

1918
January, 26.

Before Mr Justice Tudball.

RATAN SINGH (PLAINTIFF) v. KHEM KARAN (DEFENDANT).*

Act No. VII of 1870 (Court Fees Act), schedule II, article 5; section 7, clause xi—Suit for declaration that plaintiff is an occupancy tenant—Act (Local) No. II of 1901 (Agra Tenancy Act), section 95—Court fee.

In a suit under section 95 of the Agra Tenancy Act, 1901, to declare the plaintiff's status as an occupancy tenant the plaint or memorandum of appeal should bear a court fee of eight annas as provided in article 5 of schedule II to the Court Fees Act: section 7, clause xi, of the Act does not apply to such a suit.

THIS was a question arising in an appeal in a suit under section 95 of the Agra Tenancy Act, 1901, for a declaration of the plaintiff's status as an occupancy tenant, as to the proper court fee payable both on the plaint and on the memorandum of appeal. The facts of the case appear from the following order of the Court and the officers concerned:—

Office Report:—

“The suit being for declaration of the nature of tenancy under section 95 of the Tenancy Act a court fee of Rs. 10 must be paid by the plaintiff appellant on the appeal, irrespective of valuation, as held by this Court in S. A. No. 475 of 1912, dated the 16th of January, 1913, *Piari Lal v. Ganga Ram*. This appeal is therefore insufficiently stamped by Rs. 7-12-0. There is also a deficiency of Rs. 9-8-0 due from the defendant respondent on his appeal to the lower appellate court.”

The following objection was made by Babu *Piari Lal Banerji*:—“The Stamp Reporter's report absolutely overlooks the provision of the Court Fees Act, schedule II, article 5. A court fee of 8 annas only was payable on the memorandum of appeal. The earlier case referred to by the Stamp Reporter contains no reference to this provision, consequently the decision cannot be accepted as it is contrary to an express provision of law.”

Office Report:—

“With reference to the objection taken by the learned vakil for the plaintiff appellant that a plaint or memorandum of appeal in a suit brought under section 95 of Tenancy Act is governed by article 5, schedule II, of the Court Fees Act, I have grave doubts. This question came up once before when

* Stamp Reference in Second Appeal No. 95 of 1918.

Mr. BURKITT was the Taxing Officer. He referred a similar question to the Hon'ble Mr. Justice AIKMAN as Taxing Judge, who held that a memorandum of appeal in a suit under section 95 of the Tenancy Act must be stamped with a fixed fee of Rs. 10. The same view was taken by the Hon'ble Sir H. D. GRIFFIN as a Judge of this Hon'ble Court. (Both rulings are put up). If you think that these rulings are not binding in this case in view of the objection taken by the appellant's vakil, the matter may be referred to the Hon'ble Taxing Judge for a third decision."

Taxing Officer's Report:—

"This is a suit under section 95 of the Tenancy Act for declaration of occupancy rights, on which a court fee of 8 annas has been paid. Office objects that the fixed fee of Rs. 10 for a declaration without consequential relief should be paid, while the appellant points to article 5 of schedule II of the Court Fees Act. I see no reason why the suit should not be held to come under that article both in the lower courts and in this Court, but as the two rulings placed below, though for some reason they do not consider this specific question, appear to be against me, I put the case up for your orders under section 5 of the Court Fees Act."

TUDBALL, J.—This is an appeal in a suit brought by the appellant for a declaration under section 95 of the Tenancy Act, that he has occupancy rights in a certain holding. The suit is purely a declaratory suit. The question is what is the court fee payable on the appeal. *Prima facie* the suit falls clearly within schedule II, article 5, of the Court Fees Act, which lays down that on a plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy a court fee of eight annas should be paid. The only difficulty in the case arises by reason of two previous Judges of this Court having in similar cases directed that a fee of Rs. 10 was payable. In neither of these decisions was schedule II, article 5, apparently considered. The suit is not one to which section 7, clause XI, of the Court Fees Act is applicable. As I have said above, it is purely a declaratory suit, and nothing more, in which the plaintiff seeks to establish that he has a right of occupancy. In my opinion the law is plain and the appeal is governed by schedule II, article 5, of the Court Fees Act and the court fee payable is eight annas according thereto. I so direct.

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