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EMPEROR v. PANNA LAL.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

GRIFFIN, J.—This is an application for revision of an order of the Cantonment Magistrate of Jhansi convicting the applicant Panna Lal on two charges under the Excise Act, one under section 21 and the other under section 51.

The facts which form the basis of the first charge are that Panna Lal who holds no license under the Excise Act, had received an order from the secretary of the Jhansi Club, for some methylated spirits. Panna Lal obtained the methylated spirits from another shop and sent it from there on to the club, without making any profit in the transaction. Under the particular circumstances of the case it is difficult to call this transaction a sale. I therefore set aside the conviction and sentence under the first charge.

The second charge against the applicant, which was amply proved, was that he had purchased at a court sale a quantity of wines and spirits knowing that he had no license for possession or sale of such liquor. I am unable to interfere with the order on the second charge.

I allow the application to the extent above indicated and set aside the conviction and sentence under section 21 of the Excise Act. The fine of Rs. 30, if realized, will be refunded. The application is otherwise dismissed.

Order modified.

MISCELLANEOUS CIVIL.

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February 6.

Before Mr. Justice Aikman.

IN THE MATTER OF SHEIKH MAQBUL AHMAD (APPLICANT.) *

Act No. VII of 1870 *(Court-fees Act), Schedule* 1, *section* 5, *articles* 4, 5—*Court-fee—Application for review affecting only portion of decree.*

Held that the proper fee leviable on an application for review of judgment when it refers only to a portion of the decree is the fee leviable on the plaint or memorandum of appeal, in which the judgment, review of which is asked for, is passed—*Proceedings, Jan.* 16, 1872 (1), *In re Manohar Tambekar* (2), not followed. *Nobin Chundra* v. *Uzir Ali* (3), and *Imdad Hasan* v. *Badri Prasad* (4), followed.

* Stamp Reference in review of Judgment filed in first appeal No. 291 of 1901.

(1) (1872) 7. Mad., H. C. R., app. 1.
(2) (1879) I. L. R., 4, Bom., 26.
(3) (1898) 3 C. W. N., 292.
(4) Weekly Notes, 1898, 212.

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THIS was a reference made by the Taxing officer to the Taxing Judge under section 5 of the Court Fees Act.

The plaintiff's suit was for possession of a 12 biswas zamindari share and demolition of buildings and mesne profits. The defendants pleaded that the plaintiff was only entitled to 11 biswas 17 biswansi 2 kachwansi and not to 12 biswas.

The plaintiff was really entitled to 11 biswas 7 biswansi 2 kachwansi, and the 17 biswansi mentioned was a clerical error. A decree was passed in favour of the plaintiff for 11 biswas 17 biswansi 2 kachwansi and also for damages. There was an appeal to the High Court against the decree as regards damages and other matters not material to the present report. The present application for Review of judgment as regards the mistake of 10 biswansi was presented to the Court and court fee was paid with reference to the valuation of the 10 biswansi share regarding which correction was prayed for. On the application being presented to the office for stamp report the Stamp Reporter made the following report:—

"This is an application for review of judgment in F. A. No. 291 of 1901, decided on the 10th of December 1903, as regards 10 biswansi share out of 12 biswas share in mauza Tilokpur, which is one of the villages claimed in that suit. The applicant has paid court fees on five times the Government Revenue of that share. I beg to submit that under article 4, schedule 1 of Act VII of 1870, the proper fee leviable on this application for review is the fee that was leviable on the memorandum of appeal, namely Rs. 1,015 (please see W. N., 1898, p. 212 and 3 C. W. N., 292), Rs. 21-12-0 having been paid, there is therefore a deficiency of Rs. 993-4-0 to be made good by the applicant."

The following objection was preferred to the office report by Maulvi *Ghulam Mujtaba* who appeared for the applicant:—

"I am afraid I cannot accept the correctness of the office report and it is necessary to state shortly the facts of the case.

The suit out of which the appeal arose was brought for the following reliefs:—

(*a*) Possession of the zamindari property and land occupied by factories valued at Rs. 26,545-0-9.

(*b*) Rs. 44,565-14-7 on account of damages for the demolition of certain buildings.

(*c*) Rs. 212-6-2 the amount of the Government Revenue paid by the plaintiff.

(*d*) Mesne profits valued at Rs. 3,675.

The principal defendant was Sheikh Ali Ahmad, who held the property claimed in relief (*a*) under a lease executed by Musammat Chunni Kuar, and the

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applicant for the Review of judgment was made party to the suit upon the ground that defendant No. 1 purchased a portion of a factory in Mauza Chalasni in his name (paragraph 18 of plaint) and also upon the ground that he was related to and was in collusion with defendant No. 1. It will thus appear that the suit embraced distinct subjects. The defence raised on behalf of the applicant for Review of judgment was that he had nothing to do with the property in dispute except as regards a portion of the factory (paragraph 33 of written statement) and fractional share in mauza Tilokpur (paragraph 37) one of the villages claimed in the suit, and he consequently pleaded that the suit was bad for misjoinder of causes of action and parties. The applicant's interest in the suit was limited to a share in factory and a share in Tilokpur. The plea of the applicant as regards the share in Tilokpur was practically admitted by the plaintiff.

The suit was decreed by the court of first instance in respect of *(a)* except as to a share in Tilokpur and *(b)* to the extent of Rs. 7,629 and was dismissed as to other reliefs and the question of mesne profits was reserved for the execution department. Reliefs *(a)* and *(b)* being decreed against all the defendants, an appeal was preferred by all of them and was valued at Rs. 33,874-0-9. The appeal again embraced distinct subjects *viz.*, reliefs *(a)* and *(b)* and by the decree of this Court the claim for damages, relief *(b)* was altogether dismissed and for all intents and purposes the decree of the High Court was limited to the claim for possession of property held by Sheikh Ali Ahmad under the leases with which the applicant had nothing to do.

The present application for Review is limited to a 10 biswansi share in Tilokpur and sufficient court fee has been paid upon that share and no order on Review will effect any other part of the judgment passed by this Honourable Court.

The principle laid down in 7 Madras High Court Reports, page 1, Appendix, and specially 4 Bombay Indian Law Reports, page 26, applies to the facts of this case, which have not been dissented from in 3 Calc. W. N.

The present case is distinguishable from the Calcutta case and the case reported in the Weekly Notes for 1898, because in those cases the suit did not embrace several distinct subjects nor was the interest of the applicant for Review in those cases limited to a single item of property as in the case here.

For the reason submitted above, I contend that the court fee paid is sufficient."

The Taxing officer referred the case to the Taxing Judge and his report was as follows:—

"In this case the plaintiff sued for possession of property situate in several villages, including Tilokpur, and for damages, and certain other reliefs which do not concern the question for decision. The court of first instance granted the plaintiff's claim in full as to possession and damages. On appeal the High Court granted the plaintiff's claim for possession, but dismissed his suit as regards damages. Among the property for possession of which the High Court granted a decree to the plaintiff was a share in Tilokpur amounting to 11 biswas 17 biswansis 2 kachwansis. It is alleged that this share should be 11 biswas 7

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biswansi 2 kachwansi, and on this ground this application has been filed for review of the judgment of the High Court. There were several defendants to this suit and it is admitted that the present defendant-applicant's interest was limited to the property in Tilokpur.

The question is how the application should be stamped with reference to the provisions of article 4 of the first schedule to the Court Fees Act. The office contends that the proper stamp is that paid on the original appeal in the High Court.

The learned counsel for the objector contends that it should be stamped on the value of 10 biswansis with reference to which correction is sought.

It seems to me that it might also be stamped with reference to the value of the share in Tilokpur which represented the applicant's interest in the appeal. Rulings are divergent. A ruling in C. W. N., III, p. 293; supports the view of the office. It was held in this case that an application for review as to costs should have been stamped with reference to the entire value of the suit.

On the other hand a ruling in the Madras High Court Report, 1871-1872, p. 1. lays down that the Court Fee must be levied on the amount which would be obtained if a review were granted.

There is also a ruling by the Bombay Court reported in I. L. R., 4 Bom., p. 26 which appears to support the suggestion I have made above. In it, it was held that when a "plaint or memorandum of appeal comprises a number of claim and a portion only of such claims has been allowed by the judgment the applicant for review should be required to stamp his application for review with a fee sufficient to cover the amount of the claim in regard to which he wishes the court to review its judgment."

This case is not exactly on all fours with the present one. But it has certain points of resemblance. It is admitted that the present applicant was interested in only a part of the subject-matter of the suit and appeal. Therefore only part of the decrees of the first court and the appellate court affected him. It is only this part of the decree of the appellate court with reference to which he seeks review. It is therefore only a small extension of the principle laid down in the Bombay ruling to require him to pay fees with respect to this part alone. I might further point out that the present applicant who was one of the defendants in the original suit might have brought his appeal as to the part of the original decree affecting him by *himself*. In that case of course he would have only had to pay fees on the present application with reference to the value of that appeal alone."

As the rulings are conflicting, I submit the case for the order of the Honourable Taxing Judge."

The case being laid before the Taxing Judge,

Maulvi *Ghulam Mujtaba*, for the applicant, contended that the governing word in schedule 1, article 4, was 'leviable,' which did not mean 'levied,' but meant that the fee on an application for Review was the fee payable on the memorandum of appeal,

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if the appeal were limited to the subject-matter of the Review. If the legislature had intended that the fee paid on the memorandum of appeal would be payable on an application for Review, the word used would have been 'levied' and not 'leviable.' In construing fiscal enactments a construction favourable to the subject should be placed upon the words. *Amanat Begam* v. *Bhajan Lal* (1), and *Anonymous case* (2).

Moreover a literal construction would lead to hardship and absurdity and if a literal construction leads to anomalies or absurdities, it must be avoided. *Kaylash Chandra* v. *Tarak Nath* (3) *Proceedings, 16th January,* 1872 (4). *In re Manohar* v. *Tambekar* (5). *Ful Chand* v. *Bai Ichha* (6). *Nobin Chandra* v. *Uzir Ali* (7). *Imdad Hasan* v. *Badri Prasad* (8).

The Government Advocate (Mr. *W. Wallach*), for the Crown, submitted that the words "the plaint or memorandum of appeal" could only mean the plaint or memorandum of appeal in which the judgment was pronounced.

AIKMAN, J.—This is a reference under section 5 of the Court Fees Act, 1870.

The question for decision is as to the proper fee leviable on an application for review of judgment presented on or after the 90th day from the date of the decree, when the application refers only to a portion of the decree. Article 4, schedule I, of the Act provides that the fee leviable on an application for review of judgment presented on or after the 90th day from the date of the decree is "the fee leviable on the plaint or memorandum of appeal." I have had the advantage of hearing the question argued by the learned vakil for the applicant and by the learned Government Advocate as representing the Crown. The Act, it will be seen, draws no distinction between applications for review of judgment when the application affects the whole of the decree or only a portion thereof. No doubt the leading principle of the Act is that the amount of the court fee bears relation to the amount of relief sought, but in the words which I have to construe, I can find nothing to make this principle applicable. The

(1) (1886) I. L. R., 8 All. 438, 441, F. B.
(2) (1884) I. L. R., 10 Calc. 274, 282.
(3) (1897) I. L. R., 25 Calc. 571, 578.
(4) (1872) 7 Mad. H. C. R., App. 1.
(5) (1879) I. L. R., 4 Bom. 26, 27.
(6) (1883) I. L. R., 12 Bom. 68.
(7) (1893) 3 C. W. N., 292.
(8) (1898) 18 A. W. N., 202.

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proper fee for an application for review of judgment is declared to be the fee leviable on the plaint or memorandum of appeal. Now what does the Act mean by the plaint or memorandum of appeal? In my opinion it can only mean the plaint or memorandum of appeal, in which the judgment, review of which is asked for, was passed. No doubt this provision of the law may work hardships and I do not lose sight of the fact that in cases of doubt a fiscal regulation should be construed in favour of the subject. It appears to me, however, in this case that the words I have quoted do not admit of any doubt. It is to be noted that the Court Fees Act contains a special provision in regard to applications for review of judgment. This is to be found in section 15 of the Act. That section authorises a successful applicant for review of judgment save when he succeeds wholly or in part on the ground of fresh evidence, which he could not produce at the original hearing to receive back nearly the whole of his fee he had to pay on this application for review. In the present case the application for review is based on the allegation of a mistake or error apparent on the face of the record and if successful, the applicant will receive back all but Rs. 2. If I accepted the argument of the learned vakil for the applicant, I should have to read the Act as if it ran "The fee leviable on a plaint or memorandum of appeal asking for the same relief as that asked for in the application for review." In the case reported in 7 Madras H. C. Reports (1) it appears that the majority of the court considered that they might read the Act as it ran in the manner indicated, but it appears to me that to do so would be to go beyond the province of a court in interpreting the words of the Act. The learned vakil for the applicant also relies on the decision of MELVILL, J., *in re Manohar Tambekar* (2). That decision is in favour of the applicant, but the learned Judge admits that he arrived at it "not without hesitation." The case of *Nobin Chundra Chackerbutty* v. *Mohamed Uzir Ali Sarkar* (3), is against the applicant; so is also the view taken by the Taxing Officer of this Court in *Imdad Hasan Khan* v. *Badri Prasad* (4). It is possible that the construction which I place

(1) (1872) 7 Mad. H. C. Rep., app. 1.
(2) (1879) I. L. R., 4 Bom., 26.
(3) (1898) 3 C. W. N., 292.
(4) Weekly Notes, 1898, p. 212.

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on the section may in some instances be productive of hardship, but in my opinion the words of the Act admit of no interpretation other than what I place on them. If there is any hardship, the remedy is an amendment of the law. My reply to the reference is that the office report to the effect that the application must bear the court-fee leviable on the memorandum of appeal is correct. I omitted to say that the learned vakil based his argument on the use of the word 'leviable' instead of 'levied'. It appears to me that this word was used in order to provide for an application for review by a defendant or respondent in the case of a suit or appeal in *forma pauperis*.

APPELLATE CIVIL.

1906
February 5.

Before Mr. Justice Banerji and Mr. Justice Aikman.

KALKA PRASAD AND OTHERS (DEFENDANTS) *v.* BHUIYAN DIN AND ANOTHER (PLAINTIFFS).*

Mortgage by conditional sale—Stipulation for redemption within seven years—Suit for redemption—Limitation—Starting point.

The plaintiffs' ancestor executed a sale-deed of certain property in favour of the defendant's ancestor who simultaneously executed an agreement to reconvey. The latter deed provided that if within a period of seven years (*andar miad sat sal*) the vendors paid to the vendee Rs. 300, which was the consideration for the sale, the vendee would reconvey the property. *Held* that the transaction amounted to a mortgage by conditional sale, that the mortgagor had no right to redeem the mortgage before the expiry of seven years from the date of the mortgage, and that time did not begin to run until after seven years from the execution of the mortgage.

THE facts of this case are as follows :—

The plaintiffs' ancestors sold a 5 annas 4 pies share in mauza Madanpur to Mannilal, ancestor of defendants, for Rs. 300 on 13th May 1845, and there was a simultaneous agreement by Mannilal to reconvey the property to his vendors on receipt of Rs. 300 within seven years. The present suit was brought on 22nd January 1907, for redemption on the allegation that the mortgage had been paid off, but that the plaintiffs were ready to pay any money if found due. The defendants pleaded that there was no mortgage by conditional sale, that there was no sale or

*First Appeal No. 16 of 1908, from an order of Bipin Behari Mukerji, Judge of Small Cause Court, Cawnpore exercising powers of a Subordinate Judge, dated the 20th of December 1907.