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that he sometimes used to pay the price of cane sold to the H. R. Sugar Factory, Ltd., Bareilly. On the other hand the accused led evidence to prove that he was only a weighman in the factory and had no responsibility about the payment of the price of cane. The trial having been summary, the evidence is not on the record but this is what appears from the judgment of the learned Magistrate. I may also observe that the learned Magistrate was wrong in relying upon the result of the Naib-Tahsildar's inquiry as the report of the Naib-Tahsildar was based on hearsay and was therefore inadmissible.

Ziaul Hasan, J.

I accept this reference and set aside Babu Ram's conviction and sentence under rules 9 and 13 of the Sugarcane Rules. The fine if paid shall be refunded.

Reference accepted.

APPELLATE CIVIL.

1938
November, 16

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

SUKKHU (APPELLANT) *v.* NAND BAHADUR SINGH AND ANOTHER (RESPONDENTS)*

United Provinces Encumbered Estates Act (XXV of 1934), sections 9(2), (3) and 13—Written statement filed beyond time prescribed under section 9—Order declaring debt to be discharged—Appeal—Court-fee payable on appeal.

Where an application is made beyond the time prescribed under clauses (2) and (3) of section 9 of the United Provinces Encumbered Estates Act and the Special Judge declines to admit it and notes in his order that by reason of the provisions of section 13 of the Encumbered Estates Act, the claim not having been made within the time required by the Act, the debt is to be deemed for all purposes and all occasions to be duly discharged, the nature of the decision is that it is an order only and not a decree, and the court-fee payable on an appeal against the order is under article 11 of Schedule II of the Court Fees Act, namely Rs.2.

*First Civil Appeal No. 9 of 1938, against the order of P. Krishna Nand Pande Saheb, Special Judge, 1st Grade, of Partabgarh, dated the 23rd November, 1937, on office report, dated the 22nd August, 1938, regarding court-fee.

Messrs. *Radha Krishna Srivastava* and *S. N. Srivastava*, for the appellants.

ZIAUL HASAN and YORKE, JJ.:—This is a reference in regard to the court-fee payable on an appeal against an order of the Special Judge, first grade, described by the office as dismissing the claim of the appellant under the provisions of section 13 of the Encumbered Estates Act. What actually happened was that the application was made beyond the period of three months prescribed in the notice issued under section 9(2) of the Encumbered Estates Act and the further period of two months allowed by clause 3 of the same section. The learned Special Judge heard some arguments in regard to the interpretation of these two clauses but held that the application was made beyond time and he therefore declined to admit it. He also noted in his order that by reason of the provisions of section 13 of the Encumbered Estates Act, the claim not having been made within the time required by the Act the debt was to be deemed for all purposes and all occasions to be duly discharged. The office report is to the effect that this dismissal of the claim amounts to a decree and therefore *ad valorem* court-fee of Rs.205 is payable on Rs.3,600 the amount at which the appeal has been valued.

Learned counsel has gone so far as to argue that even if this had been an adjudication under section 14 of the Encumbered Estates Act, *ad valorem* court-fee would not have been payable in a case in which the court declined to pass a simple money decree under clause 7 of that section. That is a question into which we need not go on the present reference. Cases in which a money decree is granted or refused under the provisions of section 14 are cases in which there has been an adjudication. In the present case we are of opinion that there has not been any adjudication at all and that the nature of the decision of the learned Special Judge is that it is an order only and not an order having the force of a decree. In these

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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., All., 443.