

1933

AZIZUL
HASAN
v.
MOHAMMAD
FARUQ

Srivastava,
J.

of the Allahabad High Court in *Mairaj Fatima v. Abul Wahid* (1). In the last mentioned case it was held that the presumption of Mahomedan law that as regards property coming to a missing person by inheritance he must be deemed to have died at the date of his disappearance, is a rule of evidence only and as such must be taken to have been superseded by the provisions of the Indian Evidence Act. If I may say so with respect, I am in full agreement with the views expressed in the case.

The result, therefore, is that the appeal as well as the cross-objections both fail and are dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice J. J. W. Allsop*

1933
October, 3

HARNAM SINGH, RAJA (DEFENDANT-APPELLANT) v. RANI
BAHU RANI (PLAINTIFF-RESPONDENT)*

Court Fees Act (VII of 1870), Schedule I, Article 1 and Schedule II, Article 17—Cross-objections—Court-fee payable on cross-objections, whether to be ad valorem.

Held, that the court-fee on cross-objections should be paid *ad valorem* according to the value of the subject-matter in dispute under Article 1, Schedule I of the Court Fees Act and not as laid down for the case of appeals in Article 17 of Schedule II of the Court Fees Act. Article 17 refers in terms to plaints and memorandums of appeal and makes no mention of cross-objections. The word "cross-objections" was added to Article 1, Schedule I when the Court Fees Act was amended in 1908 but no such word was added to Article 17, Schedule II. *Lakhan Singh v. Ram Kishan Das* (2), relied on.

Mr. M. Wasim, for the appellant.

Mr. Naim Ullah, for the respondent.

SRIVASTAVA and ALLSOP, JJ.—This is an office report about the deficiency in court-fee paid on cross-objections. The plaintiff cross-objector contends that court-fee

*First Civil Appeal No. 6 of 1933.

(1) (1921) I.L.R., 43 All., 673. (2) (1918) I.L.R., 40 All., 93.

should be made payable on the same principle as laid down for the case of appeals in Article 17 of Schedule II of the Court Fees Act. The office has reported that the court-fee should be paid *ad valorem* according to the value of the subject-matter in dispute under Article 1, Schedule I of the Act. Article 17, Schedule II refers in terms to plaints and memoranda of appeal. It makes no mention of cross-objections. The word "cross-objection" was added to Article 1, Schedule I, when the Court Fees Act was amended in 1908 but no such word was added to Article 17, Schedule II. It appears that this omission was due to an oversight but it is not our function to legislate; we must take the law as it stands. The court-fee must therefore be paid *ad valorem* under Article 1, Schedule I of the Act. The same view was taken by a learned Judge of the Allahabad High Court in *Lakhan Singh v. Ram Kishen Das* (1) and by a Bench of this Court in First Civil Appeal No. 137 of 1929 and again in First Civil Appeal No. 4 of 1931. We accordingly accept this report as correct and direct the plaintiff to make good the deficiency of Rs.307-8 within one month.

The counsel for the cross-objector may be informed of this order.

Office Report accepted.

PRIVY COUNCIL

RAJA BIRENDRA BIKRAM SINGH *v.* BRIJ MOHAN
PANDE AND CONNECTED APPEAL*

P. C.
1934
April, 30

[ON APPEAL FROM THE CHIEF COURT OF OUDH]

Pre-emption—Sale of Taluqdari Mahal—Under-proprietor—Claim to pre-empt village—"Village community"—Oudh Laws Act (XVIII of 1876), sections 7 and 9—13.

On the sale of a taluqdari mahal consisting of several villages, an under-proprietor of one of the villages is not entitled under

*Present: LORD THANKERTON, SIR JOHN WALLIS, and SIR LANCELOT SANDFR-SON.

(1) (1918) I.L.R.. 40 All., 98.