

APPELLATE CIVIL.

Before Mr. Justice Muhammad Raza and Mr. Justice
Bisheshwar Nath Srivastava.

1930
March, 24.

THAKUR NIRMAN SINGH AND OTHERS (PLAINTIFFS-
APPELLANTS v. SHAM NARAYAN AND OTHERS (DEFEND-
ANTS-RESPONDENTS).*

*Court Fees Act (VII of 1879), section 7 (ix)—Mortgage—
Suit for redemption or foreclosure—Appeal in redemption
or foreclosure suits, court fee payable upon—Interest after
decree in redemption or foreclosure suits, whether to be
included in the amount liable to court fee in appeal.*

The criterion laid down in section 7(ix) of the Court Fees Act, 1879, for determining the court fee payable in respect of a suit for redemption or foreclosure of a mortgage does not apply to the appeal in such a suit. In the case of appeals or cross-objections in suits for redemption or foreclosure in all cases in which the amount declared by the court to be due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal or cross-objections should be valued, and future interest should not be taken into account. *Raghubir Prasad v. Shankar Bakhsh* (1), *Vithal Hari Athavle v. Govind Vasudeo Thosar* (2), and *T. K. Rowlin v. Lachmi Narain Jhan* (3), referred to. *Gobardhan Dass v. Narendra Bahadur Singh and others* (4), dissented from.

Messrs. Zahur Ahmad and Muhammad Hafiz, for the appellants.

RAZA and SRIVASTAVA, J.J. :—We have read the office report and heard the appellants' learned Counsel. The appellants' learned Counsel questions the correctness of the office report. He contends that the appellants should not be required to pay court fee on future interest and refers to the following rulings in support of his contention :—*Raghubir Prasad v. Shankar Bakhsh* (1); *Vithal Hari Athavle v. Vasudeo Thosar* (2) and *T. K. Rowlin v. Lachmi Narain Jhan* (3). The Allahabad

*First Civil Appeal No. 112 of 1929, against the decree of Bhudhar Chandra Ghosh, Subordinate Judge of Bahraich, dated the 29th of June, 1927.

(1) (1913) I.L.R., 36 All., 40.

(2) (1892) I.L.R., 17 Bom., 41.

(3) (1916) 3 P.L.J., 443.

(4) (1918) 22 O.C., 1.

case is a Full Bench case. It was held in that case that the criterion laid down in section 7 (ix) of the Court Fees Act, 1879, for determining the court fee payable in respect of a suit for redemption or foreclosure of a mortgage does not apply to the appeal in such a suit. In the case of appeals or cross-objections in suits for redemption or foreclosure in all cases in which the amount declared by the court to be due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal or cross-objections should be valued, and future interest should not be taken into account. In this Allahabad case the decree appealed against was a decree for sale passed under order XXXIV, rule 4 of the Code of Civil Procedure. It was held in the Bombay case that no additional stamp is required on account of the claim for interest from the date of the institution of the suit until payment. It stands on the same footing as future mesne profits which do not fall under section 7 of the Court Fees Act (VII of 1879). The Allahabad case was followed in the Patna case mentioned above.

Our attention has also been drawn to a ruling of the late court of the Judicial Commissioner of Oudh in the case of *Gobardhan Das v. Narendra Bahadur Singh and others* (1). That ruling is against the contention of the appellant's learned counsel. After hearing the appellant's learned counsel at some length we are inclined to take the view which was taken by their Lordships of the Allahabad High Court in *Raghubir Prasad v. Shanker Bakhsh* (2). We hold therefore that the appellant should not be required to pay any court fee on future interest. The court fee paid by the appellant is therefore held to be sufficient in all these cases.

1930

 TEAKUR
 NERMAN
 SHAM
 S.
 NARAYAN.
 SINGH

*Raza and Si-
 vastava, JJ.*

(1) (1918) 22 O.C., 1.

(2) (1913) I.L.R., 36 All., 40.