

FULL BENCH

Before Mr. Justice Allsop, Mr. Justice Ganga Nath
and Mr. Justice Ismail

1937
November, 22

JAGDISH PRATAP AND OTHERS (APPLICANTS) *v.* PANCHAITI
AKHARA BARA UDASI (OPPOSITE PARTY)*

U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 14, 45—Determination of claim, by Special Judge—Appeal from decree of Special Judge—Court fees—Court Fees Act (VII of 1870), schedule I, article 1; schedule II, articles 11, 17.

Ad valorem court fees are payable, under article 1 of schedule I of the Court Fees Act, on a memorandum of appeal from a decree passed by a Special Judge under section 14 of the U. P. Encumbered Estates Act. Article 11 of schedule II is not applicable as the appeal is from a decree. Article 17 is not applicable, for in the view that the claim determined under section 14 is not a suit the article does not apply; and in the view that the claim is to be deemed to be a suit it is not a suit for a declaration, nor is it a suit the money value of which is not capable of estimation, inasmuch as the claim is for a specific sum.

Mr. B. S. Darbari, for the applicants

Reference heard *ex parte*.

ALLSOP, GANGA NATH and ISMAIL, JJ.:—The question before us is whether the court fees on a memorandum of appeal should or should not be paid *ad valorem*. The appeal is one against a decree passed by the Special Judge under section 14 of the U. P. Encumbered Estates Act. Court fees in this Court are paid under section 4 of the Court Fees Act which says that "No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed in . . . or shall be received . . . by a High Court, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document."

There can be no doubt that the document with which we are dealing is a memorandum of appeal. The question then is whether it does or does not come within article 1 of schedule I of the Act. That article says that court fees in certain amounts shall be paid *ad valorem* on a memorandum of appeal (not otherwise provided for in the Act) presented to any civil or revenue court except those mentioned in section 3. Section 3 of the Act deals with High Courts acting on their original side and does not affect the question of court fees payable on the present memorandum of appeal. It is obvious that the court fee must be paid *ad valorem* on this memorandum of appeal unless it is otherwise provided for in the Act. The only other articles under which it is possible to argue that this memorandum of appeal might be provided for are articles 11 and 17 of schedule II. Article 11 cannot apply because it provides for court fees on a memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and in section 14 of the U. P. Encumbered Estates Act it is specifically stated that the Special Judge shall pass a simple money decree for the amount which he finds due to the claimant and that such decree shall be deemed to be a decree by a civil court of competent jurisdiction.

It has been suggested that article 17 of schedule II applies because the suit, if it can be called a suit in the court of the Special Judge, was one to obtain only a declaration that a certain amount of money was due. We do not think that there is any force in this argument. If the proceeding in the court of the Special Judge is not a suit then article 17 of schedule II cannot apply, because that applies to a memorandum of appeal in certain suits. On the other hand, if the proceeding in the court of the Special Judge is deemed to be a suit then it must be a suit on the basis of a claim made by the debtor in the written statement for which provision is made in section 9 of the Act and is a suit for a definite

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amount of money claimed by the creditor. It cannot be said that this is a suit to obtain a declaration only. Provision is made that the money shall be recovered in the particular ways specified in the Act.

It has been argued that the decree of the Special Judge cannot be executed in the ordinary way under the Code of Civil Procedure. It does not appear to us that that makes any difference. There are other decrees of a civil court which cannot be executed in the ordinary way but must be executed by Collectors under the provisions of the Code of Civil Procedure. The fact that they are executable in that way does not make them any the less decrees of a civil court.

The third argument is that the memorandum comes under article 17 of schedule II because it arises out of a suit where it is not possible to estimate at a money value the subject-matter in dispute. It again seems to us that there is no force in this argument. We have already explained that this article would not apply if the proceeding in the court of the Special Judge were not a suit. We have also pointed out that if it were a suit it would be a suit for the recovery of a specific sum of money claimed by the creditor. It is not, therefore, possible to hold that the money value of the suit is not capable of estimation. It is so capable to the nearest anna and pie because the claimant is claiming a definite sum.

We are satisfied that this memorandum of appeal cannot come under the descriptions in article 11 or 17 of schedule II of the Court Fees Act and therefore it must come under the description in article I of schedule I of the Act. The court fee is consequently payable *ad valorem*.

It has been suggested that this will lead to great hardship to landlords who have come in under the provisions of the Encumbered Estates Act. That is a matter with which we are not concerned. There is a provision in section 35 of the Court Fees Act that the Local Government may remit or reduce the fees chargeable under

the Act. The matter is entirely one for the Local Government and not one with which we are concerned. Our decision is that the court fees payable on the memorandum of appeal are payable *ad valorem* under the provisions of article 1 of schedule I of the Act.

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REVISIONAL CRIMINAL

Before Mr. Justice Allsop

RAM RAKSHPAL v. RAM NATH*

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November, 23

Criminal Procedure Code, sections 344, 526—Adjournment for purpose of applying for transfer—Costs of adjournment can be ordered along with order of adjournment.

As a court is bound to pass an order of adjournment under section 526(8) of the Criminal Procedure Code, it can not make such an order of adjournment conditional on the payment of costs of the adjournment; but the court may, when passing its order for adjournment, direct that the party whose application has necessitated adjournment shall pay the costs of the opposite party. *Emperor v. Salek Chand* (1), distinguished.

Messrs. B. S. Darbari and Ram Mohan Lal, for the applicant.

Mr. Sankar Saran (Deputy Government Advocate), for the Crown.

ALLSOP, J.:—This is a reference by the learned Sessions Judge of Moradabad recommending that an order for costs passed under section 344 of the Code of Criminal Procedure should be set aside. The learned Judge relies upon the decision in *Emperor v. Salek Chand* (1). That case, however, can clearly be distinguished. It laid down merely that a conditional order for an adjournment under section 526 was not justifiable as a Magistrate was bound to adjourn under sub-section (8) of that section. In the case under reference the learned Magistrate took care not to pass a conditional order. It has always been held that section

*Criminal Reference No. 569 of 1937.

(1) I.L.R. [1937] All. 161.