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as co-sharers in the *shamilat* land, were entitled to prevent the plaintiffs from cutting down their timber without their consent. If the lease had been a valid lease within the powers of the *lambardars*, the case would have been different.

For these reasons we allow the appeal in so far that we set aside the decree of the lower appellate court as against the defendants appellants. In other respects the decree of that court will stand. The other co-sharers have not appealed and they may have been consenting parties to the lease. The appellants will have their costs in all courts against the plaintiffs.

*Appeal allowed.*

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## MISCELLANEOUS CIVIL.

*Before Mr. Justice Tudball.*

KACHERA v. KHARAG SINGH.\*

*Act No. VII of 1870 (Court Fees Act), sections 5 and 7—Court fee—Objections by mortgages asking for sale of a portion of the mortgaged property exempted by the Court from sale—Reference by Taxing Judge to a Division Bench—Jurisdiction.*

*Held* that where a party objects by way of appeal or under the provisions of order XLI, rule 22, of the Code of Civil Procedure to a decree of a subordinate court excluding from liability a portion of certain property, the whole of which he claims to be liable for a mortgage debt, and while accepting the correctness of the amount found due asks that the excluded portion of the property may be also declared liable, court fees should be paid with reference to the value of the property sought to be rendered liable. *Kesavarapu v. Kotta Reddi* (1) followed.

Where the Taxing Judge referred to a Division Bench a question relating to court fees referred to him by the Taxing Officer; *Held* that the Bench had no authority to entertain such reference.

THIS was a reference by the Taxing Officer of the High Court to the Taxing Judge under section 5 of the Court Fees Act. The sole point for decision was, whether, when a party objected by way of appeal or under the provisions of order XLI, rule 22, of Act V of 1908, to a decree of a subordinate court, excluding from liability a portion of certain property, while the objector wanted to make the whole property liable, but accepted the correctness of the amount due to him, and asked that the excluded portion

\* Stamp Reference in Second Appeal No. 1193 of 1909.

of the property should also be declared liable, court fees should have been paid—(a) with reference to the amount found due; or (b) with reference to the value of the property which it was sought to render liable.

The facts of the case are stated in the following report by the Stamp Reporter of the Court :—

“The plaintiff in the suit claimed to recover Rs. 2,100 for principal and interest due on a bond, dated the 20th April, 1881, by sale of the property hypothe- cated therein. Upon the trial of the suit, the court of first instance passed a decree for Rs. 1,700-2-10 out of the amount claimed by enforcement of hypothecation lien against  $7\frac{1}{2}$  shares out of  $11\frac{1}{4}$  shares of the mortgagor's rights, thus exempting  $3\frac{3}{4}$  shares of Data Ram from the operation of the decree.

“From this decision both the parties appealed to the lower appellate court, and their appeals having been dismissed by that court, the defendant has come in second appeal to this Court, and the plaintiff files a cross-objection under order XXI, rule 22, of the Code of Civil Procedure, and has valued his petition of objec- tion at Rs. 700 and paid a Court fee of Rs. 2 on the same.

“I beg to submit that the object of this cross-objection being to make the share of Data Ram aforesaid jointly liable with other property for the satisfac- tion of the plaintiff's decree obtained by him from the first court, it should be valued at Rs. 1,700-2-10 and an *ad valorem* fee of Rs. 115 should be paid on the same under schedule I, article 1, of Act VII of 1870, as amended by section 155 and the 4th Schedule of the Code of Civil Procedure (Act V of 1908). In support of the reasons for this report, I rely upon a decision, dated the 26th April, 1901, of a Division Bench of this Court on the question of court fees in Second Appeal No. 640 of 1899, which is on all fours with the present case. That being so, an additional court fee of Rs. 115 is payable by the objector (plaintiff respondent) on this memorandum of cross-objection.

“For the reasons stated above, there is a deficiency of Rs. 55 to be made good by him on the memorandum of appeal filed by him in the lower appellate court and numbered as 310 of 1909 in that court. In this connection I would further submit that the plaintiff's appeal to the lower appellate court was valued at Rs. 800, while in this Court he has valued his objection at Rs. 700 only.”

Dr. Tej Bahadur Sapru, for the respondent, took objection to the above report on the following grounds :—

“I object to the report of the office with regard to the deficiency in the court-fee on the following grounds :—

“ (1) The object of the petition of objections is not to get a decree from this Hon'ble Court for any sum in excess of that allowed by the lower appellate court but to make Data Ram's share which has been exonerated from the operation of the decree, equally liable with the shares of the other judgment-debtors. The appellant has already paid court fee on the amount for which the lower appellate court has passed a decree in favour of the plaintiff respondent who is the objector in this Court. Once the full amount of the court fee having been paid, it should

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not, I submit, be levied over again when the plaintiff respondent asks for no relief for any additional amount, but only that a certain person who had been exempted should not be so exempted. Section 7 of the Court Fees Act has no application when no amount is claimed. I submit the principle laid down by the Madras High Court in the Full Bench decision at page 96 of the I. L. R., 30 Mad., covers my case.

"I have, however, no objection to the concluding portion of the report of the Stamp Reporter where he points out that the plaintiff's appeal to the lower appellate court was valued at Rs. 800, while in this Court he has valued his objection at Rs. 700 only. I am willing to raise the valuation from Rs. 700 to Rs. 800."

The Stamp Reporter submitted a further report as under :—

"The payment of full fee by the appellant on his memorandum of appeal is no excuse for the respondent. Section 16 of the Court Fees Act (No. VII of 1870), which governed cross objections, has been repealed (*vide* Schedule V, Act No. V of 1908), and they are now like plaints and memoranda of appeal governed by article I, schedule I, of Act VII of 1870 (*vide* Schedule IV of Act No. V of 1908).

"The law as administered by the courts in these Provinces is that laid down in the precedent cited by me in my report, dated the 28th January, 1910, and so far as I know, it has neither been dissented from nor overruled by a larger Bench of this Court."

The Taxing Officer referred the case to the Taxing Judge with the following report :—

"In the present reference the sole point for decision is, whether, when a party objects by way of appeal or under the provisions of order XLI, rule 22, to a decree of a subordinate court, excluding from liability a portion of a certain property, the whole of which he claims to be liable for a mortgage debt, and while accepting the correctness of the amount found due, asks that the excluded portion of the property be also declared liable, court fees should be paid (a) with reference to the amount found due under the mortgage; or (b) with reference to the value of the property which it is sought to render liable.

"The second view is supported by a Full Bench decision reported in I. L. R., 30 Mad., at page 96, but the former has the support of an unreported case (*Dumbar-Singh v. Musammal Narain Kunwar*, Second Appeal No. 640 of 1899, decided by a Divisional Bench of this Court on 26th April, 1901.)

Submitted for orders under section 5, Act VII of 1870.

The Taxing Judge referred the case to a Bench of two Judges by the following judgement :—

TUDBALL, J.—This matter raises a question of the amount of court fees payable upon the objections raised by the respondent to the decree of the Court below. The lower court has granted a decree to the respondent for Rs. 1,700-2-10 to be recovered by sale of a portion of the mortgaged property. Some of the defendants have appealed. The respondent has filed

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objections under which he asks this Court to declare that the property of one Data Ram, which has been exempted from the operation of the decree in his favour, is also liable to be sold in execution of that decree. According to the office report the fee which is chargeable upon the memorandum of objection is to be calculated under clause (i), section 7 of the Court Fees Act on the full amount decreed by the lower court. To this objection is taken and reference is made to the Full Bench ruling reported in I. L. R., 30 Mad., 96. In Second Appeal No. 640 of 1899 a similar point was raised and a Division Bench of this Court in the course of its judgement remarked:—"To such a case no other clause or section of the Court Fees Act appears applicable except clause (i) of section 7." It appears to me from the above language that the point was not fully discussed on that occasion. The ruling of the Madras High Court appears to me to take a more correct view. It is further contended before me that the objector, as a matter of fact, is only asking for a declaration, and his objection should at the most bear the fee of Rs. 10. In my opinion there is considerable force in this objection; but in view of the ruling in Second Appeal No. 640 of 1899, the point is one which should be referred to a Bench of two Judges to obtain an authoritative decision on the point. I accordingly refer this matter to a Bench of two Judges.

The case then coming on before KNOX and KARAMAT HUSAIN, JJ., their Lordships held that they had no jurisdiction to decide the reference and they directed the papers to be returned to the learned Judge by whom the reference had been made. In doing so their lordships drew attention to the case which appeared in the Allahabad Weekly Notes, 1895, page 56, and also to section 5 of the Court Fees Act, 1870.

The following order was then passed by the Hon'ble Taxing Judge:--

TUDBALL, J.—The Bench to which this matter was referred finds that it has no jurisdiction to deal with it. I have had, nowever, the opportunity of consulting my learned brothers who constituted that Bench (KNOX and KARAMAT HUSAIN, JJ). The matter was argued before them and I find that their opinion agrees with mine, *i.e.*, that the ruling of the Madras High Court,

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I. L. R., 30 Mad., 96, is the correct and equitable view. The respondent in this case seeks to bring certain property within the operation of his decree. Its value is Rs. 800 (this being less than the amount of the decretal debt) and that is the value of his cross-objections. He must, therefore, pay an *ad valorem* fee on the value of this property. He seeks more than a mere declaration. There is consequential relief in his demand, *viz.*, an order that the property be sold if the decretal debt be not paid. He will, therefore, pay the *ad valorem* fees as noted above. I allow one month to make good the deficiency.

*Order accordingly.*

### APPELLATE CIVIL.

*Before Mr. Justice Tuddall and Mr. Justice Chamier.*

RAM KISHAN (DEPENDANT) v. PIARI LAL (PLAINTIFF).\*

*Act No. XX of 1847—(Copyright Act) sections 7 and 12—Copyright—Suit for damages for infringement of copyright—Jurisdiction.*

A suit to recover damages for infringement of copyright does not lie in the court within the jurisdiction of which the plaintiff, but not the defendant, resides. Neither is the possessor of a pirated copy of a copyright work bound to deliver it to the owner of the copyright wherever he (the owner) may happen to reside.

THE facts of this case were as follows:—

A suit was filed by one Piari Lal in the court of the District Judge of Aligarh, on the allegation that the plaintiff had a copyright in a book entitled "*Kok Shastra*" and that the defendant, Hakim Ram Kishan, had infringed this copyright by printing, publishing and selling an imitation of his book in Urdu and also in Gurmukhi. The reliefs he sought were two-fold; first, that a permanent injunction might be issued against the defendant restraining him from printing, publishing or selling the offending book; and secondly, that the defendant might be ordered to deliver up all the unlawfully printed copies of the books or failing this to pay damages to the plaintiff. The books by printing, publishing and selling which the defendant was said to have infringed the copyright of the plaintiff were printed, published and sold at Lahore where the defendant

\* First Appeal No. 146 of 1909, from a decree of H. J. Bell District Judge of Aligarh, dated the 23rd of March, 1909.