

REFERENCE UNDER THE COURT-FEES ACT.

Before Costello J.

RASHBIHARI SANYAL

v.

GOSTHABIHARI GOSWAMI.*

1934

Aug. 28.

Court-fees—Appeal against order of Calcutta Improvement Tribunal—Reversioner's claim for investment of compensation money—Court-fees Act (VII of 1870), ss. 5, 7 in (c), 8; Sch. II, Art. 17 iii.

The provision of section 7 iv (c) and Article 17 iii, Schedule II, of the Court-fees Act of 1870 (and not those of section 8 of the Act) govern the assessment of court-fees payable in an appeal filed by the reversioner of a Hindu widow from an order of the Calcutta Improvement Tribunal rejecting the reversioner's claim *inter alia* for a declaration that he was in law the reversioner of the Hindu widow and that the previous sale by the widow to the other claimant of the property acquired by the widow was not for legal necessity and for an order for the investment during the widow's lifetime of the compensation money awarded for the acquired property instead of the delivery of the same to the purchaser from the widow.

Section 8 of the Act is not applicable when the amount of the compensation money awarded is not in dispute.

Unsatisfactory nature of the provision of the Court-fees Act of 1870 commented upon.

REFERENCE under section 5 of the Court-fees Act.

The appellant, who is the reversioner of a Hindu widow, claimed in an apportionment case before the President of the Calcutta Improvement Tribunal that the compensation money awarded for the compulsory acquisition of the premises No. 14, Balakhana Street, by the Calcutta Improvement Trust (Scheme No. VIIA) should be invested under section 32 of the Land Acquisition Act of 1894 and not paid over to the other claimants, who claimed the same by virtue of a purchase from a Hindu widow for alleged legal necessity: and for a declaration that there was no legal necessity.

*Reference by the Registrar, High Court, Appellate Side, under section 5 of the Court-fees Act, dated Aug. 6, 1934.

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The appellant's claim was rejected by the President of the Calcutta Improvement Tribunal. Hence he preferred this appeal.

The question raised was: how such a memorandum of appeal should be valued. On that question, there was a difference of opinion between the Stamp Reporter and the advocate of the plaintiff appellant. Thereupon the matter was referred to the Registrar, Appellate Side, as Taxing Officer, who made this reference, raising the following questions:—

When a memorandum of appeal would, in ordinary circumstances, be assessable to stamp duty under a provision of the Court-fees Act, requiring a fixed fee, does the existence of section 8 of the Act always have the effect of making such memorandum assessable to *ad valorem* duty under Article 1, schedule I of the Act, when the question has arisen in connection with compensation awarded under the Land Acquisition Act ?

Sateendranath Mukherji and *Sateeshchandra Munshi* for the appellant.

The Assistant Government Pleader, Bijankumar Mukherji, for the Government.

COSTELLO J. This matter arises in connection with an appeal—sought to be filed by one Rashbihari Sanyal under section 3 (1) of the Calcutta Improvement (Appeals) Act, 1911—from a decision of the President of the Calcutta Improvement Tribunal sitting alone, by virtue of the provisions of section 77 (1) (b) of the Bengal Act V of 1911.

Of the parties to the appeal, the appellant and the second and third respondents had been the claimants before the President of the Calcutta Improvement Tribunal in a case, in which the question at issue was whether or not a sale which had been made by a lady, Bhubanmohinee Debee, of certain immovable property in Calcutta had been made by her for legal necessity, and so passed an absolute right in the property to the purchaser who was Goshthabihari Goswami, the first respondent to the appeal.

The property, which is the subject-matter of the proceedings, had been acquired by the Calcutta

Improvement Trust compulsorily and a sum of Rs. 6,339-6 had been awarded to Goshtabihari Goswami as the owner of the property at the time when it was acquired, as compensation. The Sanyals claimed in the proceedings before the President of the Tribunal that they were the reversioners of Bhubanmohinee's husband, and therefore entitled to the property in question, or to the proceeds of the sale of it after the death of Bhubanmohinee. Whether they were so entitled or not of course depended upon the question whether the sale made by Bhubanmohinee was made for legal necessity and whether it was of such a nature as to confer on the purchaser an absolute interest or merely an interest for the duration of life of Bhubanmohinee.

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The claimants, in the proceedings before the President of the Calcutta Improvement Tribunal, asked for a declaration that they were in law the reversioners and consequently that the amount of the compensation money ought not to be handed over to Goshtabihari Goswami, but should be invested by the President of the Calcutta Improvement Tribunal under the provisions of section 32 of the Land Acquisition Act, 1894.

When the appeal was lodged, a difference arose between the officer whose duty it is to see that the proper court-fee was paid and the advocate for the appellant, upon the question of what the amount of that fee ought to be. The matter was then put before the Registrar of the Court in his capacity as Taxing Officer, and he was of opinion that it was of such general importance that he ought to refer it for the decision of the Chief Justice under the provisions of section 5 of the Court-fees Act, 1870. Under the provisions of this section, it was open to the Chief Justice to decide a matter of this kind himself or to appoint another Judge of the Court in that behalf. It is in that way that the matter comes before me for final decision.

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The officer concerned with the question of court-fees, who is referred to in the letter of Reference by the Registrar as the Stamp Reporter, seems to have taken the view that the question of the amount of the fee to be paid on the filing of this appeal was affected by the terms of section 8 of the Court-fees Act. That section provides that the amount of the fee payable under the Act on a memorandum of appeal against an order relating to compensation under any act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant. I may say at once that, in my opinion, this is not a case of an appeal against an order relating to compensation under any Act. The appeal is really against the decision of the President of the Calcutta Improvement Tribunal whereby he held that the sale by Bhubanmohinee was made for legal necessity, and therefore, Goshtabihari Goswami had acquired an absolute interest in the property and so was entitled to retain for his own use the whole of the compensation money which had been awarded and the Sanyals had no interest whatever in that money. Accordingly, the President had declined to invest the money under the provisions of section 32, and was prepared to hand it over in its entirety to Goshtabihari Goswami. If it were held that the sale by Bhubanmohinee had only resulted in a transfer of a Hindu widow's interest, the position would seem to be that the money ought to be invested so that the purchaser of the property would enjoy the interest accruing thereon for the period of life of Bhubanmohinee, and after that the principal sum would revert to the Sanyals. It is quite clear, in my opinion, that the dispute between the Sanyals and Goshtabihari Goswami cannot, in any sense, be properly said to be concerned with the amount of compensation payable by reason of the compulsory acquisition of the property owned by Bhubanmohinee. The Sanyals, in the proceedings before the President of the Improvement Tribunal, were really asking for

a declaration and some consequential relief, namely, that the money should be invested instead of being handed over to Goswami. In that view of the matter, this would seem to be one of that unsatisfactory class of cases, which fall within the provisions of section 7, sub-section iv (c), where the amount of fee payable is more or less left to the discretion of the plaintiff himself, in that the section provides that in suits brought to obtain a declaratory decree or order, where consequential relief is prayed, "the plaintiff shall state the amount at which he values the relief sought". This provision has recently been discussed by a Full Bench of this Court in the case of *The Narayanganj Central Co-operative Sale and Supply Society, Limited v. Mafijuddin Ahmad* (1).

Dr. Mukherji, who appears on behalf of the Crown in the matter now before me, was disposed to agree that it would not be easy to contend that, in the present circumstances, the matter is other than one within the ambit of the provisions of section 7 iv (c), to which I have referred. But on the other hand, the learned advocate appearing for the appellant has conceded that the matter is one which may well be treated as falling within the provisions of schedule II, Article 17 iii of the Court-fees Act, which provides that a memorandum of appeal, in connection with a suit to obtain a declaratory decree when no consequential relief is prayed, must bear a definite fee of Rs. 20. One has only to put the provisions of section 7 iv (c) and those of schedule II, Article 17 iii in juxtaposition to show how unsatisfactory and anomalous some of the provisions of the Court-fees Act are. I pointed out in the judgment which I gave in the Full Bench case already referred to that it seems desirable that the legislature should put the provisions of this Act into a more satisfactory shape.

If the property acquired by the Improvement Trust had not been sold by Bhubanmohinee, it is obvious that the only question which could have been

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agitated by the Sanyals was the question whether or not they were in fact the reversioners.

Upon the exact phraseology of section 7 iv (c) and that of schedule II, Article 17 iii respectively, I should be disposed to hold that this is a case where, subject to the qualifications mentioned in the Full Bench case, the Sanyals as claimants and now as appellants could have assigned an arbitrary value to the proceedings. That is a highly unsatisfactory state of affairs for the reasons I gave in my judgment in the Full Bench case.

In the present instance, however, having regard to the very reasonable and proper attitude taken on behalf of the appellant, I think the answer to the Reference should be that the court-fee to be paid on the memorandum of appeal is the sum of Rs. 20 as provided for in schedule II, Article 17 iii of the Court-fees Act, both sides having agreed that schedule II, Article 17 vi does not apply. The appellants have already paid a fee of Rs. 15.

The deficit of Rs. 5 must be put in within one week.

A. K. D.