APPELLATE CIVIL.

Before Mr. Justice Miller.

1907. September 27.

EKAMBARA GRAMANY AND OTHERS (PLAINTIFFS) APPELLANTS,

v.

MUNISWAMY GRAMANY (DEFENDANT), RESPONDENT.*

Land Acquisition Act—Act I of 1894, ss. 25, 27, 54—Appeal lies against an award of costs under s. 25—Section 27 does not allow a pleader's fee to be fixed arbitrarily—Fees to be allowed on the valuation as laid down in the Civil Rules of Practice or according to the rules applicable to the particular Court.

Under section 25 of the Land Acquisition Act an award of costs is a part of the award and is appealable as such under section 54 of the Act.

Section 27 does not authorise the Court to allow any amount for pleader's fee at its discretion. Where the subject-matter is capable of being valued, pleader's fees must be allowed on the scale laid down in the Civil Rules of Practice or on such other scale as may be in force for the particular Court.

CERTAIN lands having been required by Government for a public purpose, the Deputy Collector proceeded to acquire them. The Deputy Collector in his award fixed Rs. 6,000 as the compensation to be paid, and directed that Rs. 2,000 should be paid in satisfaction of a mortgage on the property, and the balance of Rs. 4,000 to *M* who claimed to be the owner. One *E* claimed to be the undivided brother of *M* and, as such, entitled to a moiety of the Rs. 4,000. The Deputy Collector referred the matter to the Court of Small Causes under the provisions of the Land Acquisition Act. The Chief Judge of the Court of Small Causes disallowed the claim of *E* with costs, and in calculating the vakil's fee allowed a sum of Rs. 200 to *M*.

E appealed on the ground that only Rs. 100 should have been allowed.

Mr. *M. A. Tirunarayana Chariar* for appellants.

P. M. Sivangnana Mudaliar for respondent.

JUDGMENT.—The first question raised is whether the appeal lies.

The reference, though it is stated to be under section 30 of the Land Acquisition Act, appears, really, to be under section 18 at the

* Appeal No. 169 of 1906, presented against so much portion of the judgment of J. G. Smith, Esq., Chief Judge of the Presidency Small Cause Court of Madras, as related to vakil's fees, in Land Acquisition Case No. 2 of 1905.

instance of a party who has not accepted the award of the Collector and it has therefore to be dealt with under part II of the Act. By section 25 the award is to state the costs incurred, and by section 54 an appeal lies against any part of the award.

I am unable to say that the award of costs is not part of the award, and I must hold that the appeal lies.

The appeal is only as to the amount of costs, the contention being that the learned Chief Judge has allowed a vakil's fee of Rs. 200, whereas according to the value of the claim (Rs. 2,000) the fee at 5 per cent. should be only Rs. 100. On the other side, it is contended that the rules of this Court and the Mofussil Civil Courts do not apply, and that the fixing of the amount is in the discretion of the learned Chief Judge.

I do not think that this is the effect of section 27 of the Land Acquisition Act, and I think the Civil Rules of Practice should be applied, or else the rules applicable to the Presidency Small Cause Court.

If, however, the rules applicable to the Presidency Small Cause Court apply, the fee would seem to be less than that which the appellant alleges to be the proper fee according to the scale prescribed. I need not therefore consider whether the learned Chief Judge tried this case in virtue of his position as Judge of a Small Cause Court or of a special Court under the Land Acquisition Act.

The claim here is clearly capable of valuation and, according to the scale of fees for suits, the fee payable here under the Civil Rules of Practice will be Rs. 100. If this is not a suit it will be less.

I think Rs. 100 is the most that can ordinarily be allowed under the rule, and no special reason is stated by the learned Chief Judge for awarding more. I therefore allow the appeal with costs.

Against this decision a Letters Patent Appeal No. 71 of 1907 was preferred and dismissed by Benson and Sankaran-Nair, JJ., on 10th March 1908.