

APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge, and Mr. Justice Muhammad Raza.

DURGA PERSHAD AND OTHERS (DEFENDANTS-APPELLANTS)
v. SURAT SINGH AND OTHERS (PLAINTIFFS-RESPONDENTS.)*

1929
July, 30.

Court Fees Act (VII of 1870), section 12—Additional court fee, what court can enforce payment of—Courts which can enforce payment of additional court fee—Appellate court cannot enforce payment of deficiency in court fee after an appeal has been decided.

The power to compel the payment of additional court fee is given to a court by section 12 of the Court Fees Act. That power must be exercised by the court in which the plaint or memorandum of appeal has been filed or by a court sitting at a court of appeal, reference or revision.

Where, therefore, the question about payment of additional court fee was raised after the appeal had been decided, held, that the appellate court had become *functus officio* and could not enforce payment of additional court fee. *Hem Nath and others v. Wilayat Ahmad and others* (1), referred to.

Mr. L. S. Misra, for the appellants.

Mr. S. C. Das, for the respondents.

The Assistant Government Pleader (Mr. H. K. Ghose), for the Crown.

STUART, C. J., and RAZA, J:—The view of the Chief Inspector of Stamps is borne out by the decision in *Hem Nath and others v. Wilayat Ahmad and others* (1). But this Court has now no power to require a party to pay an additional fee. The power to compel the payment of the additional fee is given to a court by section 12 of the Court Fees Act of 1870. Primarily the power

*First Civil Appeal No. 79 of 1928, against the decree of Babu Gulab Singh Joshi, Subordinate Judge of Kheri, dated the 30th of April, 1928, decreeing the plaintiffs' suit.

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should be exercised by the court in which the plaint or memorandum of appeal which is deficiently stamped has been filed out by the second portion of the section the same power can be exercised by a court of appeal, reference or revision if in its opinion the question has been wrongly determined to the detriment of the revenue. The court must either be the court in which the plaint or memorandum of appeal has been filed or a court sitting as a court of appeal, reference or revision. Undoubtedly the question could have been raised when the appeal was heard. But the appeal was decided on the 21st of January, 1929, before the question was ever raised. We are not a court of appeal, reference or revision in respect of this question, and the court which decided the matter is now *functus officio*. In these circumstances we can take no action in the matter.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan.

1929
July, 31.

H. HUNTER AND OTHERS (DEFENDANTS-APPELLANTS) v. RAM RATAN AND OTHERS (PLAINTIFFS-RESPONDENTS)*
Wajib-ul-arz, interpretation of—Entry of certain rights enjoyed by old zamindars in the wajib-ul-arz, effect of—Rights in abadi enjoyed by old zamindars after they had lost the village, if enforceable.

Where a certain village was in the hands of a particular family for a period of over 400 years which afterwards lost that village but when the record of rights, i.e., the *wajib-ul-arz* came to be prepared several rights besides the rights which were decreed in favour of that family by the settlement court came to be recorded in their favour and the record was accepted as correct and valid by the Taluqdar those rights are not to be deemed to have been created for the first time by the entries in the *wajib-ul-arz*, but the entries in respect of them must be taken to be a record of pre-existing rights.

*Second Civil Appeal No. 18 of 1929, against the decree of Syed Ali Hamid, Subordinate Judge of Bara Banki, dated the 4th of October, 1928, affirming the decree of Babu Sheo Charan, Munsif, Ram Sanehighat at Bara Banki, dated the 21st of May, 1928, decreeing the plaintiff's suit.