

price far below the market value, can the High Court reverse the decree of the lower appellate court and hold that the sales were not for an unreasonably low price? (2) Was the High Court competent to reverse the aforesaid finding upon the ground that the lower appellate court had not taken into consideration that the vendee was incurring a commercial risk in purchasing a property from a limited owner coupled with the risk of litigation with the reversioners and the mortgagee in possession? (3) Where the bulk of the husband's property is in the possession of usufructuary mortgagees, but no interest is running on the debts, is the widow justified in selling the property to the detriment of the reversioners, with the intention of relieving the soul of her husband from spiritual bondage?

We are of opinion that these are substantial questions of law. They involve matters of principle and of importance to the Hindu community.

We therefore hold that the present case fulfils the conditions necessary for an appeal to His Majesty in Council under section 109(c) of the Code of Civil Procedure. We certify accordingly.

MISCELLANEOUS CIVIL.

Before Mr. Justice King.

MUHAMMAD SALIM-ULLAH KHAN (PLAINTIFF) v.
KHALIL-UR-RAHMAN KHAN (DEFENDANT).*

1932
January, 2.

*Court Fees Act (VII of 1870), schedule II, article 1(d)—
Civil Procedure Code, order XII, rule 26—Memorandum of objections to findings returned by lower court—
Not an application or petition—No court fee payable—
Interpretation of statutes—Fiscal enactment.*

No court fee is chargeable upon a memorandum of objections filed under order XII, rule 26, of the Civil Procedure Code.

*Stamp reference in First Appeal No. 464 of 1929.

1931
SHEOPUJAN
UPADHYA
v.
BHAGWAT
PRASAD
SINGH.

1932

MUHAMMAD
SALIM-ULLAH
KHAN
v.
KHALIL-UR-
RAHMAN
KHAN.

There is no express provision in the Court Fees Act making such a document liable to the payment of a court fee. It cannot properly be held to be an "application" or "petition", for it does not request the court to take any action or to pass any order; it does not come, therefore, within article 1 of schedule II of the Act.

Fiscal statutes must be strictly construed, and if a document is not clearly chargeable under the statute the person sought to be charged in respect of the document is entitled to the benefit of doubt.

Mr. *A. M. Khwaja* (with him Messrs. *B. E. O'Connor* and *T. A. K. Sherwani*), for the appellant.

KING, J. :—This is a reference under section 5 of the Court Fees Act, 1870.

The question is whether a court fee is chargeable upon a memorandum of objections filed under order XLI, rule 26, of the Code of Civil Procedure.

There is no express provision in the Act making such a document liable to the payment of a court fee. The practice hitherto has been to levy a court fee of Rs. 2 on such documents. It is suggested that this practice is justified under article 1 (*d*) of schedule II, which makes an application or petition presented to a High Court chargeable with a court fee of Rs. 2. The question is whether a memorandum of objections filed under order XLI, rule 26, should be held to be an application or petition presented to the High Court. In my opinion the answer is in the negative. The memorandum does not request the Court to take any action or to pass any order. Its object is to inform the Court and the opposite party that the objector challenges the finding of the court below on certain points or on certain grounds. I do not think it can properly be held to be either an "application" or a "petition". Fiscal statutes must be strictly construed and if a document is not clearly chargeable under the statute the person sought to be charged in respect of the document is entitled to the benefit of doubt.

In *Damodar Prasad v. Masudan Singh* (1) a single Judge of the Patna High Court has expressly held that no court fee is chargeable upon a memorandum of objections filed under order XLI, rule 26. I agree to his reasoning and conclusion. No authority to the contrary has been shown to me.

Following the ruling cited I hold that no court fee is chargeable upon a memorandum of objections filed under order XLI, rule 26, of the Code of Civil Procedure.

APPELLATE CIVIL.

Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Young.

KIRPA RAM (DEFENDANT) *v.* KUNWAR BAHADUR
(PLAINTIFF).*

1932
January, 4.

Limitation Act (IX of 1908), articles 36, 48, 49—Attachment before judgment—Misappropriation of attached goods by a claimant in collusion with custodian—Plaintiff decree-holder's suit for compensation—Limitation.

Certain goods were attached before judgment in a suit. A third party claimant brought a suit for a declaration of his title to the attached goods; this suit failed. But during the pendency of that suit the claimant obtained a stay order and managed to misappropriate the goods in collusion with the custodian thereof. The plaintiff who had obtained the attachment then brought a suit against the claimant in respect of the misappropriation. *Held* that articles 48 and 49 of the Limitation Act did not apply to the suit, and that article 36 applied to it.

Articles 48 and 49 are intended to apply to cases where the plaintiff has a right to the possession of the movable property, which is lost or stolen or wrongfully taken or misappropriated. In the present case the plaintiff had merely attached the goods and had no right to the possession

*First Appeal No. 63 of 1931, from an order of P. C. Plowden, District Judge of Bareilly, dated the 19th of January, 1931.

(1) A. I. R., 1928 Pat., 85.