

1938

SUKKHU  
v.  
NAND  
BAHADUR  
SINGH

circumstances we do not accept the office report but are of opinion that the proper court-fee payable is under Article 11 of Schedule II of the Court Fees Act, namely, Rs.2. That amount having been paid, there is no deficiency to be made good.

*Office report rejected.*

### APPELLATE CIVIL

1938

November,  
16

*Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke*

PARMESHUR DIN AND OTHERS (APPELLANTS) v. HAR  
GOBIND PRASAD AND OTHERS (RESPONDENTS)\*

*Court Fees Act (VII of 1870), Schedule II, Article 17—Partition of joint family property—Suit dismissed on ground that property was self-acquired—Appeal—Court-fee payable on appeal.*

In an appeal against a decree dismissing a suit for partition of joint family property on the ground that the property was self-acquired property of the defendant the court-fee payable is Rs.15 and not *ad valorem* on the value of the share sought to be partitioned. *Kirti Churn Mitter v. Aunath Nath Deb* (1), *Asa Ram v. Jagannath* (2), and *Jai Pratap Narain Singh v. Rabi Pratap Narain Singh* (3), referred to.

Messrs. *Bhagwati Nath Srivastava* and *P. L. Varma*, for the appellants.

ZIAUL HASAN and YORKE, JJ.:—This is an office report to the effect that the court-fee paid by the plaintiffs-appellants in this Court is deficient by a sum of Rs.1,905. The suit was for partition of what was alleged to be joint family property. The trial court accepting the plea of the defence held that the property was not joint family property but was the self-acquired property of the defendants. On this ground the suit of the plaintiffs was dismissed. They are now appealing against this decree and the office reports that they should pay *ad valorem* court-fee on the value of the share sought to be partitioned.

\*First Civil Appeal No. 67 of 1938, against the order of Yaqub Ali Rizavi, Esq., Additional Civil Judge of Bara Banki, dated the 17th February, 1938, on office report, dated the 13th August 1938, regarding court-fee.

(1) (1882) I.L.R., 8 Cal., 757.

(2) (1934) A.I.R., Lah., 563.

(3) (1930) A.I.R., AH., 443.

We have heard the learned counsel for the appellants and are of opinion that the court-fee of Rs.15 paid by the appellants in this Court is sufficient. We have seen the cases referred to by the office but none of them appears to us to be in point. In fact *Kirti Churn Mitter v. Aunath Nath Deb* (1), goes against the office report. In *Asa Ram v. Jagannath* (2), which was decided by a Full Bench it was held that in a suit for partition of joint property where the plaintiff alleges that he is in actual or construction possession thereof, the court-fee payable would be under Article 17(vi), Schedule II of the Court-Fees Act. In this case no doubt the question arose as to the amount of court-fee payable on the plant but the case remains the same in appeal so far as its nature is concerned. In *Jai Pratap Narain Singh v. Rabi Pratap Narain Singh* (3), in which also the trial court had held that the plaintiff was not in possession and the suit was dismissed for want of payment of the proper court-fee, a learned Judge of the Allahabad High Court held that the plaintiff was not liable to make good the alleged deficiency in the court-fee until the question of joint possession was not finally settled in appeal.

We, therefore, reject the office report and hold that the court-fee paid by the appellants in this case is sufficient.

*Office report rejected*

(1) (1882) I.L.R., 8 Cal., 757.

(2) (1934) A.I.R., Lah., 563.

(3) (1930) A.I.R., All., 443.

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Ziaul  
Hasan and  
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