

## APPELLATE CIVIL.

*Before Mr. Justice Kumaraswami Sastri.*

*In re. PORKODI ACHI (FIRST RESPONDENT).\**

1921,  
October 18.

*Court Fees Act (VII of 1870)—Appeals—Court-fee payable—  
Test—Relief on payment of specified sum—Ad valorem on  
such sum.*

In cases of Appeals where the value of the subject matter of the Appeal can be determined the court-fee payable on the Memorandum of Appeal must be calculated on the value of the subject matter. The test is what is the value of the relief granted which is sought to be got rid of.

Where a decree grants relief on payment of a certain sum to the defendant the court-fee payable on a Memorandum of Appeal against so much of the decree as directs payment is *ad valorem* on the said sum irrespective of the nature of the suit.

REFERENCE under section 5 of the Court Fees Act by the Taxing Officer.

This was a reference by the Deputy Registrar, Appellate Side of the High Court (Mir Amir-ud-din) to the Taxing Officer (F. G. Butler), who referred it to the High Court under section 5 of the Court Fees Act as in his opinion "the matter is one not specifically provided for by the Act or its schedules and is not clearly covered by authority." The facts and contentions appear from the following extracts from the reference by the Deputy Registrar :

"This is a Memorandum of Objections in Second Appeal No. 22 of 1921, filed by the plaintiff, on which Court-fee of Rs. 10 only has been paid. The point for consideration is,

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\* Stamp Register No. 6108 of 1921.

what is the proper Court-fee payable . . . The facts in this case are as follows: The plaintiff impugned the validity of the sale of certain lands for Rs. 8,000 by her mother, and as next reversioner to the estate of her father brought a suit to recover possession of them. The Court of first instance dismissed the suit. Plaintiff appealed. The lower Appellate Court held, that the debts borrowed by the widow, to the extent of Rs. 3,881-4-0 which formed part of the consideration of the sale, were true, valid and binding on the estate and the reversioner, and decreed that the plaintiff was to have possession on condition of her paying that amount. The plaintiff by her Memorandum of Objections seeks to assail and set aside the condition imposed by the lower Appellate Court . . . and pays a Court-fee of Rs. 10 as though the subject matter of this cross objection is incapable of being estimated in money value. In this connexion it must be stated that the suit and the appeals have been valued under section 7 (v) (b) of the Court Fees Act, and the Court-fees, five times the Government revenue, have been rightly paid."

The learned vakil for the plaintiff contends that the Court-fee of Rs. 10 is sufficient, firstly, under schedule II, article 17 (iii) on the ground that the liability imposed by the decree is merely declaratory, and secondly, under schedule II, article 17 (vi) on the ground that the condition imposed is incapable of being estimated at a money value. In the alternative he contends that in any event section 7 (v) (b) covers the case and that he cannot be asked to pay more fee than he has paid for the institution of the suit.

The first contention is that the decree merely declares the liability of the plaintiff to pay a certain amount and get possession and it is sought to lend weight to this by stating that the decree for payment is not executable. But the clear words of the Act, namely, "to obtain a declaratory decree where no consequential relief is prayed for" do not lend support to such an argument. The substantial and only object of this cross objection is not

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to obtain any declaratory decree, the lower Appellate Court having already granted possession to the plaintiff, but to set aside the condition appealed against and to avoid the payment directed to be paid. . . . When the plaintiff seeks to set aside the condition which, in fact, amounts to the avoiding of the payment, she has to pay *ad valorem* on the amount declared by the decree to be payable. The fact that such liability is executable or not does not affect the question.

Supposing in a suit for foreclosure the Court directed, as a condition precedent to foreclosure, the redeeming of a prior mortgage by the payment of Rs. 5,000. What is the Court-fee payable on Appeal when the above condition is sought to be set aside? In *Baji Lal v. Gobardhan Singh*(1) it was held that the proper Court-fee was the *ad valorem* on the amount secured by the prior mortgage. In another case, *Jandhu Mal v. Himmat*, which is unreported but which is referred to and followed in *Baji Lal v. Gobardhan Singh*(1), the appellant sought to get rid of the liability imposed on him by the decree, i.e., to pay off the prior mortgagee as a condition precedent to bringing the mortgaged property to sale. *Held*, that the appellant must pay *ad valorem* Court-fee. Again, in a suit for pre-emption supposing a decree was passed against the vendee-defendants and they appealed on the ground that they were entitled to receive from the plaintiff a larger sum than that found by the Court to be the purchase price, what is the Court-fee payable? In *Hafiz Ahmad v. Sobha Ram*(2) it was held that the Court-fee should be calculated *ad valorem* on the difference between the sale-price alleged by both sides. . . . These cases show that the proper Court-fee is the *ad valorem* on the amount in dispute.

(1) (1909) I.L.R., 31 All., 265.

(2) (1884) I.L.R., 6 All., 498.

The next contention, that though the condition bears on the face of it a fixed figure, yet it is impossible of being assessed at a money value is self-contradictory and cannot be taken as seriously advanced. . . . The valuation of the condition is clearly determined by the amount payable and no other valuation seems possible. . . .

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Coming to the last contention, that the stamp fee cannot be more than the amount paid for the institution of the suit and the Appeal in the lower Court and that her position when she has partially succeeded cannot be worse than if she had completely failed, it must be stated that it is impossible to evolve such a rule out of the provisions of the Court Fees Act. Section 7 (v) (b) is not applicable to a case like the present for the subject matter of this Memorandum is not possession of the land but only the removal of the condition. It is the payment that is assailed and the *ad valorem* must be paid on the amount found.

*The Government Pleader (C. Madhavan Nayar) for Taxing Officer.*

*K. S. Venkataramani Ayyar for respondent.*

KUMARASWAMI SASTRI, J.—The first respondent as daughter and reversioner filed a suit for a declaration that the sale-deed executed by the widow of the last male holder alienating the lands specified in the plaint was not binding on her, for delivery of possession by the defendants who claim under the vendee, for mesne profits, and for costs. The plaint contained an alternative prayer that should the Court find any amount payable to the defendants then possession be decreed with mesne profits on payment of the sum so found due by the

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plaintiff to the defendants. Various pleas were raised by the defendants who contended that the alienation by the widow was binding on the plaintiff. The District Munsif dismissed the plaintiff's suit as he was of opinion that the sale was binding on her. On Appeal the Subordinate Judge held that there was necessity only for a sum of Rs. 3,881-4-0 out of the consideration of Rs. 8,000 set out in the sale-deed, and decreed possession on payment of the sum of Rs. 3,881-4-0. Against this decree the defendants filed a Second Appeal and the plaintiff filed a Memorandum of Objections objecting to the decree of the Subordinate Judge so far as it directs her to pay Rs. 3,881-4-0 as a condition precedent to the recovery of possession. A stamp duty of Rs. 10 was paid on the Memorandum of Objections and the Registrar claims an *ad valorem* duty on the sum of Rs. 3,881-4-0 the liability to pay which is questioned in the Memorandum of Objections.

The suit as filed being one for possession and mesne profits fell within clause (v) of section 7 of the Court Fees Act, which relates to suits for possession of immovable property and clause (1) which relates to suits for money, and the plaintiff paid a stamp duty of five times the kist payable on the lands and also on the amount claimed for mesne profits. The suit was valued at Rs. 2,300 and the Second Appeal is also valued at that figure.

There is no express provision in the Court Fees Act which covers a case like the present. The contentions of the respondent are (1) that the decree of the lower Appellate Court merely declares plaintiff's liability to pay a certain sum of money as a condition precedent to recovery of possession and that such decree is not executable by the defendants for whose benefit the payment is to be made ; (2) that the suit being one for

possession of immoveable property and mesne profits its nature is not changed into one for redemption merely by the fact that an unsustainable condition as to payment has been imposed by the Court ; (3) that the alternative prayer in the plaint as to payment of such sums as the Court may find to be due is not estimatable in money and falls under article 17, clause (vi) of schedule II ; (4) that in any event the stamp duty payable on the Memorandum of Objections cannot be more than the duty payable on the plaint, as it would be an anomaly if the party who fails entirely should have to pay less than a party who succeeds in part. The contention of the Registrar is that the stamp duty payable, in cases where a person is asked to pay a certain sum as a condition precedent to getting possession and disputes his liability, is on the amount which he disputes.

I do not think that the direction as to payment of a sum of money as a condition precedent to the recovery of possession makes the decree a declaratory decree simply because the defendant cannot execute the decree. The test is whether the plaintiff cannot execute it. As regards the contention that the alternative prayer is not estimatable in money, all that can be said is that the plaintiff reversioner cannot say when he filed the plaint what the defendants can prove to be binding on the plaintiff. Where the Court finds the amount that has to be paid by the plaintiff the amount is ascertained, and where the plaintiff wants to appeal against the decree the amount or value of the subject matter in dispute for the purposes of article 1 of schedule I is the amount which the plaintiff calls in question in the Memorandum of Appeal or Objections. The case is analogous to one of a suit for an account.

The objection that the suit for possession which falls under clause (v) of section 7 cannot in Appeal change its

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nature because a condition is annexed for payment of a sum of money which is disputed by the plaintiff presents more difficulty especially as there is no provision in the Court Fees Act governing such cases and there is a conflict of authority.

In *Reference under Court Fees Act, section 5, (1)* the question was what was the duty payable in a suit for ejectment where a tenant claimed compensation for improvements which were disallowed and the tenant appealed against the decree. It was held that the tenant was bound to pay stamp duty only on the value of the lands and not on the value of the improvements claimed and disallowed. SUBRAHMANYA AYYAR and BODDAM, JJ., were of opinion that the claim for improvements to the land was not the subject matter of the suit but was merely incidental to the decree for possession. The learned Judges also refer to the difficulty and inconvenience of ascertaining the fee payable in each case if a different view were adopted. With respect, it seems to me that in cases where the law annexes the liability to pay for improvements as a condition precedent to ejectment, the claim for improvements allowed by the lower Court and disputed in Appeal falls under schedule I, article 1. Whatever difficulties may exist in valuing it in the plaint there is no difficulty once the Court fixes the amount, and the party appeals against the liability to pay the amount and files a Memorandum of Objections. So far as appeals against decrees for compensation under the Malabar Tenancy Improvements Act are concerned, though the same considerations as urged in *Reference under Court Fees Act (1870) (2)* may be urged, stamp duty is paid on the amount

(1) (1900) I.L.R., 23 Mad., 84.

(2): (1906) I.L.R., 29 Mad., 367.

in dispute. This decision does not seem to have been followed. In *Sekharan v. Eacharan*(1), MUNRO and ABDUR RAHIM, JJ., were of opinion that though in a suit for redemption the stamp duty was by section 7, clause (ix) to be calculated according to the principal money expressed to be secured by the instrument of mortgage and the subject matter of the suit was the existence of the right to redeem, any question as to the amount payable as the condition of redemption being regarded merely as incidental to that right, yet where the right to redeem is not called in question in the Appeal and the only question is as to the amount payable the right to redeem cannot be said to be the subject matter in dispute in the Appeal memorandum but a definite amount payable, and that the case fell within article 1, schedule I, the court-fee being computed on the amount in dispute. In *References under Court Fees Act* (1870) (2), it was held, following *Nepal Rai v. Debi Prasad*(3), that section 7, clause (ix), of the Court Fees Act applied only to suits and not to Appeals and that in the case of Appeals, article 1 of schedule I applied, the Court-fee payable being on the value of the subject matter in dispute.

In *Hafiz Ahmed v. Sobha Ram*(4), it was held that in suits for pre-emption where the vendee-defendants appealed on the ground that they were entitled to receive a larger sum than that awarded by the Court and that plaintiffs had estopped themselves from asserting the right by refusing to purchase, Court-fee was payable under section 7, clause (vi) on the value of the property as computed in clause (v) but that when the question in Appeal relates solely to the amount to be paid by the pre-emptor, his right to pre-empt not being challenged, the proper

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(1) (1910) 20 M.L.J., 121.

(3) (1905) I.L.R., 27 All., 447.

(2) (1906) I.L.R., 29 Mad., 367.

(4) (1884) I.L.R., 6 All., 488.

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Court-fee was the amount calculated *ad valorem* on the difference between the amounts alleged as the sale price on the one side and the other.

In *Nepal Rai v. Debi Prasad*(1), it was held that when an Appeal in a suit for redemption related solely to the amount payable the Court-fee payable on a Memorandum of Appeal was to be calculated according to the sum which the appellant claimed to have deducted from the decree, and not, as in the case of a suit for redemption according to the principal sum secured on the mortgage. STANLEY, C.J., after expressing his dissent from the view taken in *Pirbhu Narain Singh v. Sita Ram*(2) observed :

“It appears to me, upon a perusal of section 7 of the Court Fees Act and schedule I to that Act, that in a case such as the one before me the Court-fee is to be calculated on the value of the subject matter in dispute only. Section 7, subsection (ix) provides that in suits against a mortgagee for the recovery of the mortgaged property the Court-fee is to be valued according to the principal money expressed to be secured by the instrument of mortgage. The section is confined to a suit apparently, and not to an Appeal. In schedule I to the Act we find that in the case of a plaint or Memorandum of Appeal not otherwise provided for in the Act except those mentioned in section 3 an *ad valorem* fee is payable at the rate mentioned in that schedule. In this schedule a Memorandum of Appeal is not mentioned. Therefore I take it, that if in the case of an Appeal, the value of the subject matter of the Appeal can be determined, as it has been in this case, the appellant is only bound to pay a Court-fee on the amount ascertained to be the value of the subject matter of the Appeal.”

With these remarks I respectfully agree. This decision was followed in *Mahadeo Prasad v. Gorakh Prasad*(3) and *Baji Lal v. Gobardham Singh*(4).

(1) (1905) I.L.R., 27 All., 447.

(2) (1908) I.L.R., 30 All., 547.

(3) (1891) I.L.R., 13 All., 94.

(4) (1909) I.L.R., 31 All., 265.

In *Basdeo v. Sri Kishu Gir*(1), it was held that when a plaintiff prayed for an unconditional decree for possession as against a defendant who set up a mortgage executed by plaintiff's predecessor and a decree was passed for possession on payment of a certain sum and the plaintiff appeals against that portion of the decree directing payment, he must pay *ad valorem* stamp duty on the amount in question. The learned Judges (CHAMBER, J.C., and EVANS, A.J.C.) dissented from *Jewahir Singh v. Rajendra Bahadur Singh*(2), and followed *Baji Lal v. Gobardhan Singh*(3). A similar view was taken in *Mata Badal Singh v. Jai Singh*(4). *Ragha Sah v. Wajid Ali*(5), no doubt supports the petitioner's contention but no reference is made to any authorities. The only reason given is that if that decree dismissed the plaintiff's suit for possession the fee payable would have been only five times the land revenue and that as it was more favourable it cannot be larger. The facts of the case are also peculiar. The plaintiff prayed for possession and the Court passed a decree for possession but allowed the defendant to redeem and the decree for possession was only if the defendants failed to redeem. *Rup Chand v. Fateh Chand*(6), which was referred to, does not throw much light on the question. The plaintiff sued for possession as absolute owner and a decree was passed in his favour. On Appeal the Subordinate Judge gave a decree for possession but limited the duration to the lifetime of the plaintiff's vendor. Against this decree the plaintiff appealed. It was held that a stamp duty of Rs. 10 was sufficient. TUDBAL, J., observed

"As matters stand now plaintiff-appellant seems to me to be in the position of a person in possession of property who

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(1) (1910) 5 I.C., 941.

(3) (1909) I.L.R., 31 All., 265.

(5) (1919) 50 I.C., 353.

(2) (1909) 2 I.C., 836.

(4) (1912) 15 I.C., 746.

(6) (1911) 8 A.L.J., 821.

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seeks to clear his title and to obtain a declaration that he has the full right of ownership to the property.”

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Treating the subject matter of the Appeal as one to get rid of the limitation imposed by the Subordinate Judge it is difficult to see how it can be valued.

In *Lukhmun Chander Ash v. Khoda Bulsh Mondul*(1), where a decree was passed in favour of the plaintiff but the Court directed payment in three instalments and the plaintiff appealed against that portion of the decree, it was held that he was not bound to pay Court-fees on the sum decreed but on the difference between the amount claimed in the Court below and the sum of the present values of the three instalments payable on the dates mentioned in the decree. BANERJEE, J., observes :

“Now, having regard to the provisions of article 1, schedule I of the Court Fees Act, read with 16 of that Act, it is clear that an appellant is bound to pay a Court-fee on a Memorandum of Appeal from a decree which gives him only partial relief, upon the difference between the values of the reliefs he claims to be entitled to and that granted by the decree appealed against.”

In *Kishan Dutt Misir v. Kasi Pandey*(2), it was held by COURTS, J., following *Basdeo v. Sri Kishn Gir*(3); that when a decree awards possession on condition of the plaintiff paying the encumbrances on the property and the plaintiff appeals against that part of the decree, the Court-fee payable on the Memorandum of Appeal must be *ad valorem* on the value of the encumbrances.

The current of authority is clearly in favour of the view that the value of an Appeal is not in all cases the value of the suit as originally filed but the value of the relief granted by the decree which a party wishes to get rid of. In some cases the stamp duty may be more than

(1) (1892) I.L.R., 19 Calc., 272.

(2) (1920) 57 I.C., 481.

(3) (1910) 5 I.C., 941.

that paid on the plaint and in some cases it may be less, and in considering the effect of the provisions of section 7 of the Court Fees Act and of schedule I, I do not think that this is a consideration which is of much weight.

I am of opinion that the Memorandum of Objections should be stamped on the amount which the respondent was directed to pay and which she seeks to escape liability from. She will have three weeks from this date to pay the deficient stamp duty.

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*Before Mr. Justice Spencer and Mr. Justice Ramesam.*

C. SAMINATHA CHETTY AND ANOTHER (PLAINTIFFS),  
APPELLANTS,

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v.

ANGAMMAL AND THREE OTHERS (DEFENDANTS),  
RESPONDENTS.\*

*Hindu Law—Inheritance—Mitakshara—Step-son of step-sister of the last male owner, whether an heir of the latter.*

Under the Mitakshara Law, the step-son of the step-sister of a deceased male is not an heir of the latter.

APPEAL against the judgment and decree of KUMARASWAMI SASTRI, J., passed in the exercise of the Ordinary Original Jurisdiction of the High Court in Civil Suit No. 360 of 1919.

The material facts appear from the judgment of RAMESAM, J.

*A. Krishnaswami Ayyar with V. O. Sesha Achariyar and N. K. Mohanarangam Pillai for appellant.—The*

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\* Original Side Appeal No. 23 of 1920.