

*Charan Chanda Talukdar v. Tariipulla* (1), a Bench ruling where it was held that appeals under section 195(6) of the former Criminal Procedure Code could not be transferred to a Subordinate Judge by the District Judge. This ruling was followed by a learned single Judge in *Dulari Koeri v. Fauzdar Khan* (2). A similar ruling has been laid down in *Bismillah Khan v. Shakir Ali* (3). For the opposite party reference was made to *Narain Das v. Emperor* (4), but in that ruling the court to which the transfer was made was the court of an Additional Judge and not the court of a Subordinate Judge and it was held that under section 8 of the Civil Courts Act the transfer could be made. I hold therefore that it is not open to a District Judge in whose court an appeal under section 476B is pending to transfer that appeal to the court of a Subordinate Judge, as the Subordinate Judge has not got jurisdiction to hear such an appeal. Accordingly I allow this application in revision with costs and I set aside the order of the Subordinate Judge and direct that the appeal should be taken again on the file of the District Judge and should be disposed of by him according to law.

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### MISCELLANEOUS CIVIL

*Before Mr. Justice Niamat-ullah and Mr. Justice Allsop*

NARAIN MOHAN DEV AND ANOTHER (DEFENDANTS) v.  
KRISHNA BALLABHI DEVI AND ANOTHER (PLAINTIFFS)\*

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December, 12

*Court Fees Act (VII of 1870), schedule II, article 17(vi)—  
Suit by some shebaitis of an idol against other shebaitis for  
formulation of a scheme for peaceful division of the worship  
and the emoluments—Impossible to estimate money value—  
Fixed fee payable.*

The plaintiffs alleged that they as well as the defendants had a joint right to worship a certain idol and to participate in

\*Stamp Reference in First Appeal No. 388 of 1931.

(1) (1912) I.L.R., 39 Cal., 774.

(2) A.I.R., 1933 Pat., 179.

(3) (1928) I.L.R., 4 Luck., 155.

(4) (1927) I.L.R., 49 All., 792.

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the emoluments attached to the office, but that the defendants were interfering with the enjoyment of the plaintiffs' rights. They, therefore, sued for an injunction to restrain the defendants from such interference and for the formulation of a scheme for the peaceful carrying on of the worship and enjoyment of the emoluments by the parties, separately and without interference from each other: *Held*, that for the purposes of computation of court fees the second prayer was of the nature of a prayer for partition by co-sharers in possession, which it was not possible to estimate at a money value, and the court fee payable in respect thereof was the fixed fee of Rs.10 under article 17(vi) of the second schedule to the Court Fees Act.

Mr. P. L. Banerji, for the appellants.

Dr. K. N. Katju and Mr. I. B. Banerji, for the respondents.

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

NIAMAT-ULLAH and ALLSOP, JJ.:—The plaintiffs respondents instituted a suit in order to obtain an injunction restraining the defendants from interfering with the service by the plaintiffs of an idol and asking the court to frame a scheme, so that they and the defendants might be entitled to carry on the service of the idol and to enjoy the emoluments of the office separately and without interference from each other. The first relief was valued at a sum of Rs.100 and the court fee was paid *ad valorem*. The second relief was valued for the purposes of jurisdiction at a sum of Rs.5,400, but a fixed court fee of Rs.10 was paid upon it. An objection has been taken by the Chief Inspector of Stamps that this was a suit for a declaration with a consequential relief of injunction and that an *ad valorem* court fee should have been paid upon the value assessed on the second relief for the purposes of jurisdiction. It seems to us that there was no question of declaration. The plaintiffs maintained that they were enjoying the emoluments of the office which they claimed and that they were carrying on the worship, although they said that the defendants were inclined to

interfere with them. It was not maintained by the plaintiffs that the defendants had not a joint right with them to worship the idol and to enjoy the emoluments attached to the office. It seems to us that although this cannot be described as a suit for partition, yet it is, in a sense, a suit which may be regarded as a suit of a similar nature for the purpose of estimation of court fees. We think that this is a suit coming under article 17(vi) of the second schedule of the Court Fees Act in that it is not possible to estimate the subject-matter in dispute at a money value. Suits for partition have always been held to be governed by this article; and we suppose that the reason for this is that a person in possession as a co-sharer who asks for partition is not asking for any advantage which can be estimated at a money value. He is already entitled to a share and all that he asks is that that share for the purposes of convenience should be divided by metes and bounds, so that he may have exclusive enjoyment of part of the property instead of joint enjoyment of the whole. The present relief is of a similar nature. The plaintiffs have asked that there should be some scheme by which they can enjoy separately the fruits of the office which they hold jointly with others, instead of enjoying the emoluments jointly with them at all times. We consider, therefore, that this is a suit to which article 17(vi) of the second schedule applies, and we hold that the court fee paid was sufficient.

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