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to complications as the rights of a third party may be affected thereby. I have no sufficient material on the record before me to assess the costs. Cases of this nature are not free from difficulty and if the complainant has in fact suffered any damage he may seek his remedy in civil court. In revision I do not consider it proper to pass any order with regard to confiscation or costs.

In the result the application is allowed in part. The conviction and sentence under section 486 of the Indian Penal Code are set aside. The fine, if paid, shall be refunded. The conviction and sentence under section 482 are maintained.

FULL BENCH

*Before Mr. Justice Iqbal Ahmad, Mr. Justice Allsop and
 Mr. Justice Bajpai*

HARENDRA SHANKAR AND ANOTHER (PLAINTIFFS) v. KHIALI
 RAM AND OTHERS (DEFENDANTS)*

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U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 33—Suit by debtor for account, not a declaratory suit—Court fee on plaints filed prior to amending Act IX of 1937—Ad valorem fee—Valuation of such suit, filed before rule 28(3) of chapter XX of Rules for Civil Courts—Valuation for court fee—Valuation for jurisdiction—Suits Valuation Act (VII of 1887), section 8—Court fee on memorandum of appeal—Court Fees Act (VII of 1870) as amended in U. P., section 7(iv)(b).

A suit under section 33 of the U. P. Agriculturists' Relief Act is, in form and in substance, a suit for accounts, and is not a suit to obtain a declaratory decree where no consequential relief is prayed.

The court fee payable on such suits, filed after the amending Act IX of 1937, is that prescribed by schedule VI to the U. P. Agriculturists' Relief Act. In suits filed before the amending Act the court fee payable is that prescribed by section 7(iv)(f) of the Court Fees Act for a suit for accounts, being *ad valorem* on the amount at which the relief sought is valued in the plaint.

The valuation of such suits, filed after the promulgation in January, 1936, of rule 28(3) of chapter XX of the Rules framed by the High Court for the civil courts, is governed by that rule.

*Stamp Reference in First Appeal No. 254 of 1936.

In suits filed before that rule, the value of the suit for purposes of court fee and the value for purposes of jurisdiction shall be the same, as provided by section 8 of the Suits Valuation Act.

Where, however, in a suit filed before that rule and before the amending Act the value of the suit for purposes of court fee was not stated in the plaint but the value for purposes of jurisdiction was stated to be Rs.12,000, and a court fee of Rs.10 was paid mistakenly as for a declaratory suit, and the plaintiffs' case in the plaint was that most of the original mortgage amount of Rs.12,000 had been satisfied out of the usufruct and very little was still due, it was *held* that it might be fairly assumed that the plaintiffs intended to value the suit for purposes of court fee at such an amount that an *ad valorem* court fee of Rs.10 would be sufficient for it, i.e. Rs.130. The valuation of the suit for purposes of court fee might therefore be assumed to be Rs.130, and the same must be deemed to be the value of the suit for purposes of jurisdiction, and the plaintiffs should be allowed to amend the plaint accordingly.

The court fee payable on a memorandum of appeal from a decree in a suit under section 33 of the U. P. Agriculturists' Relief Act is governed by section 7(iv)(f) of the Court Fees Act, 1870, [now section 7(iv) (b) of the Act as amended in the U. P.] and is an *ad valorem* fee on the valuation of the memorandum of appeal, based on the amount by which the appellant seeks the amount declared by the lower court to be modified. And this is irrespective of the fact whether the defendant, prior to the appeal being filed, had or had not, under section 33(2) of the U. P. Agriculturists' Relief Act, paid the necessary court fee and obtained a money decree in his favour for the amount declared by the court as payable to him.

Messrs. S. K. Dar and Shabd Saran, for the appellants.

Mr. Sri Narain Sahai, for the respondents.

Mr. A. M. Khwaja, for the Crown.

IQBAL AHMAD, J.:—The questions that arise for decision in the present case are as to what is the amount of court fee payable on (a) a plaint in a suit under section 33 of the U. P. Agriculturists' Relief Act (XXVII of 1934), and (b) a memorandum of appeal against a decree passed in such a suit.

There is a conflict of judicial opinion in this Court on both the points and it is with a view to set at rest

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that conflict that the present reference to a Full Bench has been made.

The answer to the first question depends upon the determination of the question as to whether a suit under section 33 is a suit for accounts or is a suit to obtain a declaratory decree where no consequential relief is prayed. In the Act as originally passed there was no provision as to the amount of court fee chargeable on a plaint in a suit under section 33, nor was there any provision as to the amount at which such a suit is to be valued, and the section ran as follows:

“(1) An agriculturist debtor may sue for an account of money lent or advanced to, or paid for, him by any person, or due by him to any person as the price of goods or on a written or unwritten engagement for the payment of money, and of money paid by him to such person.

“(2) In such a suit the court shall follow the provisions of chapter IV of this Act and the provisions of the Usurious Loans Act, 1918. It shall, after taking necessary accounts, declare the amount which is still payable by the plaintiff to the defendant, and shall on the application of the defendant, and if the money is payable, pass a decree in favour of the defendant.

“(3) Subject to section 30(2) or section 31(2), as the case may be, if the defendant is found to have been overpaid, the court shall pass a decree for refund of the amount of such overpayment in favour of the plaintiff.”

Certain amendments were, however, introduced in the section by Act IX of 1937 and by the amendment so made a schedule of court fees payable on plaints under section 33 was added to the Act. After the addition of the new schedule (schedule VI) the uncertainty as to the amount of court fee payable on such plaints has ceased to exist, as in suits filed after the Amending Act of 1937 the court fee fixed by schedule VI has to be paid.

The doubt as to the proper valuation of such suits was also removed by certain rules framed by this Court in exercise of the powers conferred on it by section 9 of the Suits Valuation Act. These rules were published in the Government Gazette, dated the 11th of January, 1936, and are to be found in chapter XX of the rules framed by this Court for the civil courts. One of these rules, viz., rule 28(3), provides that:

“Suits in which the plaintiff in the plaint asks for accounts only, not being suits to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant, or suits of either of the kinds described in order XX, rule 13 of the Code of Civil Procedure—

“Value—(a) For the purposes of the Court Fees Act, 1870—as determined by that Act:

(b) For the purposes of the Suits Valuation Act, 1887—such amount exceeding Rs.100 and not exceeding Rs.500 as the plaintiff may state in the plaint.”

It is, therefore, clear that the first question that we have to decide is now more or less a question of academic interest. In the present case, however, the plaint was filed before either the rules mentioned above came into force or the Amending Act was passed, and, as such, in the decision of the question both the rules and the Amending Act have to be ignored.

The first case, *Girwar Singh v. Piarey Lal* (1), on the point came to this Court on a reference by the Munsif of Koil, Aligarh, under section 113 read with order XLVI, rule 1 of the Code of Civil Procedure and was decided by a Bench consisting of COLLISTER and BAJPAI, JJ., on the 16th of January, 1936. It was held in that case that a suit under section 33 was a declaratory suit and the court fee payable on plaints in such suits was the fixed court fee of Rs.10 under article 17(iii) of schedule II of the Court Fees Act. The learned Judges in that case observed as follows: “It is quite true that

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(1) Miscellaneous Case No. 597 of 1935, decided on 16th January, 1936.

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the marginal note against section 33 of the U. P. Agriculturists' Relief Act is 'Suit by debtor for account of money lent', but it is equally true that all that a court can do on the suit is to take necessary accounts and declare the amount which is still payable by the plaintiff to the defendant. No consequential relief is prayed for and no consequential relief can, ordinarily, in the very nature of things be granted to the plaintiff. In an ordinary suit for accounts the plaintiff asks not only for rendition of accounts but for a decree in his favour and he has to give a tentative valuation to the suit. The court fee that then is payable on such a suit is upon the valuation given in the plaint and if, as a matter of fact, a decree for a larger amount is passed in favour of the plaintiff he has to pay an additional court fee; but, as stated before, in the present suit it is not permissible to a court under ordinary circumstances to give a decree in favour of the plaintiff."

In *Anis Begam v. Shyam Sundar* (1) a diametrically opposite view was, however, taken by SULAIMAN, C.J., and HARRIES, J., and it was held that "it is perfectly clear that suits under section 33(1) of the U. P. Agriculturists' Relief Act are not suits for declaration but are suits for an account of money." *Anis Begam's* case was noticed by COLLISTER and BAJPAL, JJ., in *Pahlad Singh v. Niadar Singh* (2) and was apparently approved and certainly not adversely commented upon.

A similar view was expressed by BENNET and VERMA, JJ., in *Balwant Singh v. Mukand Sarup* (3) and by the same learned Judges in *Muhammad Ubaidullah Khan v. Ramji Lal* (4).

It would thus appear that the weight of authority is in favour of the view that a suit under section 33 is a suit for accounts and is not a declaratory suit, and this view, if I may say so with respect, commends itself to me. The marginal note to section 33 characterizes the

(1) I.L.R. [1937] All. 965.

(2) I.L.R. [1938] All. 686.

(3) F. A. No. 383 of 1936, decided on 15th September, 1939.

(4) I.L.R. [1940] All. 93.

suit as a suit "for account" and the plaintiff in such a suit asks the court to take account between him and his creditor; vide sub-section (1). Further, in view of clause (2) of the section the court is enjoined in such a suit to take "necessary accounts". All this demonstrates that not only in form but also in substance the suit is for accounts and not for a declaratory decree. It is true that after taking the accounts the court, in view of the provisions of sub-section (2) of section 33, has to "declare the amount which is still payable by the plaintiff to the defendant", but this provision, in my judgment, does not justify the conclusion that the suit is a suit for a declaratory decree. In a suit for a mere declaration the plaintiff, generally speaking, asks for a decree declaring his status or title and in such a suit the plaintiff does not ask for, nor is it permissible to the court to pass, a declaratory decree in favour of the defendant. In such a suit, if the plaintiff succeeds in proving the case set up by him, the court grants him a declaratory decree, otherwise the suit is dismissed, and the court can, under no circumstances, grant a decree to the defendant. By section 33 the court is, however, authorised, under specified circumstances, to grant a decree in favour of the defendant. This, in my judgment, shows that the word "declare" in sub-section (2) has not been used in a technical sense and all that it means is that after taking the accounts the court is to "fix" the amount that may still be due to the defendant in the suit. As pointed out in *Muhammad Ubaidullah Khan v. Ramji Lal* (1), a suit under section 33 is not that class of suit for account in which the plaintiff ordinarily claims that a sum of money is due to him, but is a suit where the claim is that a sum of money is due from the plaintiff to the defendant. Nevertheless the suit is a suit for account and can be disposed of only after the accounts have been gone through.

It follows that article 17(iii) of the second schedule to the Court Fees Act, which deals with declaratory

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decrees, has no application to such a suit, and that for the purposes of court fee the suit is governed by section 7(iv)(f) of the Court Fees Act, according to which in suits for accounts court fee has to be paid on the amount at which the relief sought is valued in the plaint.

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Section 8 of the Suits Valuation Act (VII of 1887) provides that in certain suits in which court fees are payable *ad valorem* under the Court Fees Act, 1870, the value as determinable for the computation of court fees and the value for purposes of jurisdiction shall be the same. This section applies to suits for accounts, and it, therefore, follows that the value of a suit under section 33 for purposes of jurisdiction must be the same as is the value of such a suit for the computation of court fee. In the case before us, however, the value of the subject-matter of the suit for the purposes of court fee was not stated in the plaint and paragraph 10 of the plaint ran as follows: "For purposes of jurisdiction of this Court the suit has been laid at Rs.12,000, the amount mentioned in the mortgage deed, and declaratory court fee of Rs.10 has been paid."

In the view that I take, it was necessary for the plaintiffs to have valued the suit for the computation of court fee. They, however, omitted to do so. Nevertheless the fact remains that they paid court fee of Rs.10 under the mistaken belief that the suit was a suit for a declaratory decree. It is clear from the allegations in the plaint that the plaintiffs' case was that the major portion of the mortgage debt had been satisfied by the usufruct of the mortgaged property. The plaintiffs, therefore, could not have intended to allege that the sum of Rs.12,000, which was the original mortgage money, was still due to the defendants. On the other hand their case was that very little of the mortgage money was due to the defendants. It may, therefore, be fairly assumed that the plaintiffs intended to value the suit for the computation of court fee at such an amount for which a court fee of Rs.10 would have been sufficient. On the

date of the institution of the suit an *ad valorem* court fee of Rs.9-12-0 was payable on a claim the value of which for the purposes of court fee did not exceed Rs.130. The valuation of the suit giving rise to the present appeal for the purposes of court fee may, therefore, be assumed to be a sum of Rs.130 and the same must be deemed to be the value of the suit for purposes of jurisdiction. The plaintiffs appellants in the circumstances should be allowed to amend paragraph 10 of the plaint by valuing the suit both for the computation of court fee and for the purposes of jurisdiction at Rs.130, and the court fee of Rs.10 already paid on the plaint must, in my judgment, be deemed to be sufficient.

As the suit was valued for purposes of jurisdiction at Rs.12,000 it was filed in the court of the Civil Judge of Aligarh and the decree passed by the learned Judge was as follows: "It is ordered and decreed that it be declared that Rs.14,541-10-4 are due to the defendants, the mortgagees, up to 30th June, 1935, under the document in question." The plaintiffs filed an appeal in this Court and valued the appeal at a sum of Rs.12,000. They, however, paid a court fee of Rs.15, the court fee payable on a memorandum of appeal against a declaratory decree where no consequential relief is granted to the plaintiffs. It is admitted that till the date that the appeal was filed in this Court the defendants had not applied to the court below and had not obtained a money decree against the plaintiffs for the amount found due by the court below. One of the grounds taken in the appeal was that "the amount declared by the court below as due by the plaintiffs to the defendants mortgagees is excessive and wrong." It is clear from this ground that by the appeal the plaintiffs assailed the finding of the court below that a sum of Rs.14,000 and odd was due to the defendants and maintained that a sum much less than that amount was due to the defendants.

The question that arises is as to what was the court fee payable on the memorandum of appeal that was filed

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in this Court. In *Chob Singh v. Har Prasad* (1) BENNET, J., had to deal with a similar question and held that if before the filing of the appeal the defendant had not paid the court fee, the decree passed by the trial Judge in a suit under section 33 remains a mere declaratory decree and the memorandum of appeal is chargeable with a court fee of Rs.10 only. He, however, held that if before the filing of the appeal the defendant pays the court fee and the trial court passes a money decree in his favour, the decree becomes a simple money decree and *ad valorem* court fee is chargeable on the memorandum of appeal. The same question was considered by COLLISTER and BAJPAL, JJ., in *Pahlad Singh v. Niadar Singh* (2) and the learned Judges held that irrespective of the fact whether the defendant had or had not paid the court fee and had or had not obtained a money decree in his favour an *ad valorem* court fee is payable on a memorandum of appeal against a decree passed in a suit under section 33. I am in perfect agreement with this decision.

It is clear that the adjudication by the court in a suit under section 33 amounts to a decree as it constitutes the final expression of its opinion as to the amount that is still payable by the plaintiff to the defendant or *vice versa*. The appeal against such a decree if filed by the plaintiff is for the reduction of the amount, and if filed by the defendant is for enhancement of the amount, found due by the trial court. The appeal is in either case an appeal against a decree passed in a suit for accounts and is, therefore, governed by section 7 (iv)(f) of the Court Fees Act [7(iv)(b) of the amended Court Fees Act], and the court fee is chargeable on the value put on the memorandum of appeal. It is obvious that in the case before us correct valuation has not been put on the memorandum of appeal. The appellants should, therefore, be given an opportunity to state definitely as to by what amount they seek reduction in the amount found

(1) F. A. No. 234 of 1936, decided (2) I.L.R. [1938] All. 686.
on 20th April, 1936.

due by the court below and should be called upon to value the appeal accordingly.

ALLSOP, J.:—I agree.

BAJPAL, J.:—I agree.

Before Mr. Justice Iqbal Ahmad, Mr. Justice Allsop and
Mr. Justice Verma

GANGA SAGAR (PLAINTIFF) *v.* REOTI PRASAD AND OTHERS
(DEFENDANTS)*

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U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 2(2)(f)—“Agricultural land” does not include grove-land on which a grove stands—Grove-holder is not an “agriculturist” within section 2(2)(f)—Interpretation of statutes—Anomaly—Hindu law—Alienation for legal necessity—Rate of interest on mortgage of joint family property.

A holder of grove-land, on which a grove exists, is not an “agriculturist” within the definition in clause (f) of section 2(2) of the U. P. Agriculturists' Relief Act.

Grove-land, on which a grove exists, does not come within the term “agricultural land” in clause (f) of section 2(2). The mere possibility of the land being used for agricultural purposes or the mere fact that the land is capable of being used for such purposes does not make the land “agricultural land”. In other words the land must not merely be land “let or held for agricultural purposes”, but must actually be “agricultural”.

In some other clauses of section 2(2) the term used is “land”, which by definition in the Agra Tenancy Act includes grove-land; but in clause (f) the legislature has thought fit deliberately to use the term “agricultural and” in contradistinction to “land”, and due weight must be given to this distinction. When the words of a statute are clear, it is not within the province of a court, simply with a view to avoid apparent anomalies, to put such an interpretation on the words as they are incapable of bearing.

The rate of interest at which money is borrowed on a mortgage of joint family property for legal necessity should not be more than what is, in the circumstances, a reasonable rate. Ordinarily, interest at the rate of 12 per cent. per annum is, in the absence of any evidence to the contrary, a reasonable rate of interest. The mere fact that the rate of interest is higher

*First Appeal No. 331 of 1936, from a decree of A. P. Ghildial, Civil Judge of Aligarh, dated the 30th of March, 1936.