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 PRITAM GIR
 v.
 MAHANT
 BASDEO GIR.

Collector of Ballia. In 1916, one Basdeo Gir, in an *ex parte* suit obtained from the Subordinate Judge an order appointing himself as Mahant, and the property of the *math* was handed over to him. Subsequently, however, the *ex parte* decree was set aside, and Basdeo Gir on the re-hearing failed to establish his title. Finally on further application by Pritam Gir and Musammat Sewa Giri the *math* was again made over to the charge of the Collector. Against this order Pritam Gir appealed to the High Court.

Munshi *Haribans Sahai* and *Lakshmi Narain* for the appellants.

Munshi *Purushottam Das Tandon*, for the respondent.

MEARS, C.J., and SULAIMAN, J. :—This appeal has been filed from an order of the District Judge of Ghazipur, dated the 14th of December, 1917, purporting to be under section 5 of the Religious Endowments Act (No. XX of 1863). The proceeding started by an application under section 5 of the said Act is a miscellaneous proceeding and not a suit, and the order passed by him under that section is in no sense a decree, nor does the Act make any provision for an appeal from an order under that section. In our opinion, therefore, no appeal lies from the said order. We are fortified in this view by the decision of their Lordships of the Privy Council in the case of *Minakshi Naidu v. Subramanya Sastri* (1), which has of course been followed in subsequent cases. This appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

STAMP REFERENCE.

Before Mr. Justice Tudball.

SHIB DAYAL (PLAINTIFF, v. MEHARBAN AND OTHERS (DEFENDANTS).*

Court fees—Two appeals from one decree—Subsequently two second appeals filed by the same party, the subject matter being the same—Consolidation of appeals.

The Court Fees Act, 1870, does not provide for consolidation of appeals. If therefore, there are two appeals in the same suit, and then one party files two second appeals—one against each decree in first appeal—the appellant will have to pay the full court fee on each of his appeals.

* Stamp Reference in Second Appeals Nos. 801 and 802 of 1920,

(1) (1887) I. L. R., 11 Mad., 26.

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THE facts appear fully from the following report by the Stamp Officer :—

This was a suit for recovery of Rs. 1,578-12-6 on account of principal and interest due on the mortgage of the 16th of November, 1905, by enforcement of hypothecation lien. A court fee of Rs. 105 was paid on the plaint, on the amount claimed. The court of first instance dismissed the claim against the mortgaged property, but it gave the plaintiff a personal decree directing the plaintiff to realize the amount in suit with costs and future interest from the assets of Gokul, deceased debtor.

Against the decree of the court of first instance there were two appeals to the lower appellate court, one by the plaintiff (No. 1 of 1920) seeking for a decree for sale of the property mortgaged, and the other by the defendants (No. 3 of 1920) against the personal decree passed against them. Both appeals were valued at Rs. 1,578-12-6 and a court fee of Rs. 105 was paid on each appeal.

The lower appellate court dismissed the plaintiff's appeal (No. 1 of 1920) and allowing the defendants' appeal (No. 3 of 1920) it dismissed the plaintiff's suit. The effect of the decree of the lower appellate court was that the personal decree granted to the plaintiff by the court of first instance was set aside.

Against the decree of the lower appellate court the plaintiff has filed two appeals to this Court against the two decrees passed by the lower appellate court. On the appeal which is against the decree of the lower appellate court passed on the plaintiff's appeal (No. 1 of 1920), seeking for a decree for sale of the property mortgaged, the plaintiff has paid full *ad valorem* court fee of Rs. 105 on Rs. 1,578-12-6, the amount claimed in the plaint; and on the other appeal, which is against the decree of the lower appellate court passed on the defendant's appeal (No. 3 of 1920) dismissing the suit, and thus setting aside the personal decree passed by the court of first instance, the plaintiff has paid a court fee of Rs. 2, although the appeal is valued at Rs. 1,578-12-6. The grounds taken in both appeals are identical. In the grounds taken in both the appeals the plaintiff in the first instance contends for a decree for enforcement of the hypothecation lien and, in the alternative, for a personal decree for the

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amount claimed. The question for consideration is whether full *ad valorem* court fee of Rs. 105 ought to be paid in each appeal or only one court fee on both appeals. If it is held that only one court fee is payable then both the appeals are sufficiently stamped; but if it is held otherwise then a deficiency of Rs. 103 must be paid on the appeal which is against the decree of the lower appellate court passed on the defendants' appeal (No. 3 of 1920).

I am unable to find out any authority justifying the payment of a court fee of Rs. 2 on one of the appeals and, unless the learned vakil is able to show any authority justifying his action, a deficiency of Rs. 103 must be paid on that appeal.

Mr. M. L. Agarwala, and Munshi Gulzari Lal, for the appellants raised the following objection to the report :—

The two appeals are really one and their object is to get a decree either against the mortgaged property or personally against the respondents. The amount claimed is the sum of Rs. 1,578-12-6, and if one of the appeals succeeds it would not be necessary to press the other. Full court fee having been paid on one of the appeals I submit that a stamp of Rs. 2 is sufficient on the other. There is a case, F. A. 176 of 1913, in which the Taxing Officer of this Court accepted the principle and held that a court fee of Rs. 10 was sufficient in a similar case. I am willing to make up the amount by asking my client to pay Rs. 8 more. It would be very hard if my client is made to pay the *ad valorem* court fee twice over for the same amount which is claimed in either of the two appeals.

The matter was ultimately referred to the Taxing Judge who passed the following order :—

TUDBALL, J. :—This is a reference by the Taxing Officer. The facts are simple. The plaintiff, who is the appellant in both the appeals which have been filed, brought a suit to enforce a mortgage against the opposite party. The court of first instance held that the remedy against the property was barred by time but that the plaintiff was entitled to a money decree against the present defendant. It accordingly granted that class of decree to the plaintiff. With this decree the plaintiff was not satisfied. He appealed to the District Judge, maintaining that he was

entitled to a decree for sale of the property mortgaged. The defendant also was dissatisfied with the decree and he also appealed to the District Judge pleading that the plaintiff was not even entitled to a simple money decree. The District Judge dismissed the plaintiff's appeal and allowed the defendants' appeal with the result that the plaintiff's suit stood dismissed completely. From both these appeals the plaintiff has filed two separate appeals in this Court. This apparently is necessary to prevent the operation of the rule of *res judicata*. According to the report of the Stamp Officer the plaintiff is bound to pay full court fees on each appeal. It was urged, however, on behalf of the plaintiff, that full court fees should be payable only on one appeal and that a fixed fee of Rs. 10 should be payable upon the other appeal. He pleaded this in view of a remark of the former Taxing Officer in a similar case. It is true that the two appeals arise out of the same suit, but they are two distinct and separate appeals, and I can find nothing in the Act which empowers this Court to consolidate them into one appeal and to charge one court fee. It is a pity that this cannot be done, as it seems unjust to make a man pay double court fees because under the law it is necessary for him to file two separate appeals. Still, one must take the law as it stands, and until it is amended the law demands that on each appeal full court fees should be paid. Court fees will, therefore, accordingly have to be paid on each appeal according to its value and according to the law as it stands. I allow the appellant one month within which to make good the deficiency in court fees.

Reference answered accordingly.

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