkar* (1), *Nandi Lal Agrani* v. *Jogendra Chandra Dutta* (2) and *In the matter of Shiekh Maqbul Ahmad* (3) referred to.

Anon in Reference from Civil Judge of Tanjore (4), *In re Punya Nahako* (5) and *In re Manohar G. Tambekar* (6) dissented from.

RULE obtained by Satyakripal Banerji, defendant.

A suit for partition and accounts was valued at Rs. 5 lakhs. But the defendants were found liable for Rs. 19,500 only, of which this defendant's share of liability was Rs. 10,000. Thereupon, this defendant filed a petition of review with a court-fee of Rs. 750 valued on his liability of Rs. 10,000 only. The learned Subordinate Judge upheld the preliminary objection as to valuation and court-fees payable on this petition of review and rejected that application. Thereupon, this defendant moved the High Court and obtained a Rule.

*Civil Revision, No. 315 of 1929, against the orders of Bakulal Biswas, Additional Subordinate Judge of 24-Parganas, dated Jan. 26, 1929, and Feb. 18, 1929.

(1) (1898) 3 C. W. N. 292.
(2) (1923) 28 C. W. N. 403.
(3) (1909) I. L. R. 31 All. 294.
(4) (1872) 7 Mad. H. C. R. App. 1.
(5) (1926) I. L. R. 50 Mad. 488.
(6) (1879) I. L. R. 4 Bom. 26.

1929

SATYAKRIPAL BANERJI v. SATYABIKASH BANERJI.

Mr. Brajalal Chakravarti and *Mr. Hiralal Chakravarti*, for the petitioner.

Mr. Rupendrakumar Mitra and *Mr. Shyamaprasanna Mukherji*, for the opposite party.

GHOSE J. This Rule arises out of following circumstances: As far back as 1907, Title Suit No. 41 of 1907, was instituted in the First Court of Subordinate Judge at Alipur, the reliefs claimed being partition and accounts and the value of the suit being Rs. 5 lakhs odd. The present petitioner was defendant No. 1 in that suit. The suit was preliminarily decreed by the learned Subordinate Judge on the 24th July, 1908, and by the High Court in appeal on the 17th August, 1909. Thereafter, two commissioners were appointed in succession to take accounts. One of the claims of the plaintiff was with regard to Government promissory notes of the face value of Rs. 20,000. The defence was that certain notes had been sold by the plaintiff. The matter was duly investigated and the suit was finally decreed on the 3rd April, 1928, 21 years after its commencement. The defendants were held liable for Rs. 19,500 in respect of the aforesaid G. P. Notes. The final decree was for Rs. 95,000. The petitioner's case is that since then he has discovered new evidence which was not within his knowledge before. Thereupon he filed an application for a review of judgment before the Subordinate Judge under Order XLI, rule 1, and section 151 of the Code with regard to the petitioner's share of the said liability for Rs. 19,500, valuing the petition at Rs. 10,000 and paying court-fees of the value of Rs. 750 thereon. There was a preliminary objection to this application. The learned Subordinate Judge, after hearing the parties, held that the court-fees on the petition were leviable on the value of the entire claim in suit, and not on the value of the relief sought for in the review proceedings, and he directed the petitioner to pay the full court-fees as on the original plaint within a certain time. The petitioner at first sought for extension of time. But

ultimately he was unable to pay and his application for review was rejected. Hence this present application in revision.

It is now contended that the learned Subordinate Judge was in error in construing Article 4 of schedule I of the Court-fees Act, Act VII of 1870. The whole thing turns upon the meaning of the words "the plaint" in the 3rd column. To my mind they can mean nothing else than the plaint which was actually filed and which has resulted in the judgment which is sought to be reviewed. They do not mean an imaginary plaint which might be filed at the time of the application for review and asking for the same relief as in that application. Similarly, in the case of a memorandum of appeal a reference to Article 1 would not support any other construction. I am confirmed in this view by the reported decisions of the Calcutta and Allahabad High Courts [*Nobin Chundra Chuckerbutty* v. *Mohamed Uzir Ali Sarkar* (1), *Nandi Lal Agrani* v. *Jogendra Chandra Dutta* (2) and *In the matter of Sheikh Maqbul Ahmad* (3)], though the other view has been taken in Madras and Bombay [*Anon* in Reference from Civil Judge of Tanjore (4), *In re Punya Nahako* (5) and *In re Manohar G. Tambekar* (6)]. In the Madras case (5), which is the last case on the point, the Calcutta view was dissented from on the ground that it would entail hardship in cases where, as here, the review application related to only a small portion of the relief asked for in the plaint. But this point was not overlooked in the decisions of the Calcutta and the Allahabad High Courts. As was pointed out in *In the matter of Sheikh Maqbul Ahmad* (3), the hardship is almost entirely mitigated in deserving cases by the provisions in section 15 of the Act. The policy of the legislature is also referred to in the case of *Nandi Lal Agrani* v. *Jogendra Chandra Dutta* (2). It was pointed out that "for the purpose of ascertainment of

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1929

SATYAKRIPAL BANERJI v. SATYABIKASH BANERJI.

GHOSE J.

"the court-fee payable on the application for review "the application relates back to the plaint or "memorandum of appeal, as the case may be; the "amount is levied in a fixed proportion, independent "of the scope of the application for review." It seems to me that the policy of the legislature was to put a clog on possible *mala fide* applications for review. I hold, therefore, that the order complained against was correctly passed and the present application must fail.

The Rule is discharged with costs to all the contesting opposite parties. Hearing fee three gold mohurs.

BOSE J. I agree.

Rule discharged.

G. S.