

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge, and
Mr. Justice Radha Krishna Srivastava

1939
December, 21

BHAWANI SHANKAR, BABU AND ANOTHER (PLAINTIFFS-APPELLANTS) v. MIRZA MOHAMMAD HASAN AND ANOTHER (DEFENDANTS-RESPONDENTS)*

Court Fees Act (VII of 1870), Schedule I, Article 1—Appeal relating both to subject-matter in dispute and costs allowed by lower court—Court-fee, whether payable on costs challenged also.

Where the appellant appeals against the decree in a suit on merits and also challenges the order of costs independently, then the value of the subject-matter in dispute in appeal is the total amount consisting of the value of the subject-matter in the suit and the amount of costs challenged, and under Article 1, Schedule I, court-fee must be paid on the costs challenged also. *Doorga Doss Chowdry v. Ramanauth Chowdry and others* (1), and *Kamal Kumari Debi v. Rangpur North Bengal Bank, Limited, and another* (2), distinguished. *Debendro Mohan Rai v. Sona Kuar* (3), *In re Makki* (4) and *Kewal Singh v. Makrand Singh* (5), relied on.

Mr. Bijay Shankar, for the appellants.

Mr. K. L. Nigam, for respondent No. 1.

THOMAS, C.J., and RADHA KRISHNA, J.:—In this appeal the appellants valued the appeal at Rs.5,100, and as the reliefs claimed in the trial court were of a declaratory nature they paid the court-fee of Rs.30. In ground No. 11 of their appeal the appellants took an independent objection as regards costs which had been awarded against them personally. Their contention in appeal is that the costs should have come out of the estate. The Chief Inspector of Stamps has reported that the appellants must pay court fee under Article 1 of Schedule I of the Court Fees Act at the amount of costs challenged, i.e. a sum of Rs.550-11. He has reported

*First Civil Appeal No. 10 of 1938, against the order of D. Padmanabhan, Esq., I.C.S., Sessions and Civil Judge, of Lucknow, dated the 13th December, 1937, on the question of court-fee.

(1) (1860) 8 M.I.A., 262.

(2) (1921) A.I.R., Cal., 55.

(3) (1901) All.W.N., 21.

(4) (1896) I.L.R., 19 Mad., 350.

(5) (1909) 12 O.C., 171.

that there is a deficiency of Rs.52-8 which the appellants must make good.

This report is contested by the learned Counsel for the appellants. His contention is that under Schedule I Article I, the subject-matter in dispute means the subject-matter of dispute in the suit itself and does not include the costs. Reliance has been placed for this proposition upon *Doorga Doss Chowdry v. Ramanauth Chowdry and others* (1). Their Lordships in that case were concerned with a different provision of law altogether. They held that in order to reach the appealable value for an appeal to the Privy Council costs awarded to the successful party cannot be included in the value of the subject-matter of the appeal. The judgment of their Lordships of the Privy Council shows that there was no specific ground of appeal attacking the order of costs and the appellant wanted to add the costs only for the purpose of making up the appealable value. In our opinion this case has absolutely no application to the facts of this case. In our opinion the words "value of the subject-matter in dispute" in Article I, refer, where we are concerned with a suit, to the value of the subject-matter of the suit, and where we are concerned with an appeal then these words refer to the value of the subject-matter in dispute in appeal. The subject-matter of the suit and the subject-matter of the appeal may not be the same. Where the appellant appeals against the decree in a suit on merits and also challenges the order of costs independently, then the value of the subject-matter in dispute in appeal is the total amount consisting of the value of the subject-matter in the suit and the amount of costs challenged.

The learned counsel for the appellants has further relied upon a decision of the Calcutta High Court *Kamal Kumari Debi v. Rangpur North Bengal Bank, Limited, and another* (1). In this case the learned Judge seems

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to have gone entirely upon the decision of their Lordships of the Privy Council referred to above, which in our opinion has no application to the facts of the present case. The learned Judge has not followed the cases in *Debendro Mohan Rai v. Sonu Kuar* (1), and *In re Makki* (2) on the ground that they were not well-considered judgments. The cases of the Allahabad and Madras High Courts referred to above accord with our view which we have taken of the meaning of Schedule I Article I of the Court Fees Act.

We were referred particularly to a decision of this Court in *Kewal Singh v. Makrand Singh*, reported in (3), in which it was held that where apart from and independently of any other relief which the appellant seeks he seeks distinct relief on the ground that the costs of the parties have not been properly assessed or apportioned, then the value of that distinct relief should be reckoned as part of the subject-matter in dispute for the purpose of the First Schedule of the Court-Fees Act. The learned Counsel for the appellants has sought to distinguish this case on the ground that the appeal in the case related to costs only. In our opinion the principle of that case supports the report of the Chief Inspector of Stamps and the distinction sought to be made by the learned Counsel for the appellants is immaterial. We, therefore, accept the report of the Chief Inspector of Stamps and order the appellants to make good the deficiency of Rs.52-8 within three weeks from today.

Report accepted.

(1) (1901) All.W.N., 21.

(2) (1896) I.L.R., 19 Mad., 350.

(3) (1909) 12 O.C., 171.