

## MISCELLANEOUS CIVIL

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

ANAND GIR (APPLICANT) v. RAM NAZAR CHAUBE  
AND OTHERS (OPPOSITE PARTIES)\*

1937  
August, 9

*Court Fees Act (VII of 1870), schedule I, article 1; schedule II, article 11—U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), sections 12, 23, 27—Application for redemption of mortgage on payment of a certain sum—Assistant Collector ordering payment of a larger sum—Appeal to District Judge in respect of difference in amounts—Ad valorem court fee payable.*

A mortgagor applied under section 12 of the U. P. Agriculturists' Relief Act for redemption of the mortgage on payment of Rs.975, which he deposited. The Assistant Collector decided that the amount payable was Rs.1,101, and ordered the deposit of the balance. The mortgagor appealed to the District Judge, under section 23 of the Act, in respect of the difference between the amounts:

*Held*, that *ad valorem* court fee was payable on the appeal, in respect of the difference between the amounts, under schedule I, article 1 of the Court Fees Act. Schedule II, article 11 was not applicable, as the order appealed from was a decree or an order having the force of a decree. Even if the order did not strictly come within the meaning of the word "decree", it certainly had the force of a decree, because it had the same effect as a decree for redemption of the mortgage and finally decided the issue between the parties. The provisions of section 27 of the U. P. Agriculturists' Relief Act made this point still further clear.

The applicant was not represented.

Mr. A. P. Pandey, for the opposite parties.

NIAMAT-ULLAH and ALLSOP, JJ.:—This is a reference made by the learned District Judge of Ghazipur. The question at issue is whether court fees should be paid *ad valorem* on an appeal under the provisions of section 23 of the U. P. Agriculturists' Relief Act. A mortgagor made an application under the provisions of section 12 of the Act for the redemption of his mortgage on the payment of a sum of Rs.975. An inquiry was made

\*Miscellaneous Case No. 655 of 1936.

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under the provisions of the Act by an Assistant Collector, who decided that the amount payable was Rs.1,101-9-6. He directed the deposit of the balance within a period of fifteen days. The mortgagor filed an appeal in the court of the District Judge in which he urged that he was entitled to redeem on payment of a sum of Rs.375 only. He paid on his memorandum of appeal a court fee of twelve annas, regarding it, presumably, as an appeal from an order. The District Judge is doubtful whether the court fee is sufficient or whether the amount payable should be calculated *ad valorem* on the difference between the sum of Rs.375 and the sum of Rs.1,101-9-6.

We have no doubt, if the court fee is to be calculated *ad valorem*, that the value of the subject-matter of the appeal is the difference between Rs.375 and Rs.1,101-9-6. The only question which remains is whether the amount of court fee is to be calculated *ad valorem* or is to be a fixed fee under the provisions of article 11 of the second schedule of the Court Fees Act. Article 1 of the first schedule says that the court fee on a memorandum of appeal (not otherwise provided for in the Act) to any civil or revenue court shall be stamped with an *ad valorem* fee. The question is whether the present memorandum of appeal is otherwise provided for in the Act. If it is so provided for at all, it must be under article 11 of the second schedule. This speaks of a memorandum of appeal when the appeal is not from a decree or from an order having the force of a decree. It remains to decide whether the order of the Assistant Collector directing that property should be redeemed on the payment of a sum of Rs.1,101-9-6 was a decree or an order having the force of a decree. We do not think that there can be any room for doubt upon this question. Even if the order does not strictly come within the meaning of the word "decree", it certainly has the force of a decree, because it has the same effect as a decree for redemption of the mortgage and finally decides the issue between the parties. It is also specifically said in section 27 of the Agriculturists' Relief Act that "The provisions

in the Code of Civil Procedure, 1908, in regard to suits shall be followed, so far as they can be made applicable, to all proceedings under this chapter, and all orders passed under this chapter shall be executed in the manner prescribed for execution of civil court decrees." The order passed by the Assistant Collector was passed under a section which is in the same chapter of the Agriculturists' Relief Act as section 27. In these circumstances the memorandum of appeal cannot come within the meaning of article 11 of the second schedule of the Court Fees Act, and therefore it must come within the provisions of article 1 of the first schedule. The result is that an *ad valorem* court fee must be paid on the amount of the subject-matter in dispute, which we have already said is the difference between the sum of Rs.375 and Rs.1,101-9-6. This is our reply to the reference which has been made.

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## REVISIONAL CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice,  
and Mr. Justice Harries*

MUZAFFARNAGAR BANK (PLAINTIFF) *v.* FATTA  
AND OTHERS (DEFENDANTS)\*

1937  
August, 13

*U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), sections 3(1) first proviso, and 5—Conversion of decree into instalment decree—Simple money decree—Period of instalments—Date from which such period is to be reckoned—U. P. Agriculturists' Relief Act, sections 4, 5, 30(2)—Reduction of interest—Reduction of future interest—Simultaneous operation of sections 4 and 30(2).*

When a simple money decree, passed against an agriculturist, is converted into an instalment decree under section 5 of the U. P. Agriculturists' Relief Act, the maximum period of such instalments is fifteen years, according to the first proviso to section 3 of the Act. An agriculturist who is a simple debtor and not a mortgagor does not come under the category of "an agriculturist to whom chapter III applies", mentioned in that proviso, for chapter III deals with mortgages and their redemption and is altogether inapplicable to the case of a