APPELLATE CIVIL—FULL BENCH.

Before Sir M. Venkatasubba Rao, Kt., *Officiating Chief Justice*, *Mr. Justice Cornish and Mr. Justice Venkataramana Rao.*

MADANA MOHANA NAIKO (PLAINTIFF), APPELLANT, 1936, October 7.

v.

KRUPASINDHU NAIKO AND ELEVEN OTHERS (DEFENDANTS 1 TO 6 AND NIL), RESPONDENTS.*

Court-fee—Erroneous decision of lower Court as regards the category in which the suit ought to be placed for purpose of court-fee—Appellate Court—Power of, to require a party to make good the deficiency in the court-fee—Court Fees Act (VII of 1870), sec. 12, cl. (ii), and sec. 7 (iv) (b)—Scope of.

An appellate Court has power to require a party to make good the deficiency in the court-fee payable by him in the lower Court in cases in which the lower Court has expressly or impliedly decided the question of the category in which the suit ought to be placed for purposes of court-fee but such decision is in the opinion of the appellate Court erroneous.

APPEAL against the decree of the Court of the Subordinate Judge of Berhampore in Original Suit No. 35 of 1927.

The facts and the arguments appear fully in the order of reference and in the opinion of the Full Bench.

The appeal coming on for hearing as regards the question of court-fee payable in the lower Court, the Court (CORNISH and VARADACHARIAR JJ.) made the following

ORDER OF REFERENCE TO A FULL BENCH.

VARADACHARIAR J.—In this case, a question as to the scope of clause (ii) of section 12 of the Court Fees Act has been

* Appeal No. 432 of 1929.

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raised, under the following circumstances. The plaintiff who sued for partition valued the suit for purposes of jurisdiction at Rs. 6,000, but he paid a court-fee of Rs. 100 only under article 17-B of the Court Fees Act. An issue (No. 10) was raised as to whether the court-fee paid was correct ; the lower Court, without any discussion, held it was correct.

As the suit was decided against the plaintiff, he filed an appeal here, valuing the appeal at Rs. 6,000 but again paid a court-fee of Rs. 100 only. When the matter came before us, we held that court-fee should be paid on an *ad valorem* basis under section 7 (iv) (*b*) of the Court Fees Act and the appellant has accordingly paid in the amount required to make up the fee payable on the valuation of Rs. 6,000. With reference to the additional fee payable on the same basis in the lower Court Mr. Jagannadha Doss has contended that the case does not fall under clause (ii) of section 12 of the Court Fees Act and the plaintiff cannot now be called upon to pay the additional fee.

The argument was based on certain decisions of this Court and of the other High Courts relating to the provisions as to finality in the concluding part of the first clause of section 12. As the question raised is one of some general importance, we gave notice to the Government Pleader and have had the benefit of an argument on behalf of the Government. Though we do not feel much doubt as to the true construction of clause (ii), we have preferred to refer the matter to a Full Bench, because our view may seem to restrict or qualify the language employed in the judgment of the Full Bench in *Lakshmi Amma* v. *Janamajayan Nambiyar*(1).

Beginning with *Annamalai Chetti* v. *Cloete*(2), this Court has consistently held that the concluding words of clause (i) of section 12 do not preclude an appeal by a *party* when the question raised relates not to "valuation" in the narrow sense of *amount* but to the "category" in which a suit is to be placed for the purpose of determining the court-fee. The view taken in *Annamalai Chetti* v. *Cloete*(2) was affirmed by a Full Bench in *Lakshmi Amma* v. *Janamajayan Nambiyar*(1). Mr. Jagannadha Doss argues that the expression "the said question" in clause (ii) of section 12 must be interpreted in the light of these decisions that an appellate Court can act under this clause only when there has been an error in the lower Court's

(1) (1894) 4 M.L.J. 183 (F.B.). (2) (1881) I.L.R. 4 Mad. 204.

determination of the *amount* at which the subject-matter of the suit should be valued and that where, as in the present case, the lower Court has erred in determining the "category" in which a suit is to be placed, the appellate Court cannot invoke this clause and require the party to pay the additional fee required to make up the proper fee payable on the plaint in the lower Court. We are not prepared to accept this contention.

The decisions above referred to do not proceed on the footing that the word "valuation" will not comprise the question of *category* as well as the question of *amount*. Indeed, under the opening words of clause (i), it is the duty of the Court to decide both classes of questions; the question of category will fall to be decided on the construction of the plaint and the question of amount may have to be determined after an investigation under sections 9 and 10 of the Act. But in pursuance of the principle that court-fee is primarily a question of revenue and not a matter in dispute between the parties, the Legislature thought it right to exclude a right of appeal in such matters and hence provided that the decision of a Court under clause (i) of section 12 "shall be final as between the parties". Difficulties arose in reconciling this provision with the provisions in the Civil Procedure Code giving a right of appeal against an order rejecting a plaint for non-payment of the proper court-fee. The High Courts have sought to reconcile the two provisions by holding that the finality enacted by section 12, clause (i), of the Court Fees Act, must, in view of the right of appeal given in the Code, be restricted to cases where the decision of the lower Court relates to the question of amount and not to the question of category. It is unnecessary for us to say anything as to the correctness or otherwise of this line of reasoning. But we think that the language employed in the decisions dealing with this question must be understood with reference to the question then under consideration and not extended to cover the interpretation of clause (ii) of section 12 which has been enacted with a wholly different purpose in view, namely, the protection of the interests of the revenue.

Even as a matter of construction, it seems to us that the expression "said question" in clause (ii) refers back to the expression "every question" in the opening part of the first clause and if the opening words of clause (i) will comprise both sets of questions, namely, amount as well as category, we see no

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reason why the same scope should not be given to clause (ii) as well. The last few words of clause (i) are really parenthetical and there is no reason why clause (ii) should be read as a proviso to the main provision in clause (i). It is true that a fiscal enactment should be interpreted according to the natural meaning of the words employed but there is no more justification for restricting their natural meaning than for widening it. If by reason of the collocation of the provisions there is any room for ambiguity, it seems to us legitimate to have due regard to the fact that the purpose of clause (ii) is to protect the interests of the revenue.

In *Shama Soondary* v. *Hurro Soondary*(1) and in *Lakshmi Ammal, In re*(2) the power of the appellate Court to take action under section 12, clause (ii), in circumstances like those of the present case was recognised, but the question was not raised or considered in its present form. The observations of the Privy Council in *Rachappa Subrao* v. *Shidappa Venkatrao*(3) and the decision of this Court in *Tekana Kavandan* v. *Aligiri Kavandan*(4) no doubt affirm the differentiation between the interests of the revenue and the rights of the parties, but they do not throw much light on the present aspect of the question, nor are the decisions in *Raj Rajeswari Jiu* v. *Gati Krishna*(5) and *Baijnath* v. *Dhani Ram*(6) of much help in this connection.

We may add that it has been contended on behalf of the Government that even if clause (ii) of section 12 should be construed in the manner suggested on behalf of the appellant, the appellate Court may insist on the payment of the deficient fee even in respect of the lower Court, either under section 28 of the Court Fees Act or in the exercise of inherent power. We are not much impressed with this argument but, as we are referring the question to a Full Bench, we have thought it right to refer to the argument. We refer the following question for the opinion of a Full Bench:

"Has an appellate Court power to require a party to make good the deficiency in the court-fee payable by him in the lower Court in cases in which the lower Court has expressly or impliedly decided the question of the category in which the

(1) (1881) I.L.R. 7 Cal. 348.
(2) (1925) 49 M.L.J. 608.
(3) (1918) I.L.R. 43 Bom. 507, 518 (P.C.).
(4) (1914) 25 I.C. 506.
(5) (1923) 39 C.L.J. 217.
(6) (1929) I.L.R. 51 All. 886.

suit ought to be placed for purposes of court-fee but such decision is in the opinion of the appellate Court erroneous ?"

ON THE REFERENCE.

B. Jagannadha Doss for appellant.

S. A. Seshadri Ayyangar for fifth and sixth respondents.

C. Rama Rao for second and seventh to eleventh respondents.

S. Suryaprakasa Rao for *G. Ranga Rao* for third respondent.

K. S. Champakesa Ayyangar for *Government Pleader* (*K. S. Krishnaswami Ayyangar*) for Government.

VENKATASUBBA RAO OFFG. C.J.

The OPINION of the Court was delivered by VENKATASUBBA RAO Offg. C.J.—The question of law referred to the Full Bench for determination is interesting and not covered by authority. When the appeal came to be heard by the referring Judges, it was found that the court-fee paid on the memorandum of appeal was deficient and an order was thereupon made directing that the proper amount should be paid. So far the case presented no difficulty, but the question arose whether the learned Judges could require the appellant to pay the proper court-fee in the Court of first instance. That doubt that has arisen, which has led to this reference, may be expressed as follows. Section 12 of the Court Fees Act runs thus :

"(i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the

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said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph ii, shall apply."

It seems to have been argued, that in what is termed "valuation" two different things are involved, first, the fundamental question of category, and, secondly, the question of appraisement, and that it has been held in numerous decisions that the finality contemplated in sub-section (i) attaches to a decision relating to appraisement as distinguished from category. The next step in the argument seems to be, that the words "the said question" in sub-section (ii) must receive the same interpretation as the expression "every question relating to valuation" in sub-section (i) and if that be so, when the decision relates to category, it does not attract the operation of sub-section (ii) and the appellate Court cannot therefore make an order directing the deficiency to be made good. This contention appears to us to involve a fallacy. The words "every question" are of a comprehensive nature and there seems to be no reason why they should be construed in the restrictive sense suggested; indeed, some at any rate of the decided cases show that the view that a decision relating to category is not final is not based upon any such limited construction. True, that, in *Annamalai Chetti* v. *Cloete*(1), the learned Judges place upon the words the narrow meaning. They observe:

"In our judgment the terms of the 12th section ought not to receive a larger interpretation than they fairly admit of.

(1) (1881) I.L.R. 4 Mad. 204.

They do not declare the decision of the Court in which the plaint or appeal is filed final on all questions which may arise respecting the court-fee but on every question relating to valuation for the purpose of determining the amount of the court-fee."

It is difficult to see, as observed in *Muhammad Sadik* v. *Muhammad Jan*(1), how a Court could determine the amount without deciding the question as to the relief sought (i.e., the category to which a particular suit belongs) and how yet the relief sought is to be deemed as not comprised in the question relating to the valuation (see page 93). On the other hand, in a later case on the point, namely, *Lakshmi Amma* v. *Janamajayan Nambiyar*(2), the learned Judges proceeded upon the footing that the word "valuation" comprises both the factors, i.e., the category as well as the computation of value. Having said so, they felt constrained to hold, in view of certain provisions of the Civil Procedure Code, that the question of valuation should be viewed in two aspects for the purpose of deciding when a decision as to valuation is final and when appealable. They ultimately decided that, when the mistake made by the Judge relates to the category, an appeal lies, and not when it relates to the computation. Whether the 1877 Code, which was then under consideration, warrants this conclusion, is a matter open to doubt, but it is not at present within our province to express any final opinion on that point. The difficulty felt seems to have been as to how to reconcile the provisions of the Code relating to appealability with section 12 of the Court Fees Act.

(1) (1888) I.L.R. 11 All. 91 (F.B.). (2) (1894) 4 M.L.J. 183 (F.B.).

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Now let us examine the provisions of the present Civil Procedure Code. Order VII, rule 11, shows that the question of the deficient court-fee can be viewed not only in two [as assumed in *Lakshmi Amma* v. *Janamajayan Nambiyar*(1)] but in three aspects. Clause (*b*) refers to the case where the relief claimed is undervalued; this comprises both the category and the computation. Under clause (*c*) the mistake relates neither to category nor to appraisement; the valuation in both these aspects having been properly made, the plaint is nevertheless written upon an insufficiently stamped paper. Rule 11 provides that the plaint shall be rejected when the plaintiff, being required to make good the deficiency, fails to do so. The rejection of a plaint amounts to a decree under section 2 and is appealable under section 96. Were the matter *res integra*, it does not seem to us impossible to reconcile these provisions with section 12 of the Court Fees Act, giving full effect to both the statutes. The present trend of decisions seems to be that where a plaint is rejected under clause (*b*) of Order VII, rule 11, the order rejecting the plaint is not appealable when the order is based on a question of valuation pure and simple; but if the order involves a decision as to the category to which a suit belongs, the order is appealable. As we have said, this view is the result of the endeavour to reconcile the Code with the Court Fees Act. But is it really necessary to take such a view? One might suggest that if the decision under section 12 of the Court Fees Act leads to a rejection of the plaint under the Code, then such a

(1) (1894) 4 M.L.J. 183 (F.B.).

rejection, amounting as it does to a decree, ought in all cases to be appealable ; but where the decision does not lead to a rejection of the plaint, there is no reason why finality should not in every case attach to that decision. In this way, as we have observed, both the statutes can be reconciled. To explain what we mean, let us take this example. Supposing the Court decides that the proper court-fee has been paid, that decision should be final as between the parties and it should not be open to the defendant to question it. Again, let us suppose that the Court decides that the court-fee paid is deficient and requires the plaintiff to make good the deficiency and he complies with the order ; here no question of the rejection of the plaint can arise and the decision as between the parties ought to be final. As we have said, however, this is not a matter which directly arises under the present reference ; but the discussion is relevant in this way. It shows that the view taken in the numerous cases as to appealability does not necessarily rest upon the restrictive construction suggested of the opening words of section 12—we have already referred in this connection to *Lakshmi Amma* v. *Janamajayan Nambiyar*(1).

The only ground urged therefore disappearing, we can see no ground which would justify us in giving to the words "the said question" in the second part the limited meaning contended for. Though the question has been pointedly raised here for the first time, we may observe that our attention has been drawn to numerous

(1) (1894) 4 M.L.J. 183 (F.B.).

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cases where it was assumed, without discussion, that the High Court acting under section 12, clause (ii), has power to require the plaintiff to bring the additional fee payable in the lower Court even where its decision was as to category as distinguished from computation.

Our answer to the question is therefore in the affirmative.

G.R.

APPELLATE CIVIL.

Before Sir M. Venkatasubba Rao, Kt., *Officiating Chief Justice, and Mr. Justice Horwill.*

1936, August 31.

In re KANTHEESWARAM EKANTHALINGASWAMI KOIL THROUGH ITS TRUSTEE M. VEDANAYAGAM PILLAI (FIRST RESPONDENT), PETITIONER.*

Court-fee—Appeal in High Court—Future mesne profits claimed by plaintiff-respondent in his memorandum of objections filed in—Court-fee on—Payable, if—Decision of Taxing Officer that court-fee is payable—Revision of—Jurisdiction of High Court as to—Court Fees Act (VII of 1870), *ss.* 5, 7 *and* 11—*Applicability and effect of.*

In a suit for possession the plaintiff omitted to claim in his plaint future mesne profits. He subsequently applied for permission to amend his plaint by including a claim for such profits. The lower Court, which passed a decree in his favour for possession, rejected that application. Against the decree for possession, the defendants filed an appeal in the High Court and in the memorandum of objections which the plaintiff filed, a claim was again put forward to future mesne profits. A difference arose between the plaintiff's Advocate and the Court Fee Examiner as to the necessity of paying a court-fee on the memorandum of objections. That difference was referred to the Taxing Officer, and he held that an *ad valorem* fee was payable.

* Civil Miscellaneous Petition No. 5722 of 1933.