

context is not quite clear. At the same time the petitioner would have been better advised when time was given him for reflection, had he apologised and expressed his regret for any apparent, but as he maintained not intended, discourtesy or interruption to the Court. Looking to all the circumstances, I decline to disturb the order of the learned Judge confirming that of the Deputy Magistrate, but as I do not regard the conduct of the petitioner as of a very gross or serious character, I reduce the fine to Rs. 20, or, in default, one day's simple imprisonment. If realized, the difference between that and the Rs. 50 fine inflicted will be returned.

Conviction affirmed, sentence varied.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

DILDAR, FATIMA (PLAINTIFF) v. NARAIN DAS AND ANOTHER
(DEFENDANTS).*

Court-fee—Suit to obtain a declaratory decree—Suit to set aside a summary order—Consequential relief—Prayer to have property released from attachment—Act VII of 1870 (Court Fees Act), sch ii, No. 17 (i) and (ii).

Held that the court-fee payable on the plaint and memorandum of appeal in a suit under s. 233 of the Civil Procedure Code praying (a) for a declaration of right to certain property, and (b) that the said property might be released from attachment in execution of a decree, was Rs. 10 in respect of each of the reliefs prayed.

THIS was a reference by the Officiating Registrar as taxing-officer of the High Court, under s. 5 of the Court-fees Act (VII of 1870). The order of reference was as follows :—

“In this case there seem to be two prayers :—

“(a) For a declaration of right to certain property.

“(b) That the said property may be released from attachment.

“The former taxing-officer held that consequential relief was sought, and that therefore an *ad valorem* stamp was due. The

* Miscellaneous application in S. A. No. 259.

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appellant's counsel has drawn my attention to the following rulings.

“*Falima Begam v. Sukhram* (1).

“*Manraj Kuari v. Maharajah Radha Prasad Singh* (2).

“In both these cases the prayer was formally to set aside an order passed on an objection to an attachment, and it was held that this came under sch. ii, art. 17 of the Court-fees Act and should bear a Rs. 10 stamp.

“The latter of these two cases, however, shows that the additional prayer cannot be treated as mere surplusage, but must be stamped or considered in the valuing in accordance with its nature.

“In this case it will be observed that the form of the prayer is somewhat different; it is not to set aside an order, but to release the property. The result in each case would doubtless be the same, but the formal prayer is different.

“In the Full Bench ruling of *Ram Prasad v. Sukhdai* (3) a prayer that property “be exempted from sale” was held to involve consequential relief and an *ad valorem* fee.

“This case seems analogous to the present one, and were it not for a Bombay case to which I will refer, I should clearly hold with Mr. Thomson that the consequential relief was sought.

“The case however of *Dayachand Nemchand v. Hemchand Dharamchand* (4) gives some ground for supposing that the actual result, not the wording of the prayer, is to be considered. Thus a prayer to restore an attachment is held to be stamped as a suit to set aside a summary order.

“If the Court-fees Act, as a fiscal Act, is to be construed as far as possible in favour of the subject, it might be held as indicated by the Bombay ruling that where there has been an attachment and an unsuccessful objection followed by a regular suit under s. 283 of the Civil Procedure Code, that suit however worded is one to set

(1) I. L. R., 6 All., 341.

(2) I. L. R., 6 All., 466.

(3) I. L. R., 2 All., 720.

(4) I. L. R., 4 Bom., 515.

aside a summary order, in other words, that the result, not the formal wording of the suit, should be considered.

“If consequential relief be deemed as prayed for, the deficiency is Rs. $70 \times 3 = 210$.

“If a declaratory decree *plus* an order to set aside a summary order is deemed as prayed for, the deficiency is Rs. $10 \times 3 = 30$.

“As it is important to have a clear ruling, and I am inclined to think there is much to be said in favour of the latter view, I refer the question to the Court.”

The case came before Brodhurst, J., who referred it to a Division Bench.

Mr. *Hamidullah*, for the appellant.

STRAIGHT and TYRRELL, JJ.—A court-fee of Rs. 10 must be paid in respect of each of the reliefs prayed.

Before Mr. Justice Brodhurst and Mr. Justice Mahmood.

UMDA AND OTHERS (DEFENDANTS) v. UMRAO BEGAM (PLAINTIFF).*

Mortgage, usufructuary—Suit for sale by usufructuary mortgagee—Suit not maintainable—Act IV of 1882 (Transfer of Property Act), s. 67 (a).

Under s. 67 (a) of the Transfer of Property Act (IV of 1882), a usufructuary mortgagee whose possession has not been disturbed cannot maintain a suit either for foreclosure or for sale on non-payment of the mortgage-money. *Chowdhri Umrao Singh v. The Collector of Moradabad* (1), *Dulli v. Bahádur* (2), *Ganesh Kooer v. Deedar Buksh*, (3) *Venkatasami v. Subramanya* (4) and *Jhablu Ram v. Giridhari Singh* (5) referred to.

THE facts of this case were as follows :—

One Musammát Khanam Jan executed a usufructuary mortgage of a house in favour of one Inaitullah Khan for a sum of

* Second Appeal No. 383 of 1887 from a decree of Maulvi Saiyid Muhammad Khan, Subordinate Judge of Moradabad, dated the 2nd December, 1886, confirming a decree of Maulvi Zakir Husain Khan, Munsif of Moradabad, dated the 30th August, 1886.

(1) S. D. A., N.-W. P., 1859, p. 13.

(3) N.-W. P. H. C. Rep., 1873, p. 128.

(2) N.-W. P. H. C. Rep., 1875, p. 55.

(4) I. L. R., 11 Mad., 88.

(5) I. L. R., 6 All., 289.