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that the claim is barred by section 66 of the Civil Procedure Code was correct. Had the plaintiff come into court on the allegation that subsequent to the auction purchase of 1907 either Ram Dayal or after him his widow acquired title by adverse possession extending over 12 years we would have certainly entertained the claim. It has been laid down by their Lordships of the Privy Council in the case of *Abdul Jalil Khan v. Obaidullah Khan* (1) that section 66 is not a bar to a claim based on a title independent of the auction purchase but no such case was put forward in the plaint and none has been pressed before us in appeal.

We have, however, not considered it necessary to enter into the merits so far as the auction purchase of the 20th of July, 1907, is concerned, nor is it necessary for us to go into the question of the plaintiff's previous knowledge of his title with regard to the objection under order II, rule 2 of the Civil Procedure Code. We dismiss this appeal with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice,
and Mr. Justice Bajpai

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August, 13

RANDHIR SINGH AND ANOTHER (DEFENDANTS) v. RANDHIR SINGH (PLAINTIFF)²

Court Fees Act (VII of 1870), section 7(v)(b) and (d).—Fractional share of khewat khata separately assessed to revenue.—Proportionate share of revenue ascertainable.—Court fee according to revenue and not market value of share.

The court fee payable on a suit to pre-empt a fractional share of a khewat khata which has been separately assessed to revenue is computable according to section 7(v) (b), and not 7(v) (d), of the Court Fees Act.

Where an estate is separately assessed to land revenue and a fractional share of that estate is sought to be recovered by the suit, then the proportionate amount of the revenue on such fractional share is easily ascertainable, and the court fee is governed by section 7(v)(b). But if the property in suit is not

²Stamp Reference in First Appeal No. 183 of 1932.

(1) (1929) I.L.R., 51 All., 675.

a fractional share of such an estate but is only a specified plot or plots in the estate, and such specified part is not separately assessed to revenue, then the proportionate liability of that specified part for the land revenue is not ascertainable, and the court fee is governed by section 7(v)(d).

Dr. S. N. Sen and Messrs. K. L. Misra and A. M. Gupta, for the appellants.

Dr. K. N. Katju and Messrs. N. Upadhiya and M. L. Chaturvedi, for the respondents.

SULAIMAN, C.J., and BAJPAI, J.:—This case has been put up before this Bench for the consideration whether the court fee paid in the court below on this claim was sufficient. The suit was for the recovery of a three-fourth out of two-third share in khewat No. $\frac{1}{2}$ by pre-emption. The inspector of stamps has submitted that the case comes under section 7(v)(d), whereas the stamp reporter has suggested that the case should fall under section 7(v)(b), of the Court Fees Act.

The case would be governed by sub-section (b) if 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 as aforesaid, but would be governed by sub-section (d) if it forms part of an estate paying revenue to Government but is not a definite share of such estate and is not separately assessed as aforementioned. The distinction, in our opinion, is perfectly obvious. Where there is an estate paying annual revenue to Government and a fractional share of that estate is transferred, then it is easy to ascertain the proportionate amount of the Government revenue on the property transferred. On the other hand, if the property transferred is not a fractional share of an estate paying revenue to Government but is only a specified part of such estate and such specified part is not separately assessed to revenue, it is not possible to ascertain the proportionate liability of that specified plot so far as the payment of Government revenue is concerned. In the former case, where the

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revenue can be ascertained, the case would be governed by sub-section (b), while in the latter case by sub-section (d).

There is really no conflict of opinion in the case of *Haliman v. Media* (1) and the case of *Mst. Beti Kuari v. Harnath Singh* (2). In the former case the property in question was a fractional share of a khewat khata which was not separately assessed to revenue. It was, therefore, not possible to ascertain the proportionate liability of that property. On the other hand, in the latter case the property in question was a definite share of a particular patti which had been separately assessed to revenue and was recorded as such. It was, therefore, clear that sub-section (d) applied to the former case, while sub-section (b) to the latter.

In the present case the khewat produced shows that khewat No. $\frac{1}{2}$ is a distinct unit, a separate estate and assessed separately to revenue. A fraction of this distinct unit being in dispute, it is easy to ascertain the proportionate amount of revenue assessable on this property. We are, therefore, of the opinion that the case is governed by sub-section (b) and that the report of the stamp reporter is correct. There is, accordingly, no deficiency on account of the court fee paid in the court below.

REVISIONAL CRIMINAL

Before Mr. Justice Thom

EMPEROR v. GAJRAJ SINGH*

1936

August, 14

Motor Vehicles Act (VIII of 1914), section 16—Summons to accused not mentioning nature and particulars of offence charged—Opportunity not given to produce defence evidence—Criminal trial—Illegal.

*Criminal Revision No. 337 of 1936, from an order of Tufail Ahmad, Sessions Judge of Banda, dated the 29th of February, 1936.

(1) (1933) I.L.R., 55 All., 531.

(2) S.A. No. 1239 of 1935, decided on 14th April, 1936.