

## MISCELLANEOUS CIVIL.

1911  
May, 29.*Before Mr. Justice Trudball.*

RUP CHAND (PLAINTIFF) v. FATEH CHAND AND ANOTHER (DEFENDANTS).  
*Act No. VII of 1870 (Court Fees Act), section 7, clause V (b)—Court fee—  
 Appeal—Suit for possession—Decree for qualified possession—Appeal seeking  
 to remove the qualification contained in the decree.*

Plaintiff brought a claim for possession of certain property as transferee from a Musammat Gomi, to whom the property had been bequeathed by one Musammat Gorati Kunwar, who had acquired it under a will executed by her husband. The court of first instance granted him a decree for possession, but limited to the life-time of Musammat Gomi. The defendant appealed, and the plaintiff also appealed, seeking to have this condition removed from the decree, and paid a court fee of Rs. 10 on his memorandum of appeal. *Held* that the court fee was sufficient, the plaintiff appellant being in the position of a person in possession of property who sought to clear his title and to obtain a declaration that he had the full right of ownership to the property.

ON presentation of the memorandum of appeal the Stamp Reporter reported as follows:—

“The plaintiff brought a suit for possession of mauza Khudda and to recover Rs. 4,695 as mesne profits. The court of first instance gave the plaintiff a decree for possession of mauza Khudda to last only for the life-time of Musammat Gomi and dismissed the rest of his claim. The plaintiff is dissatisfied with the above decree, and appeals to this Hon'ble Court. He has paid a court fee of Rs. 10 only on the first part of the relief in appeal, treating it as a declaratory one.

“I beg to submit that the suit has not changed its character in appeal. The object of the appeal is to get a decree for absolute proprietary possession of the property in suit and not a life estate only as has been decreed by the lower court. That being so, an *ad valorem* fee of Rs. 610 is leviable. Rs. 270 having been paid, there is therefore a deficiency of Rs. 340 to be made good by the plaintiff appellant for this court.”

The following objections were preferred by—

The Hon'ble Pandit *Sundar Lal* and Babu *Durga Charan Banerji*, for the appellant:—

“The plaintiff appellant claimed possession of mauza Khudda. The lower court has decreed the claim for possession, and the defendant has appealed against the said decree for possession and has paid *ad valorem* court fee in full. But the Subordinate Judge has added a condition in the decree that the plaintiff's possession shall continue during the life-time of his assignor. By his appeal the plaintiff wishes to get rid of this condition as illegal and *ultra vires*; practically he claims a declaration that the condition so attached to the decree is void, and he has paid a court fee of Rs. 10 for that relief. There is no change in the

\* Stamp Reference in F. A. No. 162 of 1911.

1911

RUP CHAND  
v.  
FATTEH  
CHAND.

character of the suit as the office report suggests. He claimed possession and he has got a decree for possession. The defendant has paid the court fee payable for that relief, as he seeks to set aside the decree for possession. The plaintiff cannot and does not claim possession by his appeal, but he seeks to get rid of the condition attached to the decree."

The Stamp Reporter made the following further report:—

"In reply to the objection taken by the learned advocate for the appellants, I beg to submit that in the objection the learned advocate says, 'there is no change in the character of the suit.' This itself shows that *ad valorem* duty is payable. The payment of full court fees by the defendant on his memorandum of appeal does not exonerate the plaintiff from liability to pay on his memorandum of appeal the proper court fees leviable under the law. The lower court having decreed the possession in plaintiff's favour to last for the life-time of Musammatt Gomi, the defendant could not but pay the *ad valorem* court fees on his memorandum of appeal.

"The object of the present appeal is to get a decree for possession for ever, i.e. he, the appellants, may be legally allowed to remain in possession even after the death of Musammatt Gomi, and I do not see any reason why he should not be called upon to pay *ad valorem* court-fees, the suit for possession be governed by section 7, clause v (b) of Act VII of 1870.

"Even conceding for the sake of argument that the plaintiff does claim a declaration only in this appeal, I would submit that the declaration sought for involves a consequential relief, for if the condition attached is removed, the plaintiff's possession over the property in suit would extend beyond the life-time of his assignor, Musammatt Gomi, and he shall remain in possession of the property for ever."

The Taxing Officer's report was as follows:—

"The plaintiff brought a suit in which he claimed possession of certain property—a mauza of the name of Khudda—on the ground that this property had been assigned to him by one Musammatt Gomi to whom it had been bequeathed by Musammatt Gomi Kuar, who had acquired it under a will executed by her husband, the original owner of the property. The Subordinate Judge granted a decree for possession, but *limited it to the life-time of the assignor, Musammatt Gomi*. The plaintiff appellant now seeks to have this condition set aside, and claims a decree for absolute and unqualified possession. The question is, whether the appeal which bears a 10-rupee stamp is properly stamped. On the one hand it is contended that what the plaintiff appellant claims is possession of the property, *viz.*, possession unlimited in point of time as against the limited possession decreed by the lower court. On the other hand, it is argued for the plaintiff appellant, that he has already got possession, or a decree for possession, and that his position is, therefore, analogous to that of a man who being in possession but finding his title as absolute owner impugned, brings a suit for a declaration that his title is absolute but asks for no consequential relief.

"To my mind it cannot be said that the suit is only one for a declaration without consequential relief. If the plaintiff appellant succeeds, he will take

out execution, and he given an unqualified and unlimited possession, whereas if the decree of the lower court stands, he will be given in execution only a limited possession. The most relevant ruling I can find is 8 B. L., App. 23. It appears to me, therefore, that the appeal should bear an *ad valorem* stamp under section 7, v (b)."

The following order was passed by the Taxing Judge.

TUDBALL, J.—This is a reference by the Taxing Officer. The plaintiff in the suit brought a claim for possession of certain property as transferee from a Musammât Gomi. Musammât Gomi is a person to whom property had been bequeathed by Musammât Gomti Kuar, a Hindu widow, who had acquired it under a will executed by her husband. The plaintiff was resisted by a person who was also a beneficiary under the will of Gomti Kuar. The lower court held that the plaintiff was entitled to possession, but that that possession should be restricted to the life-time of Musammât Gomi. The defendant has appealed, he has paid full court fee, as he objects to the decree for possession. The plaintiff has also appealed, and he seeks thereby to set aside so much of the lower court's decree as declared him to be entitled to possession for the life-time of Musammât Gomi, and he asks the court on appeal to declare that he is entitled to the absolute ownership of the property and not to a limited interest. He has paid a court fee of Rs. 10. The Taxing Officer is of opinion that the appeal should bear an *ad valorem* stamp, as in a suit for possession of land under section 7, clause v (b) of the Court Fees Act. I find it difficult to see that the appeal falls under this section and clause. As matters stand now, the plaintiff appelland seems to me to be in the position of a person in possession of property who seeks to clear his title and to obtain a declaration that he has the full right of ownership to the property. Under the circumstances I think the Rs. 10 paid as for a declaration is sufficient.

*Order accordingly.*

1911

RUP CHAND  
v.  
FATEH  
CHAND.