

Before Justice Sir Edward Bennet and Mr. Justice Verma

MUHAMMAD UBaidULLAH KHAN (DEFENDANT) v.  
RAMJI LAL (PLAINTIFF)\*

1939  
October, 18

*U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 33—Suit by debtor for account—Court fee on plaints prior to amending Act IX of 1937—Ad valorem fee—Whether retrospective effect of the amendment.*

A suit under section 33 of the U. P. Agriculturists' Relief Act is a suit for accounts, within the purview of section 7(iv)(f) of the Court Fees Act; and the court fee payable on such suits filed before the coming into force of the amendment made by Local Act IX of 1937 is an *ad valorem* fee on the amount at which the relief sought is valued in the plaint.

The amendment made by Local Act IX of 1937 by which the new sub-section (3) was added to section 33 of the U. P. Agriculturists' Relief Act has no retrospective effect.

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

Mr. S. B. L. Gaur, for the respondent.

BENNET and VERMA, JJ.:—This is a matter which has been brought to the notice of this Bench by the Stamp Reporter. The appeal is by the defendant and the plaintiff is respondent. The report states that the plaintiff respondent paid on his plaint in the court below a ten rupee declaratory court fee stamp whereas the court fee should have been *ad valorem* on Rs.17,000, amounting to a court fee of Rs.685. The plaint was one under the U. P. Agriculturists' Relief Act and stated that the plaintiff had borrowed Rs.27,000 from the defendant on 20th September, 1929, and had made certain repayments on different dates amounting to Rs.15,795, and the relief asked for was "(a) It may be declared as to what amount is due by the plaintiffs under the document dated 20th September, 1929, registered on 21st September, 1929, for Rs.27,000 executed by the plaintiffs in favour of the defendants."

Now this is clearly a suit for accounts. It is provided in the Court Fees Act (VII of 1870) section 7 (iv)(f) that

\*Stamp Reference in First Appeal No. 382 of 1936.

1939

MUHAMMAD  
UBAIDULLAH  
KHAN  
v.  
RAMJI LAL

the amount of fee payable under this Act in suits for accounts shall be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

There is no doubt that this is a suit for accounts. It is true that it is not that class of suit for accounts in which the plaintiff claims that a sum of money is due to him. It is a case where the claim is that a sum of money is due from the plaintiff to the defendant. But the Court Fees Act does not draw a distinction between these cases of suits for accounts. The criterion applied to all suits for accounts by the Court Fees Act is very simple, that is, the amount at which the relief sought is valued in the plaint or memorandum of appeal. Now in the plaint the valuation is given in paragraph 7: "For purposes of jurisdiction of the court the subject-matter of the suit has been valued at Rs.17,000." There is no statement that for the purpose of the Court Fees Act a lesser value is put forward. It is clear that the figure of Rs.17,000 is arrived at by taking the original amount of Rs.27,000 borrowed on 20th September, 1929, and deducting the payments made on different dates, and the balance of the principal with interest amounts to Rs.17,000 according to the plaintiff's calculations. This figure of Rs.17,000 therefore is the amount at which the relief sought is valued. This question of valuation for section 33 of the Agriculturists' Relief Act has been the subject of a decision of a Bench of this Court in regard to the Court Fees Act, *Pahlad Singh v. Niadar Singh* (1); and it was there laid down that the amount at which the relief was valued in the plaint or memorandum of appeal must be taken for the Court Fees Act and an *ad valorem* court fee must be paid on it and not a declaratory court fee. Learned counsel for the plaintiff respondent referred to the case of *Anis Begam v. Shyam Sundar* (2). That ruling does not deal with

(1) I.L.R. [1933] All. 686.

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

the question of court fees but with the question of jurisdiction and the Suits Valuation Act. A reference was made in that ruling to the General Rules (Civil) for courts subordinate to the High Court, chapter XX, amended rule 28. This rule is headed: "The Suits Valuation Act, 1887 (VII of 1887)" and the rule begins by stating that the rule is framed under section 9 of the Suits Valuation Act for the purpose of jurisdiction. In sub-rule (3) which was quoted in part in the ruling in question it is provided as follows:

1939  
 MUHAMMAD  
 UBAIDULLAH  
 KHAN  
 v.  
 MJI LAL.

"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 purpose 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 clear therefore that this rule 28 and the sub-rule (3) did not purport to affect the Court Fees Act of 1870, and the rule only purported to affect the valuation for the Suits Valuation Act for the purpose of jurisdiction. The ruling therefore cannot be applied as learned counsel desires to apply it to the present question. As to the valuation for the Court Fees Act no authority is shown by learned counsel for his proposition. It is true that there has been an amendment by Act IX of 1937 of the local legislature in regard to this question of court fees on suits under section 33 of the U. P. Agriculturists' Relief Act, but it is admitted by learned counsel that this amendment has been passed after the plaint in question, which was dated 29th February, 1936, and the amendment does not purport to be retrospective.

We therefore hold that the report is correct and that the court fee on the plaint should have been Rs.685

1939

MUHAMMAD  
UBAIDULLAH  
KHAN  
v.  
RAMJI LAL

and that there is a deficiency of Rs.675. We allow the plaintiff respondent three months to make good the deficiency. If the plaintiff respondent neglects to make good the deficiency then he will not be heard as a respondent in this Court.

*Before Sir John Thom, Chief Justice, and Mr. Justice  
Ganga Nath*

1939  
October, 27

PHEKU RAM (DEFENDANT) v. GANGA PRASAD (PLAINTIFF)\*

*Benefit derived from payment by another—Equitable right to repayment, conditions of—Obligation, express or implied, to repay—Privity of contract—Contract Act (IX of 1872), section 70.*

It is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises. To support a suit for repayment there must exist an obligation, express or implied, to repay.

G obtained a licence for a liquor shop in the name of another person H and deposited some money as security with the Government. Later on, G severed his connection with the shop but at the request of H allowed the money to remain in deposit as before. Subsequently H took P as a partner in the shop. Thereafter the licensing fee for a particular year fell into arrears and the Government forfeited a part of the security deposit. G sued both H and P for recovery of this sum: *Held*, that G had no cause of action against P, as there was no privity of contract between them and no equity in favour of G against P, the money having been left by G for the benefit of H and not for the benefit of P.

Mr. *Shiva Prasad Sinha*, for the appellant.

Mr. *B. Malik*, for the respondent.

THOM, C. J., and GANGA NATH, J.:—This is an appeal by defendant No. 2 against the decision of a learned single Judge of this Court. It arises out of a suit brought against him and Hathi Prasad, defendant respondent No. 2, by Ganga Prasad, plaintiff respondent, for declaration that the money in deposit with the Government belonged to him and for recovery of Rs.1,333, which the Government had realised out of it on account of certain dues payable by defendant

\*Appeal No. 21 of 1938, under section 10 of the Letters Patent.