APPELLATE CIVIL.

Before Mr. Justice Krishnan.

1924, April 4.

SEETHAYAMMA (APPELLANT). *

Sec. 7 (5). Court Fees Act (VII of 1870)—Suit to set aside father's alienation—Decree for land on payment of certain sum—Appeal by defendant to exempt land—Court-fee on appeal.

In a suit by a Hindu to recover his share of the family lands alienated by his father a decree was made in favour of the plaintiff for the recovery of his share on his paying a portion of the consideration to the alienee. In an appeal by the defendant to dismiss the suit *in toto*,

Held that the subject-matter in dispute in appeal was the plaintiff's share itself and not the share *minus* the part of the consideration ordered to be refunded and that the Court-fee on appeal was to be calculated on the market value of the share of the alienated lands as provided by section 7 (5) of the Court Fees Act; *Rup Narain* v. *Bishwa Nath Singh* (1922) I.L.R., 44 All., 629, followed.

CASE referred under section 5 of the Court Fees Act, by the Taxing Officer of the High Court in respect of the amount of Court-fees payable on the memorandum of appeal sought to be preferred to the High Court against the decree of the Court of the Additional Subordinate Judge of Cocanada in Original Suit No. 53 of 1920.

The facts are given in the judgment.

G. Lakshmanna for appellant.

Government Pleader (*C. V. Anantakrishna Ayyar*) for Government.

JUDGMENT.

This is a reference under the Court Fees Act that has been referred to me for disposal by the learned Chief Justice, the Taxing Officer having referred the matter for the decision of the Court. In this case the plaintiff

* S.R. No. 12004 of 1923.

obtained a decree so far as the eleventh defendant, the appellant before me, is concerned for the recovery of possession of a half share of the lands sold to him under Exhibit V by his father on payment of Rs. 12,000. The appellant's appeal asks this Court to hold that the plaintiff is not entitled to the lands at all and that the suit should be dismissed as against the appellant. The question raised is, what is the Court-fee that the appellant has to pay on his appeal. No doubt as KUMARASWAMI SASTRI, J., has remarked in *In re Porkodi Achi*(1)

> "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."

Turning to the Court Fees Act, we find the governing rule applicable to appeals is the one in schedule 1, clause 1 of the Act. It says, leaving out the unnecessary words, the proper fee payable upon a memorandum of appeal, not otherwise provided for in this Act, presented to any Civil Court, except those mentioned in section 3 with which we are not concerned, is to be calculated on the amount or value of the subject-matter in dispute. The way in which the fee is to be fixed is by taking "the amount or value of the subject-matter in dispute." The question before me therefore really turns upon the interpretation to be put upon the expressions "the subject-matter in dispute" and "its value."

Turning to section 7, clause 5, of the Court Fees Act, we find that "in suits for the possession of land, houses, and gardens—the Court-fee is to be calculated according to 'the value of the subject-matter'." The same words "the value of subject-matter" are used there, and it says "such value shall be deemed to be"

(1) (1922) I.L.R., 45 Mad., 246.

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in the various cases referred to as mentioned in clauses (*a*) to (*e*). In the absence of any guiding rule in the Act itself as to computing the value in appeal, I think it is proper to take the "value of the subject-matter" in schedule I, clause I, as meaning the same thing as "the value of the subject-matter" as set out in various sub-clauses of clause 5, section 7.

It is contended, however, before me that the subject-matter in dispute in this appeal is not the land but the market value of the land reduced by Rs. 12,000 which has already been declared as payable to the appellant. I am unable to accede to this argument. In my view the subject-matter of the appeal is the land itself, as the appellant is seeking to get rid of a decree against him, which has given the respondent the right to recover the possession of the land from him. He does not seek to get the amount which the lower Court has directed to be paid to him, increased by any sum of money, in which case no doubt the difference between what he claims in appeal, and what the lower Court has granted to him, would be the subject-matter of the appeal. But here what the appellant claims is the land itself, and his contention in appeal is that the land should not be taken away from him under any circumstances. He is not asking in the appeal, that the condition laid down by the lower Court should in any way be varied. But he wants the suit itself to be dismissed as regards the claim for the land in his possession is concerned. Such being his prayer in appeal, I must hold that the land itself is the subject-matter of the appeal and for purposes of valuation the rule laid down in section 7, clause 5, in various clauses as applying to the various immovable properties of lands and houses and gardens should be applied in this case. The lands here are partly inam lands and partly

jirayati lands, and therefore they will have to be valued under clauses (*a*) and (*b*). This view is not in conflict with the views expressed in the cases cited to me. On the other hand, it is supported by the view expressed by Mr. Justice PIGGOT in *Rup Narain* v. *Bishwa Nath Singh*(1). The learned Judge says at page 632 :

"The position of the appellants is different. Even on the principle suggested by the stamp reporter, the report is unjust to them ; for the *ad valorem* fee would require to be calculated on Rs. 10,000, less Rs. 4,000 which the plaintiff has been ordered to pay, i.e., on Rs. 6,000. I think however that they are entitled to appeal against the decree as it stands and to value their appeal for the purposes of the Court Fees Act under section 7 (5) (*a*) of the said Act."

The appeal there was similar to the appeal here. The suit was brought by a member of a joint family to avoid the sale of a joint property by one of the members of the family and to recover his share from the property. The lower court had granted a decree to the plaintiff, subject to the payment of Rs. 4,000 by him to the defendants who were the alienees. Those defendants, appellants, contended that the decree was not correct, and the suit should be dismissed and they were entitled to keep the lands. The learned Judge held that in such an appeal, the defendants should value their appeal for the purpose of Court-fees, under section 7 (5) (*a*) of the Act, quite irrespective of the condition imposed by the decree on the plaintiff to recover the land. If the plaintiff in the present case before me had appealed and contended that the amount of Rs. 12,000 was too large, and that it should be reduced by any particular amount no doubt the subject-matter of the dispute in the appeal would be the difference between what he admits is due and what the lower Court has declared to be due. But it is the defendant that appeals in the

(1) (1922) I.L.R., 44 All., 629.

SEETHA-YAMMA, IN RE.

present case, and he seeks to have the decree of the lower Court which directed the possession of the lands to be given to the other side, set aside. It is clear in such a case that the subject-matter of the appeal is the land and not any money; and therefore as the Court Fees Act directs a certain method of valuation to be adopted in cases where the subject-matter in dispute is land, that method should be adopted in this case. I direct that the Court-fees be paid on such a valuation. The appellant will be given time for one week after the re-opening to pay the extra Court-fees.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Madhavan Nayar.

1924, August 27.

RAMANATHAN CHETTIAR (PLAINTIFF), APPELLANT,

v.

SUBRAMANIA CHETTIAR AND ANOTHER (RESPONDENTS), RESPONDENTS.*

Provincial Insolvency Act (V of 1920), sec. 51 (1)—"Assets realized in execution by sale before date of admission of petition"—meaning of.

The words "before the date of admission of the petition" in section 51 (1) of the Provincial Insolvency Act (V of 1920) qualify the words "assets realized" and not the word "sale" occurring in that section. "Assets" are "realized" within the meaning of that section not when the initial deposit of 25 per cent is made but only when the balance, viz., 75 per cent of the auction amount is received. *Arimuthu Chetty* v. *Vyapuri-pandaram* (1912) I.L.R., 35 Mad., 588, followed. Hence though an execution sale of a judgment-debtor's properties may have been held and 25 per cent of the sale amount be deposited in Court before the date of the admission of the

* Civil Miscellaneous Appeals Nos. 22 and 23 of 1923.