

may depart from our usual practice of not saying anything which is not absolutely necessary for the decision of the case because we are all interested in the good working of the Co-operative Societies Act. It seems to us that probably the liquidator was wrong in passing an order that each of these debtors should be jointly and severally liable for the amount of each other's mortgages. If he required money for the purposes of liquidation and for the discharge of the debts of the society, he had clear power to determine the contributions to be made, and we think that it would have been more correct had he made his order in this form and then proceeded to take steps to recover from each mortgagor the amount of his mortgage. We dismiss the appeal. The liquidator will get his costs in this appeal as part of his costs in the liquidation. The appellants will pay their own costs.

Appeal dismissed.

1917

MATHURA
PRASAD
v.
SHREBA
RAM.

MISCELLANEOUS CIVIL.

Before Mr. Justice Tudball.

LAKHAN SINGH (PLAINTIFF) v. RAM KISHAN DAS (DEFENDANT).*

Act No. VII of 1870, (Court Fees Act) Schedule I, Article 1—Court fee—

Cross-objection filed in an appeal.

1917

November, 18

Under article 1 of schedule I to the Court Fees Act, 1870, a party filing cross-objections must pay an *ad valorem* fee according to the value or amount of the subject matter in dispute.

Office Report.

STAMP insufficient by Rs. 20-12-0, i.e., Rs. 8 in respect of the relief decreed against the defendant respondent and Rs. 12-12-0 in respect of the plea as to costs amounting to Rs. 166-8-0.

Objection from Babu *Priya Nath Banerji*:—I object to this report. On the first point, the suit was instituted by the plaintiff on a ten rupee stamp. The plaintiff has appealed on a ten rupee stamp, i.e., he has paid the full stamp duty. Therefore I am not bound to pay another stamp duty.

On the second point I do not ask any particular amount on account of costs. My objection is that the order about costs is a wrong order. I am therefore not liable to pay stamp duty.

* Stamp Reference in First Appeal No. 186 of 1917.

1917

LIKSHAN
SINGH
v.
RAM KISHAN
DAR.

Office Report.—In reply to the objection to the stamp report taken by the learned counsel for the defendant objector respondent I beg to submit very briefly as follows :—

The petition of cross-objection filed by the defendant respondent under order XXI, rule 22, of the Code of Civil Procedure, relates to the portion of the claim decreed against the said defendant respondent. The suit being of a declaratory nature a court-fee of Rs. 10 was paid on the plaint and the same amount is payable on the cross-objection. The mere fact that the plaintiff has paid full court fee on the appeal is no reason why the defendant should not pay the requisite court fee on the cross-objection. Under the new Code of Civil Procedure (Act No. V of 1908), court fees are payable on the cross-objection in the same way as on the memorandum of appeal.

The plea as to costs as amended does not in the least affect the report as to the deficiency due on that plea. In this connection I rely on a ruling in 12 Oudh Cases at page 171.

Taxing Officer's Report.

On the question of costs it is clear that the court fee is deficient. The applicant is seeking to avoid a definite liability to pay a definite sum of money. The vagueness of the language of the memorandum of appeal cannot disguise the clear fact, and an *ad valorem* court fee on the amount of costs must be paid. There is therefore a deficiency of Rs. 12-12-0 ; on the other question as to the court fee to be paid on a cross-objection which seeks to set aside a declaration I am not so certain, and I therefore refer the question for the orders of the Taxing Judge.

Taxing Officer's Report.

In this case the original suit was one for a declaration, and was decreed in part and dismissed in part. The plaintiff has appealed asking for that portion of the declaration which was denied him, and paying a court fee of Rs. 10. The defendant has filed a cross-objection, on a stamp of Rs. 2 asking to have the portion of the declaration which was granted set aside. Office have reported that a court fee of Rs. 10 should have been paid on the cross-objection. The argument is based on the analogy of article 1 of schedule I of the Court Fees Act. If a suit susceptible of an *ad valorem* court fee is decreed in part and dismissed in part, the

memorandum of appeal and the cross-objection must each pay an *ad valorem* fee for the respective parts of the original subject matter with which they deal. Office argues, and correctly, that the action of the lower court has split up the original declaration sought into two, one of which has been granted, and the other denied. The plaintiff, it is urged, is seeking to secure that which has been denied, the defendant to have set aside that which was granted. Therefore both must pay the court fee requisite on a declaration. This argument is sound, but it ignores the fact that, while article I of schedule I definitely mentions a memorandum of cross-objection, article 17 of schedule II as clearly does not do so, and I do not think we are entitled to hold that in that article memorandum of appeal includes memorandum of cross-objection. The point, however, is not absolutely clear, and I refer it for your orders.

The following order was passed by the Taxing Judge.

TUDBALL, J.—In this case the plaintiff brought a suit asking for certain declarations. The suit was partly decreed and partly dismissed. The plaintiff appealed against so much of his claim as was disallowed and he paid a court fee of Rs. 10. The defendant filed no appeal, but, on receiving notice of the plaintiff's appeal, he filed cross-objections on a stamp of Rs. 2. The taxing clerk made a report to the effect that the cross-objection should bear a court-fee stamp of Rs. 10 just as if the respondent had appealed, apparently applying the analogy of article 17, schedule II, of the Court Fees Act. The Taxing Officer is doubtful as to the accuracy of this and he has sent the case on to me as Taxing Judge for my decision. He has pointed out that the only place in the Court Fees Act in which cross-objections are mentioned is in article I, schedule I, of the Act. Under that article the cross-objection must pay an *ad valorem* fee according to the value of the subject matter in dispute. Article 17, schedule II, though it relates to a plaint or memorandum of appeal in the classes of suits mentioned therein, does not relate to cross-objections filed in similar suits. This Act was amended when Act V of 1908 was passed and the words "or cross-objection" were added to article I of schedule I, but not to article 17 of schedule II. Under the former article the cross-objection must pay an *ad valorem* fee

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according to the value or amount of the subject matter in dispute. In the present case the respondent has valued the relief which he seeks in his cross-objection at Rs. 1,000. He must, therefore, pay this large fee when the appellant in the case can appeal on payment of only Rs. 10. It appears to me that this is perhaps due to an oversight at the time when Act V of 1908 was passed in not adding the words "or cross-objection" to article 17 of schedule II. I allow the respondent three weeks within which to make good the deficiency.

APPELLATE CIVIL.

1917

Jul, 81.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

RAMZAN (PLAINTIFF) v. RAM DAIYA (DEFENDANT),*

Hindu Law—Mitakshara—Joint Hindu family—Hindu widow—Widow's right of residence in joint family house—Effect of alienation during the life-time of widow's husband.

When a right of residence or maintenance comes into existence in favour of the widow of a man who was lately a member of a joint Hindu family, she takes that right in the property as it stands at the time of her husband's death. She cannot set up her right of maintenance or residence as against alienations effected during the life-time of her husband. *Ajudhia Prasad v. Jasoda* (1) followed.

A widowed daughter-in-law is debarred from setting up the plea of the invalidity of [an alienation effected by] the father-in-law during her husband's life-time. *Sohni v. Mohan Kuar* (2) followed.

THE facts of this case were as follows :—

One Shankar and his son, Ram Charan, constituted a joint Hindu family. Shankar executed a simple mortgage of a dwelling house which was ancestral family property and in which, it appeared, the family resided. Some time after the mortgage Ram Charan died, leaving a widow, Musammam Ram Daiya. Thereafter the plaintiff-appellant acquired by private purchase from Shankar a portion of the house. He also acquired the remaining portion by purchase at auction sale in execution of the decree which was obtained on the mortgage aforesaid. On

*Second Appeal No. 716 of 1916, from a decree of Ram Chandra Chaudhri, Officiating District Judge of Allahabad, dated the 2nd February, 1916, reversing a decree of Triloki Nath, Second Additional Munsif of Allahabad, dated the 5th of January, 1915.

(1) Weekly Notes, 1887, p. 279. (2) (1911) 9 A.L.J., 23.