

Kanta Roy (1). I would, therefore, hold that the plaintiff is not entitled to claim the benefit of the provisions of section 14(1) of the Limitation Act on account of the previous suit which he chose to withdraw.

1934
 SADAYATAN
 PANDE
 v.
 RAM
 CHANDRA
 GOPAL

MUKERJI, J.:—I agree and have nothing to add.

KING, J.:—I agree.

BY THE COURT:—The order of the Court is that the appeal fails and is dismissed with costs.

MISCELLANEOUS CIVIL

Before Mr. Justice Bennet

SURENDRA SINGH (DEFENDANT) v. GAMBHIR SINGH AND ANOTHER (PLAINTIFFS)*

1934
 March, 12

Court Fees Act (VII of 1870), schedule I, article 1; schedule II, article 17(iii)—Declaratory suit where no consequential relief is prayed—Cross-objection in such case—Ad valorem court fee not payable on the cross-objection.

In the case of a declaratory suit where no consequential relief is prayed, *ad valorem* court fee is neither payable on the plaint or memorandum of appeal nor on the cross-objection.

Although article 17(iii) of schedule II of the Court Fees Act does not specifically mention a cross-objection while it mentions plaint or memorandum of appeal, on general principles the words "plaint or memorandum of appeal" in that article should be construed to include a cross-objection. A cross-objection and an appeal are very intimately connected and there is no essential difference, from the point of view of court fees, between the one and the other, and there is no reason why a person who files a cross-objection should have to pay an *ad valorem* court fee, whereas if he filed an appeal instead of a cross-objection he would not have to pay an *ad valorem* fee but only a fixed fee of Rs. 10.

Further, section 7(iv)(c) of the Court Fees Act provides that in the case of declaratory suits where consequential relief is prayed, the plaintiff shall state the amount at which he values the relief sought; and the *ad valorem* court fee can be calculated accordingly. But there is no such provision for a declaratory suit where no consequential relief is prayed. The principle of the

*Stamp Reference in First Appeal No. 209 of 1930.

(1) (1912) 20 Indian Cases, 205.

1934

SURENDRA
SINGH
v.
GAMBHIR
SINGH

Act to be deduced from section 7 is that it is not contemplated that any *ad valorem* fees are to be charged in declaratory suits where consequential relief is not prayed for, and on that view the omission of the word "cross-objection" from article 17(iii) of the second schedule is a mere clerical error.

Messrs. S. K. *Dar* and K. N. *Laghate*, for the appellant.

Mr. *Shabd Saran*, for the respondents.

BENNET, J.:—There was a suit brought for a declaration as follows: That it may be declared that under the family partition the plaintiffs alone are the owners in possession of the property entered in list *A* and that the defendant has no concern with it, and that the defendant is not competent to have the villages of Shampur *alias* Manikpur and Pabsara, entered in list *A*, partitioned; and for some other similar declarations, five in all.

The court of first instance decreed the suit of the plaintiffs for a declaration in regard to part of the property and dismissed it in regard to part of the property. A first appeal was brought by the defendant in this Court and the plaintiffs have filed cross-objections in regard to the declaration which was not granted by the lower court. The cross-objection sets out that the value of the objection is Rs.26,758-5 and that the court fee has been paid on Rs.20. In the case of the plaint and in the case of the memorandum of appeal there was a court fee paid for a declaratory suit, that is, Rs.50 for the plaint and Rs.30 for the appeal. It is not contested that under the Court Fees Act, schedule II, article 17, the proper court fees for the plaint and for the memorandum of appeal are the amounts which have been paid and that under that article *ad valorem* court fees are not required, the rate being Rs.10 as the proceedings took place before the U. P. Court Fees Amendment Act of 1932 was passed. The Chief Inspector of Stamps has reported that there is a deficiency of Rs.846-12 in the court fee paid on the cross-objection, as he alleges that the court fee should

1934

 SURENDRA
SINGH
v.
GAMBIER
SINGH

be an *ad valorem* one. The question at issue is whether in a declaratory suit the plaint and memorandum of appeal require only a court fee of Rs.10 per declaration but the cross-objection requires an *ad valorem* court fee. The suggestion of the Chief Inspector is very illogical as there is no reason whatever why the particular proceeding of cross-objection should be treated in any manner different from the plaint and memorandum of appeal. The Taxing Officer has sustained the objection of the Chief Inspector of Stamps and he refers to various rulings: *Lakhan Singh v. Ram Kishan Das* (1), *Daroga Raut v. Parema Kuer* (2) and *Sri Rajeo Lochan v. Mahant Ram Manohar* (3). In all these rulings it was held that cross-objections in declaratory suits must bear the court fee calculated on the amount of value of the subject-matter in dispute. The line of argument in all these cases is simple. It is based on the fact that under schedule I for *ad valorem* fees article 1 states as follows: "Plaint, written statement pleading a set off, or counterclaim, or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection, presented to any civil or revenue court except those mentioned in section 3." It will be noted that in this article the words "not otherwise provided for in this Act" do not qualify the word "cross-objection" and only qualify the "plaint, written statement or memorandum of appeal." Schedule II, article 17, states that there is a fixed fee of Rs.10 for "plaint or memorandum of appeal in each of the following suits: (iii) to obtain a declaratory decree where no consequential relief is prayed." The argument is that the schedule clearly sets out that the plaint or memorandum of appeal in a declaratory suit where no consequential relief is prayed is exempt from *ad valorem* fee, whereas the cross-objection for some reason has not been made so exempt. It must be

(1) (1917) I.L.R., 40 All., 93. (2) (1918) 3 Pat. L.J., 197.
(3) (1922) 70 Indian Cases, 286.

1934

SURENDRA
SINGH
v.
GAMBHIR
SINGH

admitted that the argument is perfectly sound and that, as the schedule stands, the argument is perfectly correct. For the contrary view there is the ruling of a learned single Judge of this Court in *Kashi Bai v. Gopalcharya* (1), where he held in a similar case that a cross-objection in a declaratory suit where no other relief was asked for did not require *ad valorem* court fees but was sufficiently stamped with a ten rupee court fee. The learned single Judge proceeded on general principles as follows: "Where the apparent result of an appeal or objection being successful is merely that the objector will get a declaration, the court fee to be paid will be for a declaration. Article 17 (iii) of schedule II of the Court Fees Act which deals with a declaratory relief does not specifically mention a cross-objection, but the words 'plaint or memorandum of appeal' must in my opinion be construed to include a cross-objection." I consider that this argument from general principles is sound, and I will further point out another argument which I believe has not been referred to in any of the rulings on this subject. That argument is as follows. In section 7 of the Court Fees Act there is a provision for the calculation of the amount of fee payable under the Act in certain cases. Sub-section (iv) (c) refers to suits "to obtain a declaratory decree or order, where *consequential relief* is prayed" and for this class of suits it is stated that the plaintiff shall state the amount at which he values the *relief* sought. The *ad valorem* court fee is then calculated on the value of the relief. There is no provision for a declaratory decree or order where there is no *consequential relief*. Accordingly section 7 does not provide how the amount of *ad valorem* court fee would be calculated in such a case where there is no *consequential relief*. This clearly indicates that the Act did not intend that there was no *consequential relief* in a declaratory suit. In my

(1) F.A. No. 101 of 1927.

1934

SCRENDRA
SINGH
v.
GANESHER
SINGH

opinion the Act lays down the principles for court fees and the schedules merely apply those principles in detail. The principle of the Act to be deduced from section 7 is that *ad valorem* court fees are not to be charged in a declaratory suit where consequential relief is not prayed for. On that view the omission of the word "cross-objection" from schedule II, article 17 (iii) is a mere clerical error and it was no doubt intended that by a memorandum of appeal a cross-objection should also be included. When the framers of the Act prepared schedule I, article 1, this point was not noticed and the word "cross-objection" appears separately in that article, although it does not appear in article 17. A cross-objection and an appeal are very intimately connected and there is no essential difference from the point of view in court fees between the one and the other, and there is no reason whatever why a person who files a cross-objection should have to pay *ad valorem* court fee, whereas if he filed an appeal instead of a cross-objection he would not have to pay *ad valorem* court fee. It cannot possibly have been the intention of the legislature that such a strange result should accrue between the two kinds of procedure. Under the circumstances I hold that the cross-objection was properly stamped with a twenty rupee stamp. Accordingly the case should proceed.

In the present case the Chief Inspector of Stamps has not valued any consequential relief as no consequential relief was asked for, but he has merely taken the value of the subject-matter. There is no section of the Act which authorises him to do so.