

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Burkitt and Mr. Justice Aikman.

1893  
December 17.

BADRI PRASAD (PLAINTIFF) v. KUNDAN LAL (DEFENDANT)\*

Act VII of 1870 s. 5—Act VI of 1892, s. 3—Court fee—Finality of decision of taxing officer.

Where an appellant whose memorandum of appeal had been declared by the taxing officer of the Court to be insufficiently stamped applied for relief under s. 3 of Act No. VI of 1892, and it was found that the report of the taxing officer was erroneous and that the correct stamp had as a matter of fact been put on the memorandum of appeal. *Held*, that the appellant was entitled to the relief sought notwithstanding the provisions of s. 5 of Act No. VII of 1870.

The facts of this case sufficiently appear from the judgment of the Court.

Munshi *Kashi Prasad*, for the appellant.

Pandit *Sundar Lal*, for the respondent.

EDGE, C. J., BURKITT and AIKMAN, J.J.—The question here arises as to whether the defendant, who is appellant here, is entitled to the relief provided by s. 3 of Act No. VI of 1892. The facts of the case are simple. One Kundan Lal applied under s. 108 of Act No. XIX of 1873 for perfect partition of his share in a *mahál*. Badri Prasad, who is defendant here, objected on a question of title. That question was decided by the Assistant Collector acting as a Civil Court under s. 113 of the above mentioned Act, and he passed an order declaring that Kundan Lal was entitled to have partition made of the share which he claimed and disallowed the objection of Badri Prasad. Regarding it for the moment as a purely civil suit, the Court fee would be a 10 rupee fee for a declaration of title, which was the only relief which, under s. 113 of Act No. XIX of 1873, a Collector or Assistant Collector acting as a Civil Court could grant. Badri Prasad appealed to the District Judge under s. 114 of the same Act. His appeal there was simply one against the order of the Assistant Collector. That appeal would require merely a 10 rupee Court fee stamp. His appeal was dismissed by the District Judge and thereupon he brought the present appeal in this Court

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\* Second Appeal No. 1044 of 1889 from a decree of H. F. Evans, Esq., District Judge of Moradabad, dated the 1st August 1889, confirming a decree of Maulvi Muhammad Ali Hasan Khan, Assistant Collector of Bijnor, dated the 6th April 1889.

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under s. 114 of the Act. By that appeal he merely sought to have the decree of the lower appellate Court reversed. His memorandum of appeal in this Court was presented on stamped paper of the value of Rs. 10. His memorandum of appeal went before the officer of this Court whose duty it is to see that the fees are paid under Chapter II of the Court Fees Act, and he was of opinion that the fee of Rs. 10 was insufficient and that the memorandum of appeal was not properly stamped and required an extra *ad valorem* fee of Rs. 90. The appellant's vakil did not agree with that officer's opinion and the question of fee went under s. 5 before the then taxing officer of this Court. By his decision the memorandum of appeal was insufficiently stamped and required an additional fee of Rs. 90. That deficiency was made good after the period for the presenting of a properly stamped memorandum of appeal had expired. The peculiarity of this case is that by s. 5 of the Court Fees Act the decision of the taxing officer as to the requisite stamp was final and for purposes of this nature must be taken as final. However, what we have got to see is whether the insufficiency of the stamp on the memorandum of appeal was caused by a mistake on the part of the appellant as to the amount of the requisite stamp. As a matter of fact the memorandum of appeal was sufficiently stamped with a 10 rupee stamp, but the requisite stamp in this case, by reason of the Court Fees Act making the decision of the taxing officer absolutely final, must be taken as Rs. 100. It was not the fault of the appellant that it was decided that his appeal was insufficiently stamped, and he could not foresee that the taxing officer would take a wrong view of the law. We should say that in this case the gentleman who at that time was acting temporarily as taxing officer was not the Registrar of the Court, who ordinarily acts as taxing officer, but a gentleman who was acting in his absence. We hold in this case that the appellant has shown himself entitled to the benefit of s. 3 of Act No. VI of 1892, and the result is that we hold that the memorandum of appeal has the same effect and is "as valid," to use the words of the Act, "as if it had been properly stamped." The appeal will go to a Bench of two judges to be disposed of on the other points.