APPELLATE CIVIL.

Before Mr. Justice Piggott.

1922
March, 27.

KANHAIYA LAL AND ANOTHER (DEFENDANTS) *v.* SETH RAM SARUP (PLAINTIFF)*.

Act No. VII of 1870 *(Court Fees Act), section 7, sub-section (iv) (f)—Suit for accounts—Appeal against preliminary decree—Court fee.*

Where the defendant in a suit for accounts appeals against a preliminary decree passed against him, he is entitled to put his own valuation on his memorandum of appeal and pay the court fee on that valuation. He is not bound to accept the valuation given by the plaintiff in his plaint.

Bhola Nath v. *Parsotam Das* (1) referred to. *Dhupati Srinivasacharlu* v. *A. Perindevamma* (2) doubted.

THIS was a reference made to the Taxing Judge as to the proper court fee payable upon a memorandum of first appeal.

The facts out of which the reference arose are fully set forth in the order of the Taxing Judge.

Dr. *Surendra Nath Sen*, for the appellants.

PIGGOTT, J. :—This memorandum of appeal has been laid before me as Taxing Judge in order that the question of the court fee payable in respect of the same may be finally determined. The suit was one "for accounts," within the meaning of section 7 (iv) *(f)* of the Court Fees Act (No. VII of 1870). It was incumbent on the plaintiff to state the amount at which he valued the relief sought, and the amount of the fee payable under the said Act was to be computed on this valuation. The plaintiff accordingly valued the relief sought by him at a sum of Rs. 8,000 and paid the necessary court fee. The court below has passed a preliminary decree which calls upon the defendant to render a true account of the transactions in suit. The defendant by his memorandum of appeal seeks to have this decree set aside, not because he denies his liability to render accounts, which he has all along admitted, but because he takes exception to the form of the decree and contends that it ought to have contained a specification of the period over which the liability to render accounts should extend and an adjudication upon a question which the defendant had raised as to the period of limitation applicable to a portion of the plaintiff's claim. The defendant,

* Stamp Reference in First Appeal No. 120 of 1922.

(1) (1910) I. L. R., 32 All., 517. (2) (1915) 30 M. L. J., 402.

as appellant in this Court, originally sought to file his appeal on a fixed fee of Rs. 10. He was undoubtedly liable to pay an *ad valorem* fee, as is sufficiently obvious from the wording of the section itself and was determined by a learned Judge of this Court in his decision in *Bhola Nath* v. *Parsotam Das* (1). Now, the appellant in this Court had originally valued his appeal at the sum of Rs. 8,000, as stated in the plaint, but when called upon to pay an *ad valorem* fee, he asked to be permitted to amend the valuation. This permission was granted and he has amended the valuation by stating that the relief sought by him in his appeal to this Court is worth to him no more than Rs. 200. On a formal objection taken by the Stamp Reporter to this Court, the matter has been ordered to be laid before me for adjudication. There is no doubt that the Madras High Court, in the case of *Dhupati Srinivasacharlu* v. *A. Perindevamma* (2), has held that in a matter of this sort the valuation put by the plaintiff on his plaint must be accepted by the appellant in any appeal which he may bring against the decree of the trial court. I do not know if the learned Judges who formulated this decision were thinking only of a preliminary decree, or had in mind the possibility of an appeal against a final decree in a suit for accounts. It seems sufficiently obvious that in the latter case the valuation put upon the plaint by the plaintiff could not possibly determine the correct valuation and, therefore, the proper court fee stamp for the memorandum of appeal. Taking the present case as an instance, it is quite conceivable that when the trial court came to work out the accounts it might find that the sum due to the plaintiff was either very much less or very much more than Rs. 8,000. In the latter case, of course, the provisions of section 11 of the Court Fees Act (No. VII of 1870) would protect the fiscal interests of the State. In either case, it is beyond question that the defendant, if he desired to appeal, would have to value his memorandum of appeal at the amount of the decree actually passed against him, whatever that amount might be. I mention these considerations merely because they raise a doubt in my mind as to the correctness of the view taken by the Madras High Court. The point for

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determination before me is, however, the proper valuation of an appeal against a preliminary decree. Looking at the matter apart from technicalities, I think it obvious that it would be inequitable, and might produce serious hardship, to apply in all cases of this nature the principle insisted upon by the learned Judges of the Madras High Court. Taking the facts of the present case, so far as they are disclosed by the pleadings, they afford an illustration of my point. The plaintiff comes into court claiming a settlement of accounts and alleging that at least Rs. 8,000 will be found due to him upon such settlement: naturally he is required to pay a court fee upon the sum of Rs. 8,000. The defendant does not deny that he is under some liability to render accounts, but contends that on such rendition of accounts, and after a proper application of the Statute of Limitation to certain portions of the plaintiff's claim, the amount found due in favour of the latter will prove to be a trifling sum, if any. The court of first instance has passed a preliminary decree directing the defendant to render accounts. It seems to me quite irrelevant to say that the defendant is appealing against the whole of that decree; he could scarcely, as a matter of form, appeal against a part of it. The fact remains that he takes exception to the form of the decree which has been passed. He has nowhere abandoned or modified in the least his essential plea on the merits, namely, that the sum legally due from him will prove upon a proper examination of the question of accounts to be something far less than the amount stated in the plaint. There seems no principle of equity upon which the defendant can reasonably be debarred from maintaining his appeal against this preliminary decree unless and until he is prepared to pay an *ad valorem* fee upon the entire sum stated by the plaintiff in his plaint.

The words of the section to be interpreted are as follows:—

"The amount of fee payable under this Act in suits for accounts shall be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal." Those words, as they stand, are clearly in favour of the appellant's contention and, as I have already pointed out, I cannot see any principle of equity upon which it can be suggested that the

appellant to this Court is not within his rights when he says that the success of the appeal which he desires to prefer to this Court will not be worth to him a larger sum than Rs. 200. The learned Judges of the Madras High Court seem to me to have in effect added the words "and the valuation given in the plaint shall be accepted in the memorandum of appeal" to the section, and the real question is whether there is any warrant in the context for doing this. If such warrant is to be found anywhere, it is in the words which immediately follow those already quoted by me. These words are:—"In all such suits the plaintiff shall state the amount at which he values the relief sought." It is no doubt a little difficult to understand why the Legislature should have felt it necessary to add this proviso in respect of the plaintiff, without in express terms laying any analogous obligation upon the appellant. The answer seems to be that this proviso governs the whole of the suits falling under clauses *(a)*, *(b)*, *(c)*, *(d)*, and *(e)*, as well as under clause *(f)*, of sub-section (iv) of section 7 of the Court Fees Act. In some of these cases no question of the passing of a preliminary decree can possibly arise, and the Legislature was probably of opinion that, in most instances at any rate, when once the trial court had passed a final decree, no difficulty would arise as to the valuation of the appeal therefrom. On the whole, taking the words of the section as they stand, I think that the appellant is allowed the option of placing his own valuation upon the memorandum of appeal in a case like the present, that no intention to the contrary can fairly be inferred from the wording of the section, and that, in a case like the one now before me, it is by no means unreasonable that a defendant, who has all along been contending that he is being made the victim of a wholly extravagant claim, should be permitted to bring his appeal against the preliminary decree before this Court without being penalized in court fees by reason of the heavy valuation put upon his claim by the plaintiff. In the case to which I have already referred, which was decided by a learned Judge of this Court, it was assumed that the appellant would be permitted to put his own valuation upon his memorandum of appeal in a case like the present. I have now expressly examined the question and I am of opinion that the point was rightly assumed by my learned predecessor in favour of the appellant. This is my decision upon the question referred to