

MISCELLANEOUS CIVIL

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

Mrs. JANET ANNA BONARJEE (PLAINTIFF-APPELLANT) v.

January, 29

THE UNITED PROVINCES OF AGRA AND OUDH

AND ANOTHER (DEFENDANTS-RESPONDENTS)*

Court Fees Act (VII of 1870), as amended by United Provinces Court Fees Amendment Act (XIX of 1938), sections 7(iv-B)(b) and 7(iv) (a)—Declaratory suit with other consequential relief about immovable property—Such relief incapable of valuation in money—Court-fee payable as on relief for possession—Section 7(iv-B) (b) applies only to relief for injunction.

Section 7(iv-B) (b) of the amended Court-Fees Act applies to a suit in which the only relief claimed is one to obtain an injunction.

When along with a declaratory relief there is sought consequential relief in respect of immovable property, but such relief is not capable of valuation in money, then court-fee should be paid as if the relief was one for possession of immovable property.

Messrs. *Hydar Husain* and *Akhtar Husain*, for the appellant.

Mr. *H. S. Gupta*, Rai Bahadur, for the respondents.

ZIAUL HASAN and YORKE, JJ.:—This is an appeal against a finding of the learned Civil Judge of Kheri that there is a deficiency of Rs.3,427-8 in the court-fee paid by the appellant on her plaint.

The plaintiff-appellant brought her suit for the following reliefs:

“(a) That it be declared that the United Provinces Tenancy Bill or any other legislation of like nature or effect is fundamentally illegal, unenforceable and *ultra vires* of the United Provinces Legislature in respect of the plaintiff and her property Rampur No. 18 Grant,

(b) That all further proceedings in respect of the said bill or arising therefrom be stayed pending

*Miscellaneous Appeal No. 77 of 1939, against the order of Mr. Shiam Manohar Tewari, Civil Judge of Kheri, dated the 16th of September, 1939.

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decision of this suit at least to the extent indicated above,

(c) Any other relief or reliefs consequential or otherwise that in the circumstances of the case may appear reasonable and just to the Court.

(d) Costs of the suit."

Paragraph 13 of the plaint runs as follows:

"That for purposes of valuation of the suit Rampore No. 18 Grant is valued at approximately Rs.3 lakhs, that is twenty times its net annual rental and for purposes of court-fee it is Rs.15 for declaration and Rs.15 tentatively fixed for the consequential relief, both of which amounts have been paid."

Subsequently when the question of court-fee arose, the plaintiff paid an additional court-fee of Rs.200 and proposed to amend paragraph 13 of the plaint by substituting the following in place of the original paragraph:

"That for purposes of valuation of suit the injunction relating to Rampore No. 18 Grant is valued at approximately Rs.30,000 that is, one-tenth of twenty times its net annual rental on which the maximum court-fee of Rs.200 has been paid."

It was further sought to amend relief (b) of the plaint by deleting the words "pending decision of this suit." These amendments were sought as the plaintiff thought that they would bring relief (b) within the purview of section 7(iv-B) (b) of the amended Court-Fees Act. The court below disallowed the amendments and holding that the case fell under section 7(iv)(a) of the Act the plaintiff should pay *ad valorem* court-fee on relief (b) of the plaint.

We have heard the learned counsel for the appellant at length but are of opinion that the view taken by the learned Judge of the court below is correct. Section 7(iv)(a) of the amended Act provides that in suits to obtain a declaratory decree or order where consequential relief is prayed, the amount of fee payable under the Act

shall be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal, provided that in suits falling under clause (a) where the relief sought is with reference to any immovable property, such amount shall be the value of the consequential relief and if such relief is incapable of valuation, then the value of the immovable property computed in accordance with sub-section (v), (v-A) or (v-B) of this section as the case may be. It is not denied that the suit falls under clause (a) of section 7(iv), namely, that it is a suit to obtain a declaratory decree where consequential relief is prayed. It cannot also be denied that the relief claimed in clause (b) of paragraph 15 of the plaint is with reference to immovable property and it is obvious that this relief is incapable of valuation. Therefore the amount at which this relief should be valued is the value of the immovable property computed in accordance with sub-section (v) which deals with suits for possession of land, buildings or gardens. This means that the court-fee payable on relief (b) of the plaint should be *ad valorem* such as would be paid if the suit was one for possession of property.

The learned counsel for the appellant however contends that the two reliefs claimed in the plaint should be considered separately and that while the fixed court-fee of Rs.15 is leviable on relief (a), relief (b) falls under section 7(iv-B) (b) as if the suit was to obtain an injunction. Section 7(iv-B) (b) applies (in our opinion) to a suit in which the only relief claimed is one to obtain an injunction and not to the present suit which clearly falls under section 7(iv) (a). The clauses of the Court Fees Act are in our opinion exclusive of one another and if section 7(iv) (a) clearly applies to the present suit, as was conceded it did, there is no reason whatever to deal with the two reliefs claimed disjunctively and bring relief (b) under section 7(iv-B) (b). The intention of the Legislature appears to be that when along with a

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declaratory relief there is sought some consequential relief in respect of immovable property but such relief is not capable of valuation in money, then court-fee should be paid as if the relief was one for possession of immovable property.

We therefore agree with the view taken by the learned Judge of the court below and dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

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

DAYANAT ULLAH AND OTHERS (APPELLANTS) v. NAWAB ATIA KHANAM (RESPONDENT)*

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Civil Procedure Code (Act V of 1908), section 100—Second appeal—Finding of fact—Documents filed in evidence and not documents of title, interpretation of—Interpretation of documents produced in evidence, whether a ground for second appeal—Oudh Courts' Act (Local Act IV of 1925), section 12(2)—Certificate of fitness for further appeal when to be granted—Interpretation of documents filed in evidence, whether ground for grant of certificate.

The rule that the High Court has no jurisdiction under section 100, Civil Procedure Code, to reserve the findings of fact of a lower appellate Court unless the findings are vitiated by error of law, applies although the findings are inferences of fact drawn, wholly or in part, from documents. A decision of fact by a first appellate court does not involve a question of law so as to be open to reconsideration upon second appeal under section 100 of the Code of Civil Procedure, merely because documents, which were not relied on as instruments of title or the direct foundations of rights, have to be construed for the purpose of deciding the question. *Wali Mohammad and others v. Mohammad Bakhsh and others* (1), and *Secretary of State for India in Council and others, v. Rameshwaram Devasthanam Trustee* (2), relied on.

*Section 12(2) Oudh Courts Act appeals Nos. 7 and 8 of 1937, against the order of Hon'ble Mr. Justice G. H. Thomas, Judge, Chief Court of Oudh, Lucknow, dated the 7th of January, 1937.

(1) (1929) L.R., 57 I.A., 86.

(2) (1934) L.R., 61 I.A., 163.