

CIVIL RULE.

Before Mitter and Khundkar JJ.

KAMALA RANJAN RAY

v.

ABHAY CHARAN PAL.*

1939

Mar. 27 ;
April 26.

Court-fee—*Transfer of several appeals—Application in one appeal for transfer of other appeals from other courts for analogous hearing—Separate vakā-lātnāmās and applications with separate court-fees, if necessary—Code of Civil Procedure (Act V of 1908), s. 24—Court-fees Act (VII of 1870), Sch. II, Arts. 1, 10.*

Where a party to a pending appeal wants to get some other appeals transferred to the court where his appeal is pending, to be heard as analogous appeals, he may do so by one application with one court-fee; and no separate *vakā-lātnāmā*, apart from the one filed in the appeal, will be required if the advocate is empowered to make applications in the appeal.

Such an application for transfer will be an application in the pending appeal with as many prayers as the number of appeals required to be transferred.

Moosa Soleman Saleji v. Secretary of State for India in Council (1) and *In re Vythilinga Pandara Saamadhi* (2) distinguished.

CIVIL RULE issued on the application of the appellant-petitioner.

The facts of the case and the arguments in the appeal are sufficiently stated in the judgment.

Krishna Lal Banerjee for the petitioner.

Sarat Chandra Basak, Senior Government Pleader, for the Government.

Cur. adv. vult.

The judgment of the Court was as follows:—

The question before us is whether one application stamped with a court-fee stamp of Rs. 2 or thirteen

*Civil Rule, No. 209(F) of 1939, in Appeals from Original Decrees, Nos. 244 and 245 of 1938.

applications, each stamped with a court-fee stamp of Rs. 2 is necessary. In cases similar to the case before us different views have been taken by this Court. In First Appeal No. 97 of 1937, Guha and Bartley JJ. held that one application is sufficient but in Civil Rule No. 5 of 1937, M. C. Ghose J. held otherwise. In the orders passed by the said learned Judges, however, no reasons have been given. As the matter is important, we directed notice to be served on the learned Senior Government Pleader, and the matter has now been fully argued by him and by Mr. Banerjee who appeared for the petitioner.

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The petitioner, Raja Kamala Ranjan, was a part proprietor of estate No. 31 of the Tipperah Collectorate. That estate was under partition under the procedure of the Estates Partition Act. The Collector made a partition, but, on appeal, the Commissioner of the Division reversed the Collector's order. The Board of Revenue, however, reversed the Commissioner and restored the Collector's order. Raja Kamala Ranjan, thereupon, instituted a civil suit for a declaration that the Commissioner's order was final and that the order of the Board of Revenue was *ultra vires*. He succeeded in this suit. He then brought fifteen suits for mesne profits against his co-proprietors—ten in the Munsif's Court at Brahmanbaria and five in the First Court of the Subordinate Judge, Tipperah. The ten suits filed in the Munsif's Court were later on transferred to the file of the aforesaid Subordinate Judge and the fifteen suits were tried analogously and are governed by the same judgment. All the suits have been dismissed by the Subordinate Judge. Two of the suits having been valued at more than Rs. 5,000, two First Appeals Nos. 244 and 245 of 1938 have been filed by the petitioner in this Court. The remaining thirteen suits, having been valued at less than Rs. 5,000, thirteen appeals were filed before the District Judge, Tipperah, on September 12, 1938. The learned District Judge passed an order on November 10, 1938, for analogous hearing of the

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said thirteen appeals. One application headed "In the matter of an application under s. 24 of the Code of Civil Procedure, and in the matter of appeal from Original Decrees Nos. 244 and 245 of 1938" was made before us. In the said application the fact that the fifteen suits were tried together and are governed by the same judgment is stated and the prayer is for transfer of the thirteen appeals pending in the Court of the District Judge to this Court and for analogous trial of the same with the said two First Appeals pending here.

The contention of the learned Senior Government Pleader is that as there are thirteen appeals pending in the Court of the District Judge, thirteen applications for transfer must be made, each with a court-fee stamp of Rs. 2 and thirteen *vakâlâtnâmâs* must also be put in. He says the fact that the District Judge has ordered analogous hearing of the appeals or that the suits were tried together in the Court of first instance and were dealt with by one judgment cannot affect the amount of court-fee. The same court-fee, says he, ought to be paid if the case were tried or ordered to be tried separately. In support of his contention he relies upon *Moosa Soleman Saleji v. Secretary of State for India in Council* (1) and *In re Vythilinga Pandara Sannadhî* (2). His contention in substance comes to this: that the application for transfer must be considered as an independent application, unconnected with the pending First Appeals. It would, accordingly, require separate *vakâlâtnâmâ*, the *vakâlâtnâmâ* filed in the pending First Appeals being insufficient. The pendency of the First Appeals, according to him, only supplies the ground for transfer. The contention of Mr. Banerjee is that the *vakâlâtnâmâ*, which he has filed in the First Appeals, enables him to move the application, because it is an application filed in the First Appeals and his prayer for transfer can at most be subdivided

(1) (1927) 32 C. W. N. 776.

(2) (1929) I. L. R. 53 Mad. 262.

into thirteen prayers, each for the transfer of one appeal pending in the Court of the District Judge. If, says he, the applications for transfer had been in respect of suits or appeals which were not in any way connected with any appeal pending here, the contention of the learned Senior Government Pleader may probably be right. In our judgment, the application for transfer of the said thirteen appeals to this Court and for their analogous trial with the two First Appeals pending here must be considered not as an independent application for transfer but as an application made in the First Appeals pending here. The *vakálatnámá* filed by Mr. Banerjee authorises him to move the application which must be regarded as one application with thirteen prayers.

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The cases cited by the learned Senior Government Pleader are distinguishable, for the question before us is whether the application is to be regarded as an application in connection with an appeal pending in this Court or not.

We, accordingly, hold that proper court-fees has been paid by the petitioner.

Rule absolute.

A. A.