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November 1902, passed an order to the effect that Musammat Gobindi's name be entered in the *khewat* as recommended by the Tahsildar. Owing to some error, however, Musammat Gobindi's name was entered in respect of 89 bighas odd. It has thus been established by suit in Civil Court that Musammat Gobindi has only proprietary right over 73 bighas 3 biswas and not over half share in *khata khewat* No. 6 of mauza Lahra. Owing to this decision of the Civil Court which was long prior to the date on which the present suit was instituted out of which this appeal arises, there is nothing left for the court to presume. The view taken by the lower appellate court is a correct view and in my opinion this appeal should be dismissed with costs.

AIKMAN, J.—I concur in the judgment of my learned colleague and have nothing to add.

GRIFFIN, J.—I also concur.

BY THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL.

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January 14.

Before Mr. Justice Aikman.

JAGAN NATH PRASAD, (DECREE-HOLDER) *v.* MULCHAND AND OTHERS (JUDGMENT-DEBTORS).*

Act No. VII of 1870 *(Court Fees Act), section* 5—*Reference—Schedule I, Articles* 4 *and* 5—*Court fee—Interlocutory order—Review of.*

Held that an application for review of an interlocutory order was properly stamped with a court fee stamp of Rs. 2 and that neither Article 4 nor Article 5 of schedule I of the Court Fees Act refers to an interlocutory order. *Bom. Printed Judgments*, 1892, p. 383 followed.

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

An application for review of an order passed by a Division Bench under section 566, Code of Civil Procedure, 1882, was presented on a court fee stamp of Rs. 2. The Stamp Reporter reported that the application was insufficiently stamped on the ground that the application being one for review of judgment should have been stamped under schedule I, article 4 of the Court Fees Act, and the proper fee was the fee leviable on the memorandum of appeal.

* Stamp Reference in Second Appeal No. 1143 of 1907.

The vakil for the applicant objecting to the report of the Stamp Reporter the case was referred to the Taxing Officer under section 5 of the Court Fees Act for decision. He made the following reference to the Taxing Judge on November 12th, 1908:—

"The application is for the review of an order remanding a case under the provisions of section 566 of the Code of Civil Procedure. The office report is to the effect that the fee as laid down by article 4, schedule I of the Court Fees Act, is payable. There is no question that the application was filed after the ninetieth day from the date of the High Court's order.

"The learned vakil contends that this article does not apply as the application refers to *an order* and not to a *judgment ending in a decree.*

"I would refer to the heading of chapter XLVII of the Code of Civil Procedure where the expression "Review of judgment" is used. Further I would point out that while the words decree or order are used in section 623, the word judgment is used in article 4 of the 1st schedule to the Court Fees Act. I think it is clear that this article applies to the review of all judgments under section 623, whether the judgments of which review is sought is of the nature of an order, or ends in a decree. I know of no rule by which the term judgment is limited to mean a *judgment which ends in a decree.*

"The learned vakil also argues that should his first contention be overruled, then article 5 of the 1st schedule and not article 4, is the proper article under which to levy the fee. In support of this contention he advances no argument and I think it is untenable.

"Lastly, he argues that as the review assails only part of the order, only a proportionate fee should be levied. He has omitted to show what this proportion should be, and as far as I can judge from reading the application for review it would be impossible to do so. Another case in which a question similar to this has arisen is at present before the Honourable Taxing Judge for decision: therefore I direct this to be also laid before him."

On 23rd November 1908, the Taxing Officer made the following further reference:—

"I find I was under a misapprehension when I made my note as to the applicability of articles 4 and 5 of the 1st schedule.

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I would add that if the days spent in obtaining a copy be excluded the application for review was filed before the ninetieth day from the date of the judgment. But this does not assist the argument of the learned vakil as in *In re Kota* reported in I. L. R., 9 Mad., 134, and in *In the matter of Doorga Prosunno Ghose*, reported in 9 Calc., L. R., p. 479, the view taken is dead against his contention. I therefore think that the full fee is leviable."

Lala Girdhari Lal, for the appellant.

AIKMAN, J.—This is a reference by the Taxing Officer, under section 5 of the Court Fees Act. In Execution Second Appeal No. 1143 of 1907 a Bench of this Court referred certain issues for trial by the court below. An application was presented by the appellant in that case for a review of the interlocutory order referring these issues. The application was presented on a court-fee stamp of Rs. 2. The official charged with the duty of checking the court-fee reported that the application was insufficiently stamped on the ground that the proper court-fee on the application was the fee leviable on the memorandum of appeal. The Taxing Officer accepted this view, but considering the question to be one of general importance, made a reference regarding it under section 5. It is no doubt true that the application is an application for a review of judgment and that judgment is defined as meaning the statement given by the judge of the grounds of a decree or order. But in my opinion neither article 4 nor article 5 of schedule I of the Court Fees Act refers to an interlocutory order. I think it is clear from the language of these articles that they deal with judgments ending in a decree. I am of opinion therefore that the application was properly stamped. The learned vakil for the applicant has referred me to a case in the Bombay High Court in which a similar view was expressed by the learned Chief Justice on reference under section 5 of the Court Fees Act. This is to be found at p. 383 of the Printed judgments of the Bombay High Court for 1892. I concur with the view there taken. This is my answer to the reference.