

suit of 1901. We may also point out with reference to the observations of their Lordships later on in the same judgment that in the present case it cannot be argued that in the order of the District Munsif the terms of the compromise in so far as the present plaintiffs are concerned were either referred to or narrated. We accordingly must hold that the razinamah (exhibit A) in so far as it is relied on by the plaintiffs now is inadmissible as evidence for want of registration. We cannot accept the finding of the Subordinate Judge that the razinamah only recited an oral agreement entered into between the parties. That is not the case set up by the plaintiffs and there is nothing in exhibit A to show that there was any prior oral agreement. We accordingly set aside the order of the Subordinate Judge and dismiss this suit. The parties will bear their own costs throughout.

PATHA
MUTHU
AMMAL
v.
ESUP
ROWTHER.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Subrahmania Ayyar.*

REFERENCE UNDER COURT FEES ACT, 1870.*

1905
December 19.

Court Fees Act VII of 1870, s. 7 (e), cl. IX, and art. I of sched. I—Art. 1 of sched. I of the Act applies to appeals in mortgage suits—Court-fee payable on subject matter in dispute in the appeal.

Section 7 (e), clause IX of the Court Fees Act, applies only to "suits" and not to appeals. In the case of appeals in mortgage suits article 1 of schedule I of the Act applies. The Court fee in such cases is payable on the value of the subject-matter in dispute in the appeal and not of the subject-matter in dispute in the suit.

Nepal Bai v. Debi Prasad, (I.L.R., 27 All., 447), followed.

Umarkhan v. Mahomed Khan, (I.L.R., 10 Bom., 41), dissented from.

THE facts necessary for this report are fully set out in the judgment.

T. Rangachariar and V. Purushothama Ayyangar for S. R. No. 12162 of 1905.

E. Venkatarama Sarma for S. R. No. 13337 of 1905.

* Stamp Reference No. 12162, etc., of 1905, under section 5 of Act VII of 1870. by A. L. Hannay, Esq., Registrar of the High Court, Madras.

REFERENCE
UNDER
COURT
FEES ACT,
1870.

ORDER—SIR ARNOLD WHITE, C.J.—The plaintiffs sued for redemption. They valued their suit at Rs. 231-11-7, the amount they stated to be still due on the bond, but Court-fees amounting to Rs. 580 were levied from them with reference to section 7, clause IX, of the Court Fees Act, which makes fees leviable in suits against a mortgagee for the recovery of the property mortgaged, upon the principal money expressed to be secured by the mortgage in this case Rs. 13,500.

The plaintiffs got a decree for redemption upon payment of Rs. 231-11-7.

The defendants appealed and the original decree was modified by directing that the plaintiffs should pay Rs. 1,162-6-5 in addition to the amount fixed by the lower Court, Court-fees were only paid on Rs. 1,162-6-5.

The plaintiffs and the defendant now prefer separate second appeals. The plaintiffs (mortgagors) valuing their second appeal at Rs. 1,162-6-5, while the defendant (mortgagee) values his second appeal at Rs. 10,000

The mortgagee says he is not liable to pay Court-fees on Rs. 13,500, the amount of the principal money secured by the mortgage, but only on the difference between the amount claimed by him, and the amount which, under the decree of the lower Appellate Court, he has been held to be entitled to receive.

The mortgagor says he is not liable to pay Court-fee on Rs. 13,500, but only on Rs. 1,162, the amount which, under the decree of the lower Appellate Court, he has been held liable to pay in addition to the Rs. 231-11-7 which, under the decree of the Court of First Instance, he was held liable to pay.

I will take the case of the mortgagor-appellant first. The question is—is the fee payable by him governed by section 7, (e), IX of the Court Fees Act, or is it governed by article 1 of the first schedule to the Act? If, by the former, the fee is to be computed with reference to Rs. 13,500, the principal money expressed to be secured by the instrument of mortgage. If, by the latter, the further question arises, do the words "subject-matter in dispute" in the second column of article 1 of the 1st schedule mean subject-matter originally in dispute in the suit, or subject-matter in dispute in the appeal. I am of opinion that article 1 of the 1st schedule applies and that the words "subject-matter in dispute" mean subject-matter in dispute in the appeal.

I think it is clear that article 1 applies unless it can be said that the matter is otherwise provided for in the Act. Now turning to section 7, I find that in cases falling within sub-section (e), IV, there is a special provision that the method of computation for the purpose of a memorandum of appeal shall be "otherwise," that is to say, it is to be according to the amount at which the relief sought is valued in the memorandum of appeal. There is no similar special provision with regard to cases falling within section 7 (e), IX. It seems to me that the word "suits" in this sub-section cannot be construed as including appeals and that appeals (unless otherwise provided for) are governed by article 1. The more natural construction of the words "subject-matter in dispute" seems to me to read them, when a memorandum of appeal is concerned, as applying to the matter in dispute in the appeal. Section 16 seems to show that the general policy of the legislature was to make the value of the subject-matter in dispute in appeal the criterion for the purpose of computing the fee.

REFERENCE
UNDER
COURT
FEES ACT,
1870.

In the case in "Reference under Court Fees Act"(1) the question for decision was—"In a suit to redeem a mortgage and to recover arrears of rent due by the mortgagee to the mortgagor on account of the mortgaged property should the Court-fee to be levied be calculated according to the *sum* of the principal amount of the mortgage and arrears of rent, or according to the difference of those two items?" It seems to me that that decision does not cover the point raised in the present cases. The precise point was considered by the Chief Justice of the Allahabad High Court in the case of *Nepal Rai v. Debi Prasad*(2) and he held that the fee was to be calculated with reference to the amount in dispute in the appeal. I agree with this decision. The case of *Pirbhu Narain Singh v. Sita Ram*(3) is a decision the other way. Sir John Edge based his decision on the ground that relief claimed by the mortgagor in appeal was a relief which it was impossible to value, but that it would be otherwise if a mortgagee appealed on the ground that a larger amount was due than that which had been awarded. So far as the construction of the Act is concerned I fail to see any good grounds for this distinction. I find myself unable to agree with the decision in the case of *Umarkhan v.*

(1) I.L.R., 14 Mad., 480.

(2) I.L.R., 27 All., 447.

(3) I.L.R., 13 All., 94.

REFERENCE
UNDER
COURT
FEES ACT,
1870

Mahomed Khan and others(1) which is in conflict with the recent decision of the Allahabad High Court.

As to the appeal by the defendant the mortgagee I agree that one rule should apply in both cases, but it seems to me that, as a question of construction of the Act, the right rule to apply is that laid down in the case in *Nepal Rai v. Debi Prasad*(2) which so far as an appellant mortgagee is concerned, is in accordance with the opinion expressed by Sir John Edge in the case in *Pirbhu Narain Singh v. Sita Ram*(3).

I think in the case of both appeals, the fee is to be calculated with reference to the value of the subject-matter in dispute in appeal.

S.R. No. 13337 of 1905.

For the reasons stated above, I think the fee is to be calculated with reference to the subject-matter in dispute in the appeal.

SUBRAHMANIA AYYAR, J.—I concur.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Moore.

1906.
February 15.

PERIA MUTHIRIAN AND OTHERS (RESPONDENTS, PLAINTIFFS),
APPELLANTS,

v.

KARAPPANNA MUTHIRIAN AND ANOTHER (FIRST AND THIRD
DEFENDANTS, FIRST AND THIRD RESPONDENTS), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, s. 373—Court has power to extend time for payment of costs.

Where a party has been permitted to withdraw from a suit with liberty to bring a fresh suit if he should pay costs within a named date under section 373 of the Code of Civil Procedure, the Court has power to extend the time for payment when it is absolutely impossible for the party to pay such costs on or before the day so fixed.

(1) I.L.R., 10 Bom., 41 at p. 45.

(2) I.L.R., 27 All., 447.

(3) I.L.R., 13 All., 94.

* Appeal No. 74 of 1905, under section 15 of the Letters Patent presented against the order of Mr. Justice Boddam in Civil Revision Petition No. 84 of 1905.