

1936

BABU RAJA
MOHAN
MANUCHA
v.
BABU NISAR
AHMAD
KHAN

As regards the payment of the sum of Rs.5,500 towards the principal sum due under the deed (exhibit 5), we order that it shall be taken as having been paid on the 31st of December, 1924, as directed by the lower court.

*Nanavutti
and Smith,
Jl.*

Interest '*pendente lite*' and future interest will be calculated at 3 per cent. per annum on any sums that may be found due to the plaintiffs after calculations have been made in accordance with the directions contained above.

The plaintiffs' suit for sale of the property hypothesized under the deeds (exhibits 3 and 5) is hereby dismissed.

Finally, there remains for us to consider the question of costs. The plaintiffs' suit for sale has been dismissed by us, and the legal pleas raised by the defendant and embodied in issues 4 and 6 have been upheld by us, and the plaintiffs have been given only an equitable relief in respect of the amounts actually advanced to the defendant's father. In these circumstances, after giving the matter our most careful consideration, we think that the equities of the case will be met if we direct that each party should bear its own costs in both courts, and we order accordingly.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief
Judge and Mr. Justice H. G. Smith*

1936
September 3

KEOLAPATI, MUSAMMAT, AND ANOTHER (DEFENDANTS-APPELLANTS) v. B. N. VARMA, DR. (PLAINTIFF-RESPONDENT)*

Court fee—Promissory note—Suit for recovery of principal and interest on a promissory note—Appeal—Court fee payable on appeal.

In an appeal in a suit for recovery of principal and interest due on a promissory note, where the appellant does not chal-

*Second Civil Appeal No. 142 of 1936, against the decree of Babu Bhagwati Prasad, Subordinate Judge of Lucknow, dated the 17th of March, 1936, setting aside the decree of Mr. Mohammad Ahmad, Munsif, Lucknow district, dated the 13th of September, 1935.

lenge the order of the court below awarding future interest, the court fee is payable on the amount of principal and interest due up to the date of suit and not also on the interest which has accrued due from the date of suit till the date of the filing of the appeal. *Nirman Singh v. Shyam Narain* (1) followed. *Gobardhan Das v. Narendra Bahadur Singh* (2), referred to. *Mirza Mohammad Sadiq Ali Khan v. Niaz Ahmad* (3), distinguished.

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 KEOLAPATI,
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 VARMA, DR.

Messrs. *Ali Muhammad* and *Ghulam Husain Naqui*, for the appellants.

SRIVASTAVA, C.J. and SMITH, J.:—This is an office report about an alleged deficiency in court-fee paid on the memorandum of appeal filed in this Court. The appeal arises out of a suit for recovery of the principal and interest due on a promissory note. The plaintiff claimed Rs.1,360 for principal and interest due up to the date of suit. The suit has been decreed by the lower appellate court and the defendants have come to this Court in second appeal. They have paid a court fee on the amount of Rs.1,360 as was paid on the plaint in the trial court. It is reported by the office that the interest which has accrued due from the date of suit till the date of the filing of the appeal in this Court amounts approximately to Rs.85, and that adding this amount to Rs.1,360 there is a deficiency of Rs.5 in the court fee which should be made good. Reliance has been placed on the decision of a Bench of this Court consisting of Sir CARLETON KING and Mr. Justice ZIAUL HASAN in *N. Mirza Muhammad Sadiq Ali Khan v. M. Niaz Ahmad and others* (3). It was held in this case that in appeals relating to future interest, the proper court fee is “*ad valorem*” on the amount of interest claimed or decreed up till the date of the presentation of the appeal. The case appears to us to be distinguishable inasmuch as the appellant in that case had expressly challenged the order of the court below awarding future interest. In the present case there is no ground

(1) (1930) I.L.R., 6 Luck., 34. (2) (1919) 22 O.C., 1.

(3) (1935) I.L.R., 11 Luck., 396.

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of appeal challenging any order about future interest. We might also note that the attention of the learned Judges who decided the above-mentioned case does not appear to have been drawn to an earlier decision of a Bench of this Court, of which one of us was a member, reported in *Nirman Singh, Thakur v. Shyam Narain and Abhilakh Singh and others* (1), in which it was held that in an appeal in a suit for sale of mortgaged property the appellant should not be required to pay court fee on future interest. This decision was followed by another Bench of this Court in First Civil Appeal No. 52 of 1933. The Bench which decided the case in *Nirman Singh, Thakur v. Shyam Narain and others* (1), dissented from the decision of the late Court of the Judicial Commissioner of Oudh in *Gobardhan Das v. Narendra Bahadur Singh and others* (2), but it has been followed in the later decision in *N. Mirza Muhammad Sadiq Ali Khan v. M. Niaz Ahmad and others* (3). Both these reported cases of this Court were cases of appeals arising out of suits for sale of mortgaged property. Thus the two decisions seem to be in conflict, though it might be possible to distinguish the latter decision on the ground that the order for future interest was expressly challenged in the appeal in that case. At any rate, we are satisfied that the present case is distinguishable from the case reported in *N. Mirza Muhammad Sadiq Ali Khan v. M. Niaz Ahmad and others* (3), on the ground that the present appeal does not challenge the order for future interest. We are accordingly of opinion that the present case should be governed by the decision in *Nirman Singh v. Shyam Narain and others* (1), and therefore hold that the court fee paid on the memorandum of appeal is correct.

(1) (1930) I.L.R., 6 Luck., 34.

(2) (1919) 22 O.C., 1.

(3) (1935) I.L.R., 11 Luck., 396.