

APPELLATE CIVIL

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

LALA JAI KRISHNA (PLAINTIFF-APPELLANT) *v.* CH. ABDUL RAHMAN, OFFICIAL RECEIVER, AND OTHERS

(DEFENDANTS-RESPONDENTS)*

1940
January, 24

Court Fees Act (VII of 1870), Article 17(vi)—Appeal only against the manner of execution of decree—Declaratory court-fee, whether sufficient.

Where a suit was brought for recovery of a loan against a Hindu father and his son who had become insolvent alleging that the goods of the joint family firm were hypothecated for the loan but the court, passed a decree against the father alone and then the appeal was filed claiming that the decretal amount be declared to be a charge on the goods of the firm, held, that the appeal being only against the manner in which the decree is to be executed, a declaratory court-fee is sufficient.

Mr. *Kashi Prasad Srivastava*, for the appellant.

Mr. *Naimullah*, for the respondents.

ZIAUL HASAN and YORKE, JJ.:—This is an office report in First Civil Appeal no. 170 of 1939 to the effect that the court-fee paid on the memorandum of appeal is deficient by a sum of Rs.162-8. The learned counsel for the appellant contests the office report.

The suit of the plaintiff-appellant was for recovery of money on foot of *bahi khata* accounts. The loans were said to have been taken by defendant no. 3 and his son defendant no. 2 who subsequently became an insolvent and his property became vested in the official receiver, who was impleaded as defendant no. 1. The plaintiff's case was that the goods of the firm Bhupendra Nath Jitendra Nath were hypothecated for the loans advanced to defendants 2 and 3. The court below decreed the plaintiff's suit for the amount claimed but gave him a personal decree against defendant no. 3. He has filed this appeal in which he prays that the decretal amount be declared to be a charge on the goods of the firm mentioned above.

*First Civil Appeal No. 170 of 1939, against the order of R. T. Shivasani, Esq., Additional District Judge, Lucknow, dated the 1st of November, 1939

1940

LALA
JAI
KRISHNA
v.
CHAUDHARI
ABDUL
RAHMAN

Ziaul Hasan
and
Yorke, JJ,

We have heard the counsel for parties but are of opinion that the case is covered by the decision in *Shantranje Ji v. Deputy Commissioner, Manager of Court of Wards, Mahewa Estate, Kheri*, (1). It is argued on behalf of the respondent that the goods in question belong solely to defendant no. 2, against whom the suit of the plaintiff was dismissed and that as the plaintiff wanted a decree against the property of defendant no. 2 in the possession of defendant no. 1, he should pay *ad valorem* court-fee on the entire amount of the claim. It appears, however, that the plaintiff's suit against defendant no. 2, was dismissed because he was an insolvent and the plaintiff could not obtain a decree against him, in a regular suit without going to the insolvency court. Moreover, it is not correct to say that the goods in question belong solely to defendant no. 2. It has been found by the court below that the loans were taken by defendants 2 and 3 as members of a joint Hindu family and that the shop in question belongs to the joint family.

As in the present appeal the appellant is appealing only against the manner in which the decree is to be executed, the declaratory court-fee paid by him in addition to the court-fee on the costs mentioned in paragraph 5, is in our opinion sufficient.

We, therefore, reject the office report and hold that the court-fee paid is sufficient.

Office report rejected.

(1) (1940) I.L.R. , 15Luck., 435.