

Before Mr Justice Tudball

CHHABRAJI KUNWAR AND OTHERS (DEFENDANTS) v. THE COURT OF
WARDS AND OTHERS (PLAINTIFFS.) *

1912,
November, 22.

Act No. VII of 1870 (Court Fees Act), section 7, clause IX—Decree on mortgage—Separate liabilities of distinct properties—Appeal in respect of distinct properties.

In a suit for sale on a mortgage a decree was passed declaring the separate liabilities of the different properties mortgaged. One of the defendants, whose property was held liable for specific sums of money, appealed. Held that the proper court fee payable on the memorandum of appeal was a fee calculated on the sum of money for which the defendant's property was held liable and not one calculated on the full amount of the decree.

THIS was a reference as to amount of court fee payable in this case on the memorandum of appeal. The following report of the office gives the material facts :—

“The plaintiff brought the suit out of which this appeal has arisen for recovery of Rs. 48,000 principal and interest on foot of a mortgage, dated the 28th of March, 1909, by enforcement of hypothecation lien. The original document, the basis of the suit, was not produced, as it could not be found, and the suit was brought on the basis of a copy of the bond.

“The suit was resisted on various grounds. However, the court below decreed the plaintiff's claim for Rs. 14,554-7-0 of the amount claimed together with *pendente lite* interest and proportionate costs and made the different properties liable for the rateable contribution. The property of mauza Bisoha was made liable to contribute Rs. 6,215-0-8, and of Tehra Man Rs. 1,012-11-5. These are the two properties with which we are concerned in this appeal.

“A decree for sale under order XXXIV, rule 4, was prepared. The decree awarded to the plaintiffs—

1. Rupees 14,554-7-0, principal and interest on foot of mortgage.
2. Rupees 11,220-14-0, *pendente lite* interest.
3. Rupees 622-9-6, proportionate costs.

Total, Rs. 26,397-14-6.

“Against the said decree the defendants abovenamed have preferred this appeal praying that the suit may be dismissed against them. The appeal is valued at Rs. 7,227-12-1 the

* Stamp Reference in First Appeal No. 13 of 1913.

contribution money in respect of the two villages mentioned above and a court fee of Rs. 305 has been paid thereon. I may say here that the proper court fee payable on the said valuations is Rs. 365. The first four grounds of appeal taken in the memorandum of appeal affect the whole decree obtained by the plaintiffs in the suit, and if they succeed the plaintiffs would naturally be deprived of the decree obtained by them in the suit.

“On the authority of a ruling of the Hon'ble Taxing Judge in F. A. No. 197 of 1912, *Jugul Kishore v. Hirde Narain* the defendants appellants are liable to pay a court fee of Rs. 915 on the amount of decree i.e., Rs. 26,397-14-6. A court fee of Rs. 305 having been paid, there is, therefore, a deficiency of Rs. 610 to be made good by the defendants appellants on this memorandum of appeal.”

The matter was referred to the Taxing Officer, who referred the question to the Taxing Judge with the following remarks :—

“The appellants in this case are defendants Nos. 5 to 8.

“The facts of the appeal are stated in taxing clerk's note of 31st October, 1912, and the latter stated that court fee amounting to Rs. 915 was payable on the whole amount of the decree Rs. 26,397-14-6.

“The learned advocate for the defendants appellants maintained that court fees should be paid on the value of the appeal, only, Rs. 7,227-12-1. This would amount to Rs. 365.

“This case is, I consider, similar to F. A. No. 197 of 1912, in which you passed an order, dated the 23rd February, 1912. In that order you stated that ‘the defendants contest the mortgage as a whole, and they can only save their property from the operation of the decree by succeeding in their pleas mentioned above. If they so succeed, the mortgage falls to the ground.’

“The learned advocate for the defendants appellants urges a distinction, however, between this case and that of F. A. No. 197 of 1912. Here, he says, the liability of each property for the proportionate amount of the mortgage debt is defined: in the other case, it was a joint mortgage and the liability of each property was not separately defined. He also declares that the result of this appeal cannot affect the parties who are not appealing.

1912

CHHABRAJI
KUNWAR
v.
THE COURT
OF WARDS.

1912

OHABRAJI
KUNWARv.
THE COURT
OF WARDS.

"In the face, however, of your order of 23rd February, 1912, order XVI, rule 33, of Civil Procedure Code, and taxing officer's ruling of 27th February, 1912, in S. A. No. 680 of 1911, where a part of the property was exempted in the decree, I do not agree.

"But the matter is one of general importance, and under section 5 of the Court Fees Act, I beg to refer the matter."

The following decision was given by the Taxing Judge.

TUDBALL, J.:—This case is clearly distinguishable from the case in F. A. No. 197 of 1912. Here various properties have been held separately liable for separate sums of money. The present appellants are transferees of two parts of property which have been held liable for specific sums of money. If they succeed in their appeal it is only those properties which will be released from the operation of the decree and it is only these sums which the decree-holder will lose. The rest of the decree-holder's decree for various other sums and for various other properties will still hold good even if the appellants' appeal succeeds. The correct stamp on this appeal will be Rs. 365. I allow one fortnight to make good the deficiency.

Order accordingly.

1912,
November, 25.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

BALDEO SINGH AND ANOTHER (PLAINTIFFS) v. KALKA PRASAD AND ANOTHER (DEFENDANTS)*

Act No. VII of 1870 (Court Fees Act), section 7, clause IX—Suit for sale on a mortgage—Court fee payable in appeal—Value of the subject matter—Amount declared due on date fixed for payment.

A decree for sale on a mortgage declared that on the date fixed for payment a specified sum would be due from the mortgagor, which included interest *pendente lite*.

Held that the court fee payable in appeal from such decree was to be assessed, not on the amount claimed in the suit but upon the amount with interest *pendente lite* found due by the court of first instance at the date fixed for payment.

THE question in this case was as to the amount upon which the court fee is payable on a memorandum of appeal against a decree awarding mortgage money with interest *pendente lite* to date

*Second Appeal No. 251 of 1912 from a decree of E. O. Allen, District Judge of Mainpuri, dated the 21st of December, 1911, reversing a decree of Pratap Singh, Additional Subordinate Judge of Etawah, dated the 10th of July, 1911.