appreciated the effect of the amendment of the statute. We accordingly reject the reference and maintain the conviction and sentence. Let the record be returned.

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EMPEROR v. HAR PRASAD.

MISCELLANEOUS CIVIL.

Before Mr. Justice King.

1932 *May*, 2.

PARSOTTAMANAND GIRI (PLAINTIFF) *v.* MAYANAND GIRI AND OTHERS (DEFENDANTS).*

Court Fees Act (VII of 1870), section 7 (v); schedule II, article 17 (vi)—Suit for possession as mahant of properties attached to a math—Ad valorem *court fee payable on properties other than temple which has no market value.*

In a suit for possession of immovable properties appertaining to a *math* brought by a person claiming to be the duly elected mahant an *ad valorem* fee is payable under section 7, clause (v) of the Court Fees Act upon the value of the properties of the *math*, excluding the temple itself as having no market value. This clause is applicable to suits for possession of immovable property, and no distinction is made between a suit for possession as a beneficial owner and a suit for possession as a trustee or as the manager of a religious endowment. The question whether the plaintiff who seeks possession has or has not any beneficial interest in the properties does not make any difference as regards the court fee payable by him. There is no justification for interpreting the word "possession" as meaning "possession as beneficial owner".

Mr. *A. Sanyal*, for the appellant.

Mr. *Gadadhar Prasad*, for the respondents.

KING, J.:—This is a reference under section 5 of the Court Fees Act. The plaintiff alleged that defendant No. 1, who was a mahant of a *math*, had lost his title to mahantship owing to his marriage, illegal transfers of properties and other wrongful acts, and that the plaintiff had been duly elected as mahant in his place. The plaintiff sued for possession as

*Stamp Reference in First Appeal No. of 1930

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mahant of the properties attached to the *math*, including the properties which had been unlawfully transferred. The suit was valued for the purposes of jurisdiction at Rs.2,30,242 and for the purposes of the court fee at Rs.1,59,842, on which a court fee of Rs.1,750 was paid. The plaintiff paid a further court fee of Rs.525 under a subsequent order of the court. The suit was partially dismissed and the plaintiff appeals. He has valued his appeal at Rs.1,59,842 and has paid a court fee of Rs.10 only. He contends that it was by mistake that an *ad valorem* court fee had been paid in the trial court and the proper court fee would have been Rs.10 in the trial court and the same in the appellate court. The appellant's argument is that he is not claiming the property as a proprietor but is only seeking possession as manager or mahant. He is only asking for such possession as pertains to the office of a mahant, and the subject matter in dispute is not capable of valuation, so a court fee of Rs.10 only is payable under article 17, clause (vi) of schedule II.

Apart from authority it would seem that the suit is for possession of immovable property and that the court fee should be governed by section 7, clause (v). This clause is applicable to suits for possession of immovable property, and no distinction is made between a suit for possession as a beneficial owner and a suit for possession as a trustee or as the manager of a religious endowment.

The appellant has cited several rulings, but none of them are directly applicable to the facts of this case.

In *Thakuri* v. *Bramha Narain* (1) the suit was under section 539 of the old Code of Civil Procedure, which corresponds to section 92 of the Code of 1908. The plaintiff sued for a declaration that certain property was endowed property and for the appointment of himself as superintendent of the endowment and for an injunction forbidding the defendant to interfere

(1) (1896) I.L.R., 19 All., 60.

with his management. It was held that the relief regarding the appointment of the plaintiff as superintendent of the religious endowment was governed by article 17, clause (vi) as it was not capable of valuation. This case is distinguishable because the plaintiff did not seek possession of the property. On the other hand, he did claim to be appointed as superintendent, whereas the plaintiff in this case alleges that he has already been appointed as mahant and seeks possession of the property.

The case of *Girdhari Lal* v. *Ram Lal* (1) was also a suit under section 539. The plaintiffs claimed that new superintendents should be appointed for the management of the endowed property and that the property should be taken from the defendant and placed in the possession of the new superintendents. Here, again, it was held that the court fee was governed by article 17, clause (vi), but the case is distinguishable because the plaintiffs claimed nothing for themselves personally; they only asked that the trust property should be placed in the possession of the new superintendents whoever they might be. It was not contended that it was a suit for possession of trust property.

In *Rajagopala Naidu* v. *Ramasubramania Ayyar* (2) the plaintiff prayed for a declaration that he was entitled to manage a temple and to appoint and remove the trustees and prayed for possession of the temple and the properties attached thereto. It was held that the temple had no market value, so the suit, in so far as it was a suit for the possession of the temple, was governed by article 17, clause (vi). It appears that the other properties, which were attached to the temple, had been valued in the plaint and an *ad valorem* court fee had been paid. This case therefore cannot be said to be any authority in favour of the appellant. The suit was held to be a suit for possession of immovable property

(1) (1899) I.L.R., 21 All., 200. (2) (1923) I.L.R., 46 Mad., 782.

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and an *ad valorem* court fee was paid on the value of the property attached to the temple, but it was held that the temple itself had no market value. The question referred to the Full Bench, namely "whether, on a claim by a trustee for possession of trust properties for the purpose of proper administration of that trust, he will have to pay court fee on the value of the trust property, or whether in that case he is only bound to pay the nominal amount of Rs.10 or Rs.15", was left undecided.

In *U. Pyinnya* v. *U. Dipa* (1) the suit was by trustees for the possession of a Phongyi Kyaung, which is a building for the residence of monks. The court held that such a building (like a Hindu temple) had no market value and article 17, clause (vi) was applicable to the suit for possession of such a building. The ruling in *Rajagopala Naidu* v. *Ramasubramania Ayyar* (2) was followed. In the present suit it is admitted that the properties attached to the *math* have a market value. The value of the temple itself should be excluded on the strength of the rulings cited, but the properties attached to the temple have a market value, and the Madras ruling is an authority for holding that a court fee should be paid on the valuation of such properties.

Several rulings have also been cited by the Stamp Reporter in support of the contention that a court fee should be paid *ad valorem* on the value of the property in suit.

In *Basawa Singh* v. *Bhagwan Kaur* (3) the suit was for the removal of the manager of a religious institution. It was held by the Punjab Chief Court that this was "practically a suit for possession" of the endowed property and that a court fee should be paid *ad valorem* upon the value of the property. This

(1) A.I.R., 1929 Rang., 134. (2) (1923) I.L.R., 46 Mad., 782.
(3) (1901) 17 Indian Cases, 270.

ruling certainly supports the Stamp Reporter's contention.

In *Sonachala* v. *Manika* (1) the suit was for the removal of the manager of a charitable endowment and for the appointment of the plaintiff as manager. The plaintiff did not claim possession of the property, but it was held that the plaintiff was bound to ask for possession and that a suit for possession of trust property falls under section 7. *Manni Lal* v. *Radhe Gopalji* (2) and *Raghunath Ganesh* v. *Gangadhar Bhikaji* (3) have also been cited, but they are not directly in point. They were both suits for a declaration that the plaintiff is the lawful manager of a religious endowment and for an injunction restraining the defendant from interfering with the plaintiff's management. It was held that the court fee was governed by section 7, clause (iv), sub-clause (*c*), as the suit was for a declaration where consequential relief is prayed. Possession was not prayed for in either of these suits, so the rulings have no direct bearing upon the point under consideration.

In the case of *In re Syed Mahamad Gouse* (4) the facts were very similar to those of the case now in question. The suit was for a declaration that the plaintiff is the sajjada nashin of a *dargah* and for possession of its properties. It was argued in that case also that the subject matter in dispute was the right of management of a religious endowment and that such subject matter is incapable of valuation. It was also argued that as the plaintiff was only suing for trusteeship and had no beneficial or personal interest in the properties, no *ad valorem* court fee should be paid. Both these contentions were repelled and it was held that the court fee was payable under section 7, clause (v). I agree with the learned Judge who decided that case that the question whether the plaintiff has or has not any beneficial interest in the properties does

(1) (1885) I.L.R., 8 Mad., 516.
(2) (1925) I.L.R., 47 All., 501
(3) (1885) I.L.R., 10 Bom., 60.
(4) (1924) 88 Indian Cases, 209.

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not make any difference as regards the court fee payable by him. The legislature lays down certain rules governing the court fees payable on suits for possession of immovable properties and I see no justification for interpreting "possession" as meaning "possession as beneficial owner".

I hold that the court fee is payable *ad valorem* under section 7, clause (v) upon the value of the properties of the *math*. In calculating the value of such properties the temple itself should be left out of consideration as having no market value.

Before Mr. Justice Kendall.

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May, 3.

HAR NARAIN SAHI (JUDGMENT-DEBTOR) *v.* SADHU GOVIND RAI (DECREE-HOLDER).*

Civil Procedure Code, order XLI, rule 6 (2)—Interpretation —Appeal pending from a decree—Order for sale of immovable property—Whether executing court is bound to stay sale on security being given.

Order XLI, rule 6 (2) of the Civil Procedure Code was not intended to impose on the court which ordered the sale an obligation to stay the sale pending an appeal from the decree, merely because the property which is to be sold is immovable property and security is given.

The attention of the legislature seems, in sub-rules (1) and (2) of rule 6, to have been directed to the manner in which security should be demanded; and as the rule immediately follows rule 5, which prescribes the manner in which execution proceedings may be stayed, the whole of rule 6 must be held to be complementary to rule 5, providing in fact an explanation of the word "security" which has been used in clause (*c*) of sub-rule (3) of rule 5.

Dr. *M. Wali-ullah*, for the applicant.

Mr. *Shambhu Prasad* (for Mr. *Shiva Prasad Sinha*), for the opposite party.

KENDALL, J.:—This is an application under order XLI, rule 5 of the Code of Civil Procedure for stay of execution proceedings. It is made on the ground that the judgment-debtor entered into a compromise

*Application in Second Appeal No. 182 of 1932.