

APPELLATE CIVIL.

Before Rce, J.

SAHDEO NARAIN DEO

v.

KUSUM KUMARI.*

1917
March, 7

Court-Fees—petition by respondent criticising judgment, whether court-fee payable on—Code of Civil Procedure 1908 (Act V of 1908) Order XLI, rule 22—procedure.

Where a suit has been dismissed in its entirety and, on the plaintiff appealing, the defendant files objections to certain terms in the judgment, held, (i) that the petition of objections is not a petition of cross-objections within the meaning of Order XLI, rule 22, of the Code of Civil Procedure 1908; (ii) that mere criticisms of a judgment cannot be filed as cross-objections, and, if so filed, they should not be accepted by the office; (iii) that such a petition does not require to be stamped with a court-fee.

The facts of the case material to this reports are stated in the following order of the Taxing Officer—

This was a suit for possession of a certain estate valued at rupees forty-two lacs and was stamped with the proper court-fee, namely, the maximum Rs. 3,000. The suit was dismissed but all the issues were not tried.

The plaintiffs have appealed and the respondents have filed a cross-objection. The grounds taken in the cross-objection traverse practically the whole of the plaintiff's case and it is prayed that the suit be dismissed. The cross-objection has been valued at nothing and a court-fee of Rs. 10 only has been paid.

It is contended, that as the matter now stands, the plaintiffs' suit has been dismissed and, therefore, the value of the cross-objection is nothing, and it is claimed that the case comes under Art. 17 (6), Sch. 2 of the Court-Fees Act. This is in my opinion a wrong contention. As was pointed out in *Bunwari Lal v. Daya Shankar Misser* (1) the article referred to applies in suits where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by the Act. In this case it is possible to value the cross-objection and the

* Appeal from Original Decree No. 86 of 1916.

(1) (1908-09) 18 C. W. N. 815 (\$19).

value is the value of the property, namely, rupees forty-two lacs, and in my opinion it is on this that court-fees should be paid. In order to set at rest any doubt in the matter, however, and as numerous cases of this kind occur, I direct that the case be placed before the Taxing Judge for orders.

P. R. Das (with him *Nares Ch. Sinha, Lal Mohan Ganguly, D. N. Sirkar, Lalit Mohan Ghosh* and *Ranjit Singh*), for the appellants.

Manuk (with him *Sailendra Nath Palit, Jagannath Prasad, Ray Guru Saran Prasad, Surendra Nath Bose* and *Prafulla Ch. Bose*), for the respondents.

ROE, J.—In this case the plaintiffs sued for possession of an estate valued at 42 lacs of rupees. That suit was dismissed in its entirety and full costs of the suit were awarded to the defendants. The plaintiffs appealed and on receipt of notice of the appeal the defendants put in what they were pleased to call cross-objections. They were not objections to anything contained in the decree; indeed it was obvious that, seeing that the whole suit had been dismissed and the whole costs awarded to the defendants by the decree, there was nothing whatever in the decree to which they could either take exception or make objection. What they objected to were certain terms in the judgment. Having regard to the provisions of Order XLI, rule 22, it is apparent that criticisms of a judgment cannot be filed as cross-objections. If filed they should not be accepted by the office. The first portion of the rule completely covers the defendant-respondent's case. He will be entitled to support the decree at the time of argument on any of the grounds decided against him in the court below. The petition which is described as a cross-objection is not a cross-objection as contemplated by the Code of Civil Procedure. It does not in my view require any stamp at all. It should not be a part of the record. It should certainly not be printed in the paper book. If at the time of hearing the respondent insists on referring to it, the question whether he should be allowed to do so and if so upon what terms may be considered by the Divisional Bench. In my view the office will be well advised in refusing to accept such petitions as cross-objections.

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