

conditions for review laid down in order XLVII, rule 1 of the Code of Civil Procedure. His grounds for review were really grounds of appeal. That being so I am of opinion that there was no sufficient cause for filing the application for review and therefore there was thus no sufficient cause for the delay in filing the appeal. Therefore the application under section 5 of the Indian Limitation Act for "excusing the delay must be dismissed, and in consequence the appeal must fail, as it has been filed long after the period of limitation expired.

On merits too, I am of opinion that the appellant has no case. Costs are always in discretion of the court (*vide* section 35 of the Civil Procedure Code). In this case I think the appellate court exercised a sound discretion in the matter of the award of costs. That being so there can be no appeal against the decree of the lower appellate court as to costs only.

I, therefore, dismiss the appeal as well as the Miscellaneous Application with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

ORI LAL (DEFENDANT-APPELLANT) *v.* MST. RAHIM ZADI
(PLAINTIFF-RESPONDENT)*

1940
March, 11

*Court Fees Act (VII of 1870) (as amended), section 7(i) (c)—
Suit for cancellation of sale-deed on ground of fraud and
undue influence—Plaintiff in possession of property sold—
Court-free whether payable ad valorem on market value of
property sold.*

Where a plaintiff files a suit for cancellation of a sale-deed on the ground that it had been obtained by fraud and undue influence and the plaintiff is in possession of the property sold, he cannot be required to pay *ad valorem* court-fee on the

*Second Civil Appeal No. 26 of 1938, against the order of M. Ziauddin Ahmad, District Judge of Gonda, dated the 29th of October, 1937.

1940
MAHMUD
ALI KHAN
v.
WAJID
ALI KHAN

*Radha
Krishna, J.*

1940

ORI LAL
v.
MUSAMMAT
RAHIM
ZADI

market value of the property. *Baij Nath Singh v. Sri Nath Kuar* (1), and *Samiya Mavali v. Minammal* (2), referred to.

Mr. S. N. *Srivastava*, for the appellant.

Mr. *Mohammad Ayub*, for the respondent.

ZIAUL HASAN, J.:—This is a defendant's second appeal against a judgment and decree of the learned District Judge of Gonda, decreeing the appeal of the plaintiff-respondent against the rejection of her plaint by the Munsif of Gonda.

The plaintiff-respondent owned two houses one of which was bigger than the other. She sold one of these houses to the appellant by a sale-deed dated the 13th June, 1936. The suit from which this appeal arises was brought by her for cancellation of the sale-deed on the ground that she meant to sell the smaller house to the defendant but that she came to know that the defendant had by fraud and undue influence got the bigger house entered in the sale-deed. The relief claimed in the plaint as it originally stood was as follows:

“*Relief (a)*—It may be declared that the sale-deed executed by the plaintiff in favour of the defendant was obtained by fraud and undue influence and that thereby no interest had accrued to the defendant in the *pucca* houses nos. 275 and 924.”

It appears that No. 924 was a mistake for No. 934 and the correct number was subsequently entered. In paragraph 11 of the plaint she stated that the value of the house was Rs.1,500 but that as the suit was a declaratory one, a court fee of Rs.15 was being paid.

The defendant objected to the valuation of the suit by the plaintiff on the ground that it was exaggerated. A commissioner was appointed to find out the value of the house in suit and his report was that the house was worth Rs.1,500. After that the plaintiff-respondent put in an application for amendment of the plaint so

(1) (1939) I.L.R., 14 Luck., 536.

(2) (1899) I.L.R., 23 Mad., 490.

as to reduce the valuation of the suit to Rs.200, the amount of the sale consideration entered in the sale-deed.

1940

ORI LAL
v.
MUSAMMAT
RAHIM
ZADI

Ziaul
Hasan, J.

The learned Munsif rejected this application and was of opinion that the plaintiff should pay an *ad valorem* court fee on Rs.1,500 the valuation originally put by her on the house. As the plaintiff was unable to pay *ad valorem* court fee on Rs.1,500 her plaint was rejected. The plaintiff appealed against the order rejecting her plaint and the learned District Judge held that the correct court fee payable by the plaintiff was on Rs.200. He therefore accepted the appeal and allowed the claim to be amended and held that the court fee of Rs.15 paid by the plaintiff was sufficient. With these findings the suit was remanded to the trial court for decision on the merits. Against this order the present appeal has been brought by the defendant.

I am of opinion that the order of the learned District Judge is perfectly correct. As the suit was brought on the 1st March, 1937, before the amending Court Fees Act of 1938 was passed, it will be governed by the provisions of the Act as it stood unamended. If the relief claimed by the plaintiff be considered to be a declaratory relief the court fee paid by her was quite sufficient. If on the other hand, as is contended by the learned counsel for the appellant, the suit be considered to be one to obtain a declaratory decree with a consequential relief then under section 7(iv)(c) of the old Act, the amount of the court fee should be determined according to the amount at which the relief sought is valued in the plaint and as the value now in the plaint is Rs.200 the court fee of Rs.15 is the proper court fee to be paid in the case. It is contended that the plaintiff should not have been allowed to change the valuation originally put by her on the suit, but Rs.1,500 which was the value of the house in suit was not the proper valuation to be put on the suit. The provisions of the Court Fees Act

1940

ORI LAL
v.
MUSAMMAT
RAHIM
ZADI

Ziaul
Hasan, J.

as it stood before the amending Act was passed and even those of the amending Act clearly show that the Legislature has made a distinction in the amount of court fee between suits for possession of immovable property and those seeking reliefs other than possession in respect of immovable property, the court-fee required in the case of the latter suits being much less than that required in suits for possession. It has been found by the lower appellate court that the plaintiff is herself in respect of immovable property, the court-fee required is cancellation of the sale-deed which she said was obtained from her by fraud and undue influence. In such a suit, therefore, she could not be required to pay *ad valorem* court fee on the market value of the house which is the court fee payable on a suit for possession. The order of the learned District Judge therefore allowing the plaintiff to amend her plaint by putting a more correct valuation on her suit was in the circumstances of the case perfectly proper. The learned counsel for the appellant has relied on the cases of *Baij Nath Singh v. Sri Nath Kuar* (1) and *Samiya Mavali v. Minammal* (2) but neither of these cases supports the contention put forward by the appellant in the present case. In fact in *Samiya Mavali v. Minammal* (2) which was similar to the present case, it was held—

“We think section 7(iv)(c) must be taken to apply. The case is therefore one in which the valuation given by the plaintiff is the valuation to be accepted.”

This so far from supporting the contention of the appellant goes against him.

I consider the order of the learned District Judge quite correct and dismiss this appeal with costs.

Appeal dismissed.

(1) (1939) I.L.R., 14 Luck., 536. (2) (1899) I.L.R., 23 Mad., 490.