

## APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava,  
and Mr. Justice Ziaul Hasan*

1935  
November, 5

SITA RAM (PLAINTIFF-APPELLANT) *v.* SUKHRAJ SINGH  
AND OTHERS (DEFENDANTS-RESPONDENTS)\*

*Court Fees Act (VII of 1870), Schedule II, Article 1, clause (d)*  
—*Memorandum of objection filed under Order XLI, rule 26,*  
*C. P. C.—Court fee, if payable.*

No court fee is payable in respect of objection filed under Order XLI, rule 26 of the Code of Civil Procedure, it being not an application or petition within the letter of Article 1, clause (d) of Schedule II of the Court Fees Act. *Damodar Prasad v. Masudan Singh* (1), and *Muhammad Salim-ullah Khan v. Khalil-ur-Rahman* (2), relied on.

Mr. *Bhagwat Prasad Srivastava*, for the appellant.

SRIVASTAVA and ZIAUL HASAN, JJ.:—This is a reference by the taxing officer as regards the question whether a memorandum of objections to a remand finding filed under order XLI, rule 26, Civil Procedure Code is liable for the payment of court-fee or not. It is pointed out that the longstanding practice of this Court as well as of the late Court of the Judicial Commissioner has been to treat such memoranda as applications or petitions chargeable with a fixed court-fee of Rs.2 under article 1, clause (d) of Schedule II of the Court Fees Act. It is a well recognized rule that a fiscal statute must be strictly construed, and as far as possible in favour of the subject. The object of the memorandum of objection is to give notice to the opposite party of the grounds on which the finding is proposed to be contested. It does not seek any relief from the Court and does not contain any request for any order being passed on it. In the circumstances, it can hardly be regarded as an application or petition within the meaning of the aforesaid article.

\*Second Civil Appeal No. 300 of 1933, against the decree of Pandit Kishan Lal Kaul, Subordinate Judge of Sultanpur, dated the 25th of July, 1933, modifying the decree of Babu Shubhrendu Bhushan Banerji, Munsif, Musafirkhana, Sultanpur, dated the 5th of January, 1933.

(1) (1928) A.I.R., Pat., 35.

(2) (1932) I.L.R., 54 All., 465.

As the case of such an objection does not strictly fall within the letter of the abovementioned article, we are of opinion that no court-fee can properly be levied under it. The Patna High Court in *Damodar Prasad v. Masudan Singh* (1) and the Allahabad High Court in *Muhammad Salim-Ullah Khan v. Khalil-ur-Rahman* (2) have adopted the same view. We are in entire agreement with the reasoning contained in these cases. We accordingly hold that no court-fee is payable in respect of a memorandum of objection filed under order XLI, rule 26 of the Code of Civil Procedure.

1935

SITA RAM  
v.  
SUKHRAJ  
SINGH

*Srivastava  
and Ziaul  
Hasan, J.J.*

## APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty

SALIK RAM (DEFENDANT-APPELLANT) v. BHUDAR SINGH  
(PLAINTIFF-RESPONDENT)\*

1935  
November, 27

*Oudh Rent Act (XXII of 1886), section 108(15)—Suit for profits—Plaintiff recorded as co-sharer—Right as co-sharer contested—Revenue Court, whether competent to go behind record and try question of proprietary title.*

Where in a suit for profits the plaintiff is recorded as having proprietary title entitling him to institute a suit the Revenue Court is not competent to go behind the record and receive evidence and itself try the question of proprietary title. *Gajadhar Singh v. Har Prasad* (3), and *Durga Prasad v. Hazari Singh* (4), relied on.

Mr. P. N. Chowdhri, for the appellant.

Mr. N. Banerji, for the respondent.

NANAVUTTY, J.:—This is a defendant's appeal against an appellate judgment and decree of the learned District Judge of Sitapur upholding the judgment and decree of the Honorary Assistant Collector of Sitapur.

\*Second Rent Appeal No. 26 of 1934, against the decree of Chaudhri Akbar Husain, I.C.S., District Judge of Sitapur, dated the 21st of March, 1934, upholding the decree of K. B. Aga Syed Fateh Shah, Honorary Assistant Collector, 1st Class, Sitapur, dated the 9th of September, 1931.

(1) (1928) A.I.R., Pat., 85.

(2) (1932) I.L.R., 54 All., 465.

(3) (1926) A.I.R., Oudh, 462.

(4) (1911) I.L.R., 33 All., 799.