

1922.

decrees of 24th April, 1917, Baijnath Goenka brought these two consolidated appeals.

RAI
BALJNATH
GOENKA
v.
MAHARAJA
SIR
KAMESHWAR
PRASAD
SINGH.

Their Lordships agree with the High Court at Patna that the decree of 30th June, 1904, could be executed by giving these respondents respectively possession of the substituted shares, and that no application to the Judicial Committee was necessary. The questions as to what were such substituted shares were questions which arose within the meaning of section 47 of the Code of Civil Procedure, 1908, between the parties and related to the execution and satisfaction of the decree of 30th June, 1904.

At the conclusion of the arguments in these two consolidated appeals their Lordships were informed by counsel that no stay of execution having been granted, the decree of the 30th June, 1904, has been executed pursuant to the directions given in the decree of the High Court at Patna of 24th April, 1917.

Their Lordships will humbly advise His Majesty that these two consolidated appeals should be dismissed with costs.

Solicitors for appellant : *Watkins and Hunter*.

Solicitors for respondent : *T. I. Wilson, and Co.*

REFERENCE UNDER THE COURT-FEES ACT.

Before Courts, J.

RAGHUBAR SINGH

v.

JETHU MAHTON.

1922.

February, 9.

Court-Fees Act, 1870 (Act VII of 1870), section 4—Letters Patent of the High Court of Judicature at Patna. Clause (10)—Appeal from decision of single judge, whether court-fee payable on.

No court-fee is payable on a memorandum of appeal from the judgment of a Judge of the High Court sitting singly.

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The facts of the case material to this report are stated in the order of the Taxing Judge.

Atul Krishna Ray, on behalf of the appellants, submitted that section 4 of the Court-Fees Act, under which alone the High Court was entitled to levy court-fees on documents filed in the High Court did not cover the case of an appeal from the judgment of a single Judge of the High Court. That section provides for the levying of court-fees on appeals from the judgment of two or more judges of the High Court, or of a Division Court. It is silent as to appeals from the judgments of a High Court Judge sitting singly. Therefore the Court-Fees Act does not apply to appeals from the judgment of a single judge and no court-fees are payable in such appeals.

“Division Court” in section 4 of the Court-Fees Act means a court consisting of two or more judges of the High Court. Refers to section 13 of the High Courts Act, 1861, and to section 108 of the Government of India Act of 1915, and also to clauses 10 and 28 of the Letters Patent, Patna High Court.

The Calcutta High Court in the Full Bench case of *Nabu Mondul v. Cholim Mullik*(¹), held that a single judge does not constitute a Division Court.

Recently the Allahabad High Court has held that court-fees are not payable in such appeals; refers to *Bhadool Pandey v. Manni Pandey*(²)

Kulwant Sahai, Government Pleader, submitted that the High Court had power to constitute Division Courts by its rules and a single Judge can constitute a Division Court. In the Patna High Court Rules, although the term Division Bench is used, yet there is nothing to show that a single judge cannot constitute a Division Court. The Full Bench case of *Nabu Mondul v. Cholim Mullik*(¹) is distinguishable inasmuch as that case was decided on the rules framed by the Calcutta High Court.

RAGHUBAR
SINGH
v.
JETHU
MARTON.

(1) (1898) I. L. R. 25 Cal. 896, F. B.

(2) (1922) I. L. R. 44 All 13.

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RAGHUBAR
SINGH
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Atul Krishna Ray: Although in the Calcutta Full Bench case, a rule of that court, *viz.*, whether a judge sitting singly could refer a matter to the Full Bench, was the subject of decision, yet their Lordships specifically dealt with the meaning of the term "Division Court" as ordinarily understood and as indicated in section 13 of 24 and 24 Vict., cap. 102.

COURTS, J.—The question for decision is whether court-fee is payable on a memorandum of appeal under section 10 of the Letters Patent. Up to now court-fees have been levied but it is contended that the only law under which court-fees can be levied is section 4 of the Court-Fees Act and that this section does not contemplate payment of court-fee in the case of an appeal from the decision of a single Judge of the High Court.

Section 4 of the Court-Fees Act says :—

"No document of any of the kinds specified in the first or second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction; or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a Division Court; unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document."

In this High Court so far as I am aware no Division Court has ever been constituted; and in any case, in my opinion, a Division Court must, under the law as it stands at present, consist of at least two Judges for section 108 of the Government of India Act enacts that :—

"(1) Each High Court may by its own rules provide, as it thinks fit, for the exercise by one or more Judges or by Division Courts constituted by two or more Judges of the High Court, of the original and appellate jurisdiction vested in the Court.

"(2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts."

Section 4 of the Court-Fees Act, therefore, does not entitle the High Court to levy court fees on Letters

Patent appeals and there being no other law under which they can be levied such appeals must be accepted without court-fees. I feel convinced, however, that it was never intended that Letters Patent appeals should be filed without court-fees and I would suggest that the matter be brought to the attention of the legislature.

1922.

 RAGHUBAR
 SINGH
 v.
 JETHU
 MAHTON.
 Courts, J.

APPELLATE CIVIL.

Before Das and Adami, J.J.

RAJĀ SRI SRI SHIVA PRASAD SINGH

v.

BENI MADHAB CHOWDHURY.*

1922.

 Feb. 16.

Impartible Estate—succession to, by survivorship—application by successor for personal decree, whether succession certificate is necessary—Code of Civil Procedure, 1908 (Act V of 1908), Order XXXIV, rule 6—Lease—provision for personal liability of lessee for rent, and certain properties specified as security, whether creates a mortgage or a charge—Transfer of Property Act, 1882 (Act IV of 1882), section 58.

A person who succeeds to an impartible estate by survivorship is entitled to maintain an application under Order XXXIV, rule 6, of the Code of Civil Procedure, 1908, although he has not obtained a succession certificate.

Shyam Lal Singh v. Raja Bijay Narain Kunda Bahadur(1), *Katama Natchier v. Srimut Raja Moottoo Vijaya Raganadha Bodhu Gooroo Sawmy Periya Odaya Taver*(2), *Naraganti Achammagaru v. Venkataohlapati Nayaniwaru*(3), *Rani Sartaj Kuari v. Rani Deoraj Kuari*(4), *Neelkisto Deb Burmono v. Beerchunder Thakoor*(5) and *Bajinath Prasad Singh v. Tej Bali Singh*(6), referred to.

* Appeal from Original Decree No. 69 of 1919, from an order of Babu Brojendra Kumar Ghose, Subordinate Judge of Dhanbad, dated the 20th January, 1919.

(1) (1917) 2 Pat. L. J. 136 (F. B.)

(2) (1861-64) 9 M. I. A. 543.

(3) (1882) I. L. R. 4 Mad. 250.

(4) (1887-88) L. R. 15 I. A. 51; I. L. R. 10 All. 272.

(5) (1867-69) 12 M. I. A. 523.

(6) (1921) I. L. R. 43 All. 288; L. R. 48 I. A. 195.