

1931

BISHNATH  
SINGH,  
BABUv.  
KHURSHED  
AHMAD.

Raza, J.

decide intricate questions of title and easement and ought to have left the matter to be decided by the civil court.

I am therefore of opinion that the proceedings in this case should be stayed until the matter of existence of the right in question has been decided by a competent civil court. The order of the learned Magistrate is set aside and he is directed to proceed according to law. The proceedings in this case should be stayed until the matter of the existence of the right in question has been decided by a competent civil court.

*Case remanded.*

### APPELLATE CIVIL.

*Before Sir Syed Wazir Hasan, Knight, Chief Judge and  
Mr. Justice Bisheshwar Nath Srivastava.*

1932  
January, 15.

MOHAMMAD SADIQ ALI KHAN, NAWAB MIRZA,  
(DEFENDANT-APPELLANT) v. SAIYID ALI ABBAS  
(PLAINTIFF) AND OTHERS (DEFENDANTS-RESPONDENTS).\*

*Court Fees Act (VII of 1870), sections 13, 14 and 15—Appeal unnecessary—No proceedings held except admission of appeal—Court, whether can order refund of court-fee—Refund of court-fee, whether can be allowed in a case not falling within section 13, 14 or 15 of the Court Fees Act.*

*Held*, that the court has jurisdiction to order a refund of court-fee even in cases which do not fall within section 13, 14 or 15 of the Court Fees Act.

In a case where the court is satisfied that the appeal was wholly unnecessary and no proceedings except the admission of the appeal have taken place in respect thereof the court can order that a certificate for the refund of the court-fee be issued in favour of the appellant. *In the matter of Mr. G. H. Grant* (1), *Bhuneshwari Prasad Singh v. Kishen Dayal* (2), *C. T. A. M. Chettyar Firm v. Ko Hin Gyi* (3), *Prabha Kar Bhat v. Vishwam Bhar* (4), *Vishweshwar Sarma v. T. M. Nair* (5), and *Raja Seth Swami Dayal v. Raja Muhammad Sher Khan* (6), referred to.

\*First Civil Appeal No. 107 of 1931, against the decree of Babu Gulab Chand Srimal, Subordinate Judge of Lucknow, dated the 31st of July, 1931.

(1) (1870) 14 W.R., 47.

(2) (1912) I.L.R., 40 Calc., 365.

(3) (1929) I.L.R., 7 Rang., 88.

(4) (1884) I.L.R., 8 Bom., 219.

(5) (1911) I.L.R., 35 Mad., 567.

(6) (1923) 11 O.L.J., 148.

Mr. *Akhtar Husain* for the appellant.

HASAN, C.J. and SRIVASTAVA, J.—As regards the prayer for the refund of court-fee in this appeal we had called for a report from the office. The report says that a refund can be ordered only under sections 13, 14 and 15 of the Court Fees Act and that this case does not fall under any of those sections. The question therefore in the case is as to whether the court has jurisdiction to order a refund of court-fee in cases which do not fall within any of the sections mentioned above. In a series of cases several High Courts in India including the Court of the Judicial Commissioner of Oudh have answered the question in the affirmative—See *In the matter of Mr. G. H. Grant* (1), *Bhuneshwari Prasad Singh v. Kishen Dayal* (2), *C. T. A. M. Chettyar Firm v. Ko Hin Gyi* (3), *Prabha Karbhat v. Vishwam Bhar* (4), *Vishweshwar Sarma v. T. M. Nair* (5) and *Raja Seth Swami Dayal v. Raja Muhammad Sher Khan* (6).

In the present case on the allegation now made on behalf of the appellant and in the event which has happened that is the withdrawal of the appeal, we are satisfied that the appeal was wholly unnecessary and as no proceedings except the admission of the appeal have taken place in respect thereof we direct that a certificate for the refund of the court-fee be issued in favour of the appellant.

(1) (1870) 14 W.R., 47.

(3) (1929) I.L.R., 7 Rang., 38.

(5) (1911) I.L.R., 35 Mad., 567.

(2) (1912) I.L.R., 40 Calc., 365.

(4) (1884) I.L.R., 8 Bom., 313

(6) (1923) II O.L.J., 148 (153).

1952

MOHAMMAD  
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