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CHHUTTAN LAL v. MUHAMMAD IKRAM KHAN

cannot be allowed to get the sale vitiated on the ground that, although no sale proclamation was issued at this time, there had been an irregularity in the preparation of the previous sale proclamation owing to the under-valuations.

* * * * *

Holding that the judgment-debtor is now estopped from urging that the under-valuations in the previous sale proclamation were a material irregularity, we are unable to hold that there has been any other material irregularity which has caused the property to be sold at an inadequate value. The mere fact that the price fetched was grossly low is not in itself sufficient to vitiate the sale. If the judgment-debtor has suffered, it is due to his own negligence and omission in not raising this point when he received notice under order XXI, rule 66, and to his obtaining an adjournment by agreeing to the sale taking place on the 24th of October without the issue of a fresh proclamation. The appeal is accordingly dismissed with costs.

MISCELLANEOUS CIVIL

Before Mr. Justice King

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March, 2

HALIMAN AND ANOTHER (DEFENDANTS) *v.* MEDIA AND ANOTHER (PLAINTIFFS)*

Court Fees Act (VII of 1870), *section* 7(v)(*b*) *and* (*d*)—*Suit for possession of fractional shares of khewat khatas—"Estate"—Separate engagement for Government revenue—Court fee payable on market value—Government of India Notification No.* 1746, *under section* 35 *of Court Fees Act.*

A suit for possession of fractional shares of certain khewat holdings (khatas) of zamindari land is governed by section 7(v) (*d*), and not section 7(v)(*b*), of the Court Fees Act and the court fee payable is according to the market value of the fractional shares.

Although each khewat khata is, in accordance with section 67A of the Land Revenue Act and Board's Circular I-1, entered in the revenue records as being separately assessed with

*Stamp Reference in First Appeal No. 336 of 1929.

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a definite portion of the revenue assessed upon the mahal, nevertheless it cannot be held to be an "estate" within the meaning of the Explanation to section 7(v) of the Court Fees Act, because no separate engagement has been entered into between Government and the proprietors in respect of the revenue assessed upon the khewat khata. And as the proprietors of the mahal have executed an engagement for the revenue assessed upon the mahal, of which the khewat khata is a part, it cannot be held that the khewat khata has been separately assessed with revenue "in the absence of such engagement".

Further, a khewat khata is not a "definite share" of an estate, within the meaning of section 7(v)(*b*), as it is not a "definite share" of the mahal; it follows that a fractional share of a khewat khata is not a "definite share" of an estate.

Under the Government of India Notification No. 1746, dated the 4th of April, 1889, issued in exercise of the powers conferred by section 35 of the Court Fees Act, the court fee in the present case would rightly have been calculated, under section 7(v)(*b*), upon five times the proportionate amount of revenue. But after the Devolution Act of 1920 the Notification in question has been superseded by the Local Government and is no longer in force.

A khewat khata is, no doubt, a "part of an estate" and it is recorded as separately assessed with revenue. So, in a suit for possession of an entire khewat khata the court fee would be payable under section 7(v)(*b*), upon five times the revenue assessed upon the khata.

Dr. *N. U. A. Siddiqui*, for the appellants.

Mr. *Muhammad Ismail* (Government Advocate), for the Crown.

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

The suit was for possession of fractional shares of certain khewat holdings (khatas) of zamindari land. The question is whether under section 7(v)(*b*) of the Court Fees Act the value of the subject-matter should be deemed to be five times the proportionate share of the Government revenue assessed upon the khewat khatas, or whether it should be the market value of the land in suit, under

section 7(v)(*d*) of the Act. Under section 7(v)(*b*), where the suit is for possession of land, and where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate, and is recorded in the Collector's register as separately assessed with such revenue and such revenue is settled, but not permanently, then the value of the subject-matter shall be deemed to be five times the revenue so payable.

It is argued for the appellant that the land in suit forms definite shares of an estate, which are recorded in the Collector's register as separately assessed with revenue, and, therefore, the value should be deemed to be five times the proportionate share of the revenue payable upon the fractional shares claimed. The decision depends upon the meaning of the word "estate" in this clause. The word "estate" has been defined in the "Explanation" as follows: "The word 'estate', as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue."

A perusal of the United Provinces Land Revenue Act, 1901, and of the rules contained in Board's Circular I-1, establishes the facts that the unit of land for the purpose of the assessment of revenue is a mahal, and that a separate engagement is demanded from the lambardars or proprietors of every mahal in respect of the revenue assessed upon the mahal. It is true that the khewat khatas in question are entered in the revenue records as being separately assessed with revenue, that is, a certain amount of revenue is recorded as being payable in respect of each khewat khata. Nevertheless, I think that a khewat khata cannot be held to be an "estate" within the meaning of this clause for the reason that *no separate engagement* has been executed in respect of each khewat khata. It appears that the settlement officer distributes the

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revenue assessed on each mahal over the several properties recorded separately in the khewat, in accordance with the provisions of section 67A of the U. P. Land Revenue Act. This section was only inserted in the Act by an amending Act of the year 1929, but the practice of distributing the assessment of the mahal over its component parts (thoks, pattis, or khewat khatas) had previously been in force under the authority of rules contained in Board's Circular I-1. I think it is clear that although each khewat khata is recorded as separately assessed with revenue, nevertheless it cannot be held to be an "estate" within the meaning of the clause, because no separate engagement has been entered into between Government and the proprietors in respect of the revenue assessed upon the khewat khata.

It cannot be held that the khewat khata has been separately assessed with revenue "in the absence of such engagement", because the proprietors of the mahal must have executed an engagement for the revenue assessed upon the mahal; and the khewat khata is a part of the mahal. I think it is established, therefore, that a khewat khata is not an "estate" within the meaning of section 7(v).

Further, I think it is clear that a khewat khata is not a "definite share" of an estate, as it is not a "definite share" of the mahal. It is merely a part of the mahal, but not a fractional share or definite share of the mahal, although it is assessed with a definite share of the revenue assessed upon the mahal. It follows that a fractional share of a khewat khata is not a "definite share" of an estate.

A khewat khata is, no doubt, a *part* of an estate and it is recorded as separately assessed with revenue. So if the suit were for the possession of an *entire* khewat khata the court fee would be payable *ad valorem* under section 7(v)(*b*) upon five times the revenue assessed upon the khata. But in the present case the suit is for fractional

shares of khewat khatas. Those fractional shares are not recorded as separately assessed with revenue. The conclusion seems inevitable that section 7(v)(*b*) does not apply to the facts of this case. On the other hand, section 7(v)(*d*) seems clearly applicable. The fractional shares of khewat khatas are parts of an estate (mahal), but are not "definite shares" of the estate and are not recorded as separately assessed with revenue. Therefore under section 7(v)(*d*) the court fee is payable on the market value of the fractional shares.

It is conceded that the practice hitherto has been to treat the khewat khata as an "estate", on the ground that it is recorded in the Collector's register as being separately assessed with revenue and that, therefore, if a fractional share of the khewat is in suit, the court fee is treated as payable under section 7(v)(*b*) on five times the proportionate amount of revenue. According to the Chief Inspector of Stamps, this practice is not sanctioned by the Act itself but is based upon the authority of an old Government of India notification, viz. Notification No. 1746, dated the 4th of April, 1889, under which the Government of India, in exercise of the powers conferred by section 35 of the Court Fees Act, 1870, were pleased to direct that "When a part of an estate paying annual revenue to Government under a settlement which is not permanent, is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, *a fractional share of that part shall*, for the purpose of computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share." On the strength of this Notification the court fee would be computed in the present case on the revenue payable in proportion to the fractional shares.

The argument on behalf of the Crown is that in the absence of such Notification the court fee would be payable

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in this case not on five times the proportionate share of revenue but on the market value, under section 7(v)(*d*). It is argued with some force that if section 7(v)(*b*) were applicable to cases of this sort then there would have been no necessity for issuing the notification. I have already given reasons for holding that section 7(v)(*b*) does not apply to this case, and certain rulings have been cited in support of this conclusion. In *Haidar Ali* v. *Sondha* (1) it was held that in a suit for a half share of a holding, not a definite share in an estate paying annual revenue to Government, the stamp must be calculated upon the value of the land under section 7(v)(*d*) and not on the revenue under clause (v)(*b*), there being no provision in the Court Fees Act for the value of a fractional part of a holding, which is recorded in the Collector's register as separately assessed with land revenue, being calculated on the land revenue. The reason for the decision seems to have been that although the holding was recorded in the Collector's register as separately assessed with land revenue, it was, nevertheless, not an "estate" within the meaning of the clause and, therefore, section 7(v)(*b*) was not applicable. This ruling was followed in *Mst. Jian* v. *Mst. Nadir Nishan* (2). It may be that it was in view of these rulings that the Government of India Notification of 1889 was issued. However that may be, it seems clear that under this Government of India Notification the court fee in the present case would rightly have been calculated upon five times the proportionate amount of revenue. The Chief Inspector of Stamps points out that in the United Provinces the Notification of 1889 is no longer in force. Under the Devolution Act of 1920, the Local Government were given authority to issue notifications under section 35 of the Court Fees Act in respect of the territories under their administration. The power to issue notifications must include the power to cancel notifications previously issued. The Local Government of the United Provinces did, in fact, issue a notification

(1) [1880] Punj. Rec., No. 102. (2) [1883] Punj. Rec., No. 6.

No. 1231, dated the 11th of October, 1923, under section 35 of the Court Fees Act as amended by the Devolution Act. In this Notification they gave a list of cases in which the Governor in Council had been pleased to make certain reductions and remissions in court fees and it was expressly stated that this Notification was issued *in supersession of all previous notifications* under that section. The United Provinces Notification did not include any remission or reduction corresponding to that made by the Government of India Notification of 1889. Whether this omission was intentional or due to an oversight is immaterial from my point of view. The fact remains that the Government of the United Provinces cancelled the Notification of 1889 under which the court fee, in a case of this sort, could be computed on five times the proportionate revenue. The result is that we must now follow strictly the provisions of the Act itself and, for reasons given above, I hold that section 7(v)(*b*) is not applicable to the facts of this case and the court fee must be paid upon the market value of the property under section 7(v)(*d*).

Certain rulings of this High Court have been referred to on behalf of the appellant, but I do not think that any of them support his argument. In *Reference under the Court Fees Act* (1) it was held that the court fee in respect of separate plots of land which did not constitute any definite fraction of a distinct revenue-paying area, and were not themselves separately assessed to revenue, should be paid on the market value of the land and not, as is the case where the suit is for a definite fractional share, on five times the Government revenue. The ruling relates to separate plots of land and the decision is that the court fee is payable on the market value of the land, so *prima facie* it has no bearing on the present case, but the learned advocate for the appellant has relied upon certain observations made by the Taxing Officer which were endorsed by the Taxing Judge. In my opinion the

(1) (1894) I. L. R., 16 All., 493.

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observations made do not help the appellant, because they are based upon the Government of India Notification of 1889 which has now been cancelled. There seems to be no ruling of this Court which is directly in point and it seems unnecessary to refer to any cases which were decided before the cancellation of the Government of India Notification of 1889.

Under the present law it appears that certain anomalies will arise. The court fee in a suit for possession of an entire khewat khata would probably be less than in a suit for possession of half the khata. If the contention for the Crown is accepted as correct, as I think it must be, then the result is that these anomalies must be accepted and the present practice must be altered, unless the Local Government think fit to issue a notification under section 35 of the Court Fees Act on the lines of the Government of India Notification of 1889.

In my opinion section 7(v)(*b*) is not applicable and there is no notification under section 35 to be taken into account, so section 7(v)(*d*) applies and the court fee must be paid on the market value of the property in suit. I allow three months to the parties for making good the deficiency in court fees.

REVISIONAL CRIMINAL

Before Mr. Justice Bajpai

EMPEROR *v.* ASA RAM*

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March, 2

Municipalities Act (Local Act II of 1916), sections 241, 298 heading F(a), (b) and (d)—Bye-law requiring licence for sale of milk, dahi etc.—Ultra vires—*Power to establish, regulate and inspect markets etc. does not include power to impose and levy licences.*

A bye-law framed by a Municipal Board prohibiting a shopkeeper from selling milk and *dahi* etc. without previously obtaining a licence from the Board is *ultra vires*.

*Criminal Reference No. 823 of 1932.