

## APPELLATE CIVIL.

*Before Mr. Justice Waller and Mr. Justice Krishnan Pandalai.*

1932,  
February 12.

IN RE SUPPUTHAYAMMAL AND TWO OTHERS (DEFENDANTS  
5 AND 4), APPELLANTS. \*

*Court-fees Act (VII of 1870), sec. 7 (iv) (f) and Sch. 1, art. 1—  
Accounts—Suit for—Final decree in—Appeal from—  
Court-fee payable on memorandum of—Preliminary decree  
in same suit—Appeal previously filed by same party to same  
Court from—Court-fee paid on memorandum of—Credit for  
—Appellant's right to—Conditions.*

When a party, who has filed an appeal against a preliminary decree for accounts and paid court-fee on the value as fixed by the plaintiff in his plaint, files along with or pending that appeal an appeal to the same Court against the final decree ascertaining the amount due according to the preliminary decree, he is entitled to get credit in the appeal attacking that amount for the court-fee already paid on the appeal against the preliminary decree. This doctrine ought not, however, to be extended to cases where the appeal against the final decree is filed after the decision in the appeal against the preliminary decree. In such cases the court-fee in appeal would be governed by article (1) of Schedule I to the Court-Fees Act.

APPEAL against the decrees of the District Court of Madura in Appeal Suits Nos. 79 and 254 of 1928 preferred against the preliminary and final decrees of the Court of the Subordinate Judge of Madura in Original Suit No. 42 of 1926.

*B. Gopalaswami Ayyangar* for appellants.

*Government Pleader (P. Venkataramana Rao)* for the Crown.

*Cur. adv. vult.*

The JUDGMENT of the Court was delivered by KRISHNAN PANDALAI J.—A question has been raised in this second appeal under section 12 (2) of the Court-Fees Act that the appellants in the lower appellate Court, who are two of the three appellants in this Court, did not pay proper court-fee on their appeal to the lower appellate Court and should now be ordered to pay the deficiency.

SUPPU-  
THAYAIMMAL,  
*In re.*  
KRISHNAN  
PANDALAI J.

The suit was by a co-sharer against his co-sharers for accounts. A preliminary decree declaring the liability of the defendants to account and giving direction to take the account was passed. The defendants appealed to the lower appellate Court against that decree paying *ad valorem* court-fee on the amount at which the plaintiff valued his relief. Subsequently accounts were taken and a smaller sum than that at which the suit was valued was awarded by the final decree. Pending the appeal against the preliminary decree the defendants appealed to the same Court against the final decree and paid a court-fee of only one rupee. The question is whether they should have paid *ad valorem* court-fee on the amount decreed.

By section 97 of the Code of Civil Procedure unless a party who is aggrieved by a preliminary decree appeals from it he would be precluded from disputing its correctness in any appeal from the final decree. This was a new provision introduced into the Code in 1908. The provision in the Court-Fees Act relating to suits for accounts is section 7 (iv) (f) which prescribes that in such suits the court-fee payable is an *ad valorem* fee according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. This provision has remained in force both before and after 1908.

SUPP-  
 KRATAMMA L.  
 In re.  
 KRISHNAN  
 PANDALAI J.

There is no decision on the point in our Court. But there are a number of decisions in other Courts that, when the same party appeals first from a preliminary decree having paid an *ad valorem* fee on the amount mentioned in the plaint and either before or after the decision of that appeal appeals from the final decree, he need not again pay *ad valorem* fee on the amount on which he has paid fee in the first appeal as that would be paying twice over for the same matter which must be regarded as a continuation of the earlier appeal and need only pay fee on the amount if any in excess of that on which fees were already paid.

In *Kanchan v. Kamala*(1) there was a decree for possession and for mesne profits before suit to be ascertained subsequently. The defendant appealed paying court-fee on the plaintiff's valuation of the whole claim including the sum claimed as mesne profits. Then the mesne profits were ascertained at a lower figure. The defendant wanted to appeal against the final decree awarding the sum ascertained. The question was whether he having already paid court-fee on the whole amount claimed in the main appeal should pay court-fee again on the actual amount awarded. It was held that the defendant cannot be called upon to pay court-fee a second time as all that had happened was that the preliminary decree had meanwhile been carried into effect and the liability of the defendants fixed at a lower sum. The Government Pleader conceded that this view was correct though no provision of the Court-Fees Act was referred to. In *Budhu Ram v. Niamat Rai*(2) there was a preliminary decree in a redemption suit fixing the amount payable by the mortgagor and a date for payment. The money was paid and a final decree

(1) (1912) 16 C.L.J. 564.

(2) (1928) I.L.R. 4 Lab. 406.

for redemption was passed. The plaintiff-mortgagor appealed from the preliminary decree in which he prayed that the amount due might be reduced by about Rs. 7,000 and also from the final decree. In the former he paid *ad valorem* court-fee on the amount in dispute and in the latter two rupees. The Court held that a redemption decree consists really of two parts and that the preliminary decree having been obeyed by payment, the final decree was a mere corollary and that, as the appeal against the final decree did not contest anything beyond what was contested in the appeal from the preliminary decree, no separate fee need therefore be paid. In *Ram Mander v. Maharani Nawlakhbati*(1) the facts were similar to those in *Kanchan v. Kamala*(2), except that in *Ram Mander v. Maharani Nawlakhbati*(1) the appeal against the decree for possession and mesne profits to be subsequently ascertained was dismissed by the High Court before the appeal against the decree for the amount as ascertained was filed in the District Court. The Court held that this made no difference and that proper court-fee having been paid on the appeal against the main decree it need not be paid again on the appeal against the amount when ascertained. The Court added that the District Court had no jurisdiction to entertain the appeal and should have returned it to be presented to the High Court where the allowance of the fee would have been granted. In *Kanti Chandra v. Radha Raman*(3) there was a preliminary decree for account and an appeal against it valued at Rs. 1,300. After the defendant had appealed against the preliminary decree, the amount due was ascertained to be more than Rs. 6,000 and a decree was passed therefor. The defendant appealed against this

SUPPU-  
THAYAMMAL,  
*In re.*  
KRISHNAN  
PANDALAI J.

(1) (1924) I.L.R. 3 Pat. 815. (2) (1912, 16 C.L.J. 564.

(3) A.I.R. 1929 Cal. 815.

SUPP-  
THATAMMAL,  
In re.  
KRISHNAN  
PANDALAI J.

decree and the question was whether the plaintiff not having paid additional court-fee on the excess amount as required by section 11 of the Court-Fees Act to enable him to execute the decree, the defendant was bound to pay court-fee on that sum in the appeal. RANKIN C.J. held that he should pay court-fee on the whole amount but could get credit for the fee already paid in the previous appeal on Rs. 1,300.

These decisions are based on the principle that in a suit for accounts the preliminary and final decrees are only stages of the same proceeding and though for the purposes of appealing two successive stages are now provided by section 97 of the Code of Civil Procedure the suit or appeal is not fully decided till both stages are completed and therefore the plaintiff or appellant who has already paid the fee provided by the Court-Fees Act cannot be called upon to pay an additional fee at the second stage. There are grounds for accepting this view within limits but we may at once point out that we must not be understood as approving its unlimited application.

So far as this Court is concerned, in *Damodara Padhano v. Haribandhu Patnaick*(1) SPENCER J., in an application for review of a judgment pronounced by BAKEWELL J. and himself, held that it was competent for the appellant to prefer a single combined appeal against the preliminary and final decrees if the dates permitted him to do so and that in such an appeal it would be reasonable for computing court-fees to treat the greater amount claimed in the plaint as including the lesser amount ascertained by the final decree. As against this our attention has been called by the Government Pleader to an unreported decision by WHITE C.J. on a

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(1) (1921) 14 L.W. 389.

reference under section 5 of the Court-Fees Act (S.R. 13871 of 1910). There an appeal against a preliminary decree for partition had been filed on payment of an *ad valorem* fee. Afterwards an appeal against the final decree was presented with a court-fee of Rs. 10 which was less than the *ad valorem* fee. Two questions were considered—what is the proper fee payable in the High Court on (1) an appeal from a preliminary decree in a suit for partition and (2) an appeal from a final decree in such a suit. The Chief Justice held that in both classes of appeals the fee is *ad valorem* and is regulated by the amount or subject-matter in dispute in the appeal as fixed by the appellant. That was a case under section 7 (iv) (b) of the Court-Fees Act. Besides, the precise question now before us was not considered or decided. Also, in view of the decision in *Samiya Mavali v. Minammal*(1), approved in *Srinivasacharlu v. Perindevaramma*(2), the view that it is open to the appellant to fix the value of the subject-matter in appeal cannot now be supported in this Court, at any rate in cases where the whole of the subject-matter in the first Court is in dispute in appeal.

SUPPU-  
THAYAMMAL,  
*In re.*  
KRISHNAN  
PANDALAI J.

To the extent that, when the same party, who has filed an appeal against a preliminary decree for accounts and paid court-fee on the value as fixed by the plaintiff in his plaint, files along with or pending that appeal an appeal to the same Court against the final decree ascertaining the amount due according to the preliminary decree, he may get credit in the appeal attacking that amount for the court-fee already paid on the appeal against the preliminary decree, we are prepared to follow and act upon the Calcutta, Patna and Lahore decisions referred to.

(1) (1899) I L.R. 23 Mad. 490.

(2) (1915) I L.R. 39 Mad. 725 (F.B.).

SUREN-  
THAYAMMAL,  
*In re.*  
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KRISHNAN  
PANDALAI J.

But there are difficulties in extending the doctrine to cases where the appeal against the final decree is filed after the decision in the appeal against the preliminary decree. If a plaintiff's suit for accounts is dismissed on the ground that the defendant is not accountable and he appeals and gets a preliminary decree in his favour in appeal, and then in the first Court a final decree is passed from which also he appeals disputing the amount decreed, there seems to be little justification for the argument that he need not pay the fee on the amount disputed in appeal. Similarly, in the case of a defendant who has appealed from a preliminary decree, if the appeal is dismissed, and then a final decree is passed from which also he appeals disputing the amount, there seems as little justification for saying that he need not pay the fee on the amount disputed in appeal. In both cases there is no ground for saying that the earlier appeal contemplated consideration of a final decree which had not and which might never come into existence. In those cases the fee in appeal would be governed by article 1 of the first Schedule. We need not mention other cases.

Having given the matter our best consideration and having regard to the desirability of uniformity in matters of practice between the different Courts in India, where the Court-Fees Act does not lay down any definite rule, we are of opinion that the appellants were not bound to pay any more court-fee in the lower Court than they did. The second appeal will now be proceeded with in due course.

A.S.V.

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