

MISCELLANEOUS CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice A. H. deB.
Hamilton

RAJA SHATRANJE JI (CLAIMANT-APPELLANT) v. DEPUTY
COMMISSIONER, KHERI, MANAGER, COURT OF WARDS,
MAHEWA ESTATE (APPLICANT-RESPONDENT)*

1939
November,
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Court Fees Act (VII of 1870), Article 17 (vi)—Appeal relating to manner in which decree can be enforced and not the amount decreed—Court-fee payable in appeal.

Where an appeal does not relate to the amount for which the decree has been passed but to the manner in which the decree can be enforced or executed the appeal falls under Article 17(vi) of the Second Schedule of the Court Fees Act. *Radha Krishan v. Mehtab Mian* (1), *Harcharan Das v. Sukhraj Das* (2), *Jagannath Rawji Kondkar v. Laxmibai Anant Kondkar* (3), and *Sobha Ram Chela Ram v. Bainsiram Janjiram* (4), relied on.

Messrs. *M. Wasim* and *Ali Hasan*, for the appellant.

Mr. H. S. Gupta, for respondent.

ZIAUL HASAN and HAMILTON, JJ.:—This is an application by the respondent to an appeal filed under section 45 of the Encumbered Estates Act alleging that there is a deficiency of court-fee on the appeal and praying that the appellant be ordered to pay the proper court-fee and to amend the valuation of his appeal.

The applicant filed an application under section 4 of the Encumbered Estates Act and the appellant brought a claim before the Special Judge amounting to Rs.2,09,087 on the foot of a mortgage of property held by the applicant. The learned Special Judge gave the appellant a decree for the amount claimed, but as the applicant was a transferee from the original mortgagor,

*Civil Miscellaneous Application no. 730 of 1939, in First Civil Appeal no. 43 of 1937, against the order of Mr. Mahabir Prasad Varma, Special Judge, 1st Grade, Kheri, dated the 22nd January, 1937.

(1) 1925) 90 I.C., 629.

(2) (1921) 62 I.C., 979.

(3) (1934) I.L.R., 59 Bom., 439.

(4) (1937) 171 I. C., 13.

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the learned added a condition to the decree in the following terms:

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"The actual liability of the landlord will, however be limited to the extent of the transfer value of the mortgaged property which might be fixed by the Collector".

The claimant was awarded costs on Rs.25,000. Future and *pendente lite* interest was awarded to him at Rs.3-12 per cent. per annum.

Against this decree the claimant filed an appeal to this Court. In paragraphs 1 to 3 of the grounds of appeal he objected to the condition imposed by the Special Judge, in paragraphs 4 he claimed full costs in the court below and in paragraph 5 he claimed interest from the date of the application at the rate of $4\frac{1}{2}$ per cent. per annum. The entire appeal was valued at Rs.2,09,087. The office made a report that the appellant had not put any valuation on grounds 4 and 5 of the memorandum of appeal and that he might be asked to put proper valuation on the relief claimed by him. Thereupon the learned counsel for the appellant amended the memorandum of appeal by mentioning a sum of Rs.1,525 as the costs claimed by him in paragraph 4 and Rs.1,045 as the difference of interest claimed. He reduced the valuation of the appeal to the total of these amounts namely Rs.2,570 and paid a court-fee of Rs.10 on grounds 1 to 3 of his appeal. The office reported that the valuation and the court-fee paid were correct, and the appeal was fixed for hearing. It could not, however, be taken up on the date fixed and on that very date the learned counsel for the respondent filed the application with which we are now dealing.

We have heard the learned counsel for the parties and are of opinion that there is no deficiency in the court-fee now. The learned counsel for the applicant argues that as by the decree of the Special Judge it has been ordered that the appellant would be entitled to

realize the amount of his decree to the extent of the transfer value of the property, which the respondent says is Rs.24,164-12-3, it should be assumed that the appeal relates to an amount equivalent to the difference between Rs.2,09,087 and Rs.24,164-12-3. We are unable to accept this argument. The court below has already given the appellant a decree for Rs.2,09,087 and it is not the amount of the decree given to him that is in any manner in dispute in this appeal. What the appellant objects to is the condition imposed by the learned Special Judge in the decree granted to him. It is we think a case which comes under Article 17(vi) of the Second Schedule of the Court Fees Act in that it is not possible to estimate the subject-matter of the appeal at a money value.

In *Radha Krishna v. Mehtab Mian* (1), *Harcharan Das v. Sukhraj Das* (2), *Jagannath Ravji Kondkar v. Laxmibai Anant Kondkar* (3), and *Sobha Ram Chela Ram v. Bainsiram Janjiram* (4), it was held that where an appeal does not relate to the amount for which the decree has been passed but to the manner in which the decree can be enforced or executed the appeal falls under Article 17(vi) of the Second Schedule of the Court Fees Act.

We, therefore, hold the court-fee paid by the appellant sufficient and dismiss the respondent's application with costs.

Application dismissed.

(1) (1925) 90 I.C., 629.

(3) (1934) I.L.R., 59 Bom., 439.

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