

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Jwala Prasad, J.

NEKO TEWARI

v.

KISHUN PRASAD PANDEY.*

1924.

March, 24.

Court-Fees Act, 1870 (Act VII of 1870), Schedule II, Article 17, section 7(iv)(c)—Suit for declaration and interim injunction—injunction granted and suit decreed—appeal from decree granting the declaration, court-fee payable on memorandum of.

Where plaintiff sued for a declaration and for consequential relief in the form of a temporary injunction pending the disposal of the suit, and the injunction was granted and the suit decreed, held, in an appeal by the defendants from the decree awarding the plaintiffs the declaration prayed for, that the court-fee payable on the memorandum of appeal was Rs. 15 only under Schedule II, Article 17(vi), of the Court-Fees Act, 1870, as amended by the Bihar and Orissa Court-Fees Act, 1922, although the value of the subject-matter of the appeal was Rs. 4,305/2.

Kishun Dut Misir v. Kasi Pandey(1), and *Rup Chand v. Fateh Chand*(2), applied.

Chethru Mahto v. Khaja Muhammad Karim Nawab(3), *Secretary of State for India v. Baswa Singh*(4), *Rachappa Subrao Jadhav Desai v. Shidappa Venkatrao Jadhav Desai*(5), *Raj Krishna Dey v. Bipin Behari Dey*(6), *Sahib Ditta v. Narinjan Das*(7), *Shama Pershad Sahi v. Sheoparsan Singh*(8), *Umatal Batul v. Mauji Kuar*(9), *Boidya Nath Adya v. Makhan Lal Adya*(10), *M. Azimuddin Sahib v. S. E. S. Kadirā Rowther*(11) and *Vachhani Keshabhai v. Vachhani Nanbha Bavaji*(12), referred to.

* Stamp Reference.

(1) (1920) 5 Pat. L. J. 455.

(2) (1911) I. L. R. 33 All. 705.

(3) (1918) 4 Pat. L. J. 237.

(4) (1912) 17 Ind. Cas. 764.

(5) (1918-19) 46 I. A. 24.

(6) (1913) I. L. R. 40 Cal. 245.

(7) (1912) 15 Ind. Cas. 272.

(8) (1920) 5 Pat. L. J. 394.

(9) (1907) 6 Cal. L. J. 427.

(10) (1890) I. L. R. 17 Cal. 680.

(11) (1918) 43 Ind. Cas. 995.

(12) (1909) I. L. R. 33 Bom. 307.

Appeal by the defendants.

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This was a reference by the Taxing Officer under the Court-Fees Act, and the question raised was whether the memorandum of appeal in the present case was taxable under the Court-Fees Act, under Schedule II, Article 17, or section 7, clause (iv)(c), of the Act. Under the former, the defendants Nos. 15 to 21, filed the memorandum of appeal on a court-fee of Rs 15. They were aggrieved by the decree passed by the Court below in a suit by the plaintiffs-landlords for a declaration that the lands in suit were the *bakasht* lands of themselves and of their cosharer-defendants. The reliefs claimed in the plaint were as follows :

(1) On consideration of the facts set forth above as also of the fact that defendants Nos. 1 to 5 and 15 to 21 acquired no *kashikari* right to the lands entered in Schedules Nos. 4 to 8, below, by virtue of the purchase alleged by them as referred to above; that defendants Nos. 1 to 5 have no right to or possession over the lands mentioned in Schedules Nos. 4 and 5; that the father of defendants Nos. 1 and 2 and defendant No. 3 are mere *farzidars* of defendants Nos. 6 to 14 who are in possession in their stead, a declaratory decree may be passed by the Court in favour of the plaintiffs to the effect that the lands set out in Schedules Nos. 4 and 5 are not the *kasht* lands of defendants Nos. 1 to 5, that the lands mentioned in Schedules Nos. 6 to 8 are not the *kasht* lands of defendants Nos. 15 to 21 and that all those lands being as they are the *maliks'* lands, *serait* and *bakasht* are fit to be partitioned in the said partition case.

(2) An injunction may be issued by the Court for the stay of the *batwara* proceedings and it may be ordered that until the disposal of this suit the parties should not proceed with the *batwara* case.

(3) Costs in Court with interest may be awarded.

(4) Any other relief to which, in the opinion of the Court, the plaintiffs be deemed entitled, may be awarded to them.

In paragraph 18 the plaintiffs valued the relief No. 2 for injunction at Rs. 500 for the purpose of court-fee and paid a court-fee of Rs. 37-8-0 with respect thereto. They also paid a court-fee of Rs. 10 in respect of relief No. 1 for a declaratory decree. Thus they paid a court-fee of Rs. 47-8-0. The value of the suit for the purpose of jurisdiction was stated to be Rs. 13,000 which represented 11-annas share of the plaintiffs in 132 5 *bighas*. On this valuation the plaintiffs were called upon in the trial Court to pay an *ad valorem* court-fee which they did pay.

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A temporary injunction was issued during the trial of the suit. The decree was passed in the following terms :

“ Suit be decreed with costs. Disputed lands are declared to be *bakasht muliks* and should be partitioned as such.”

The terms of the decree exactly agreed with those set forth in relief No. 1 of the plaint, which the Subordinate Judge had held to be a purely declaratory relief.

Against this decree two appeals were preferred : one by defendants 1 to 5 and the other by defendants 15 to 21.

Janak Kishore, for the appellants.

Sultan Ahmed, Government Advocate, for the Crown.

JWALA PRASAD, J. (after stating the facts, as set out above, proceeded as follows) :—

We are concerned with the appeal of defendants Nos. 15 to 21 only. The appellants are interested in some of the lands covered by the suit, and their appeal is confined to those lands only. The appeal is directed against the declaration made in the decree referred to above, and the appellants pray that it be declared that the lands claimed by the appellants are their *kasht* lands and that they are not the *farzidars* of the plaintiffs.

The temporary injunction as a consequential relief prayed for in the plaint was granted during the pendency of the suit and lasted till the termination of the suit. It has now ceased to exist and is no longer the subject-matter of contention between the parties.

The appellants valued the appeal at Rs. 4,305-2-0 being the price of 44 *bighas*, the subject-matter of the appeal, and paid a court-fee of Rs. 15 “under Schedule II, Article 17, clause (vi)” of Act VII of 1870.

The Stamp Reporter reported that the memorandum of appeal was insufficiently stamped by Rs. 337-8-0. The Taxing Officer has agreed with the view of the Stamp Reporter and has referred the matter to me as a Taxing Judge for decision.

The contention in support of the view is that the suit against which the appeal has been filed was a suit for a declaratory decree *plus* consequential relief, and although in the appeal the relief is only a declaratory one the court-fee must be levied upon the reliefs sought in the plaint, and not upon the reliefs sought in the appeal. Accordingly, it is said that the court-fee leviable on the memorandum of appeal should be *ad valorem* under section 7, clause (iv)(c), of the Court-Fees Act, that is, for a declaration with consequential relief, and not Rs. 15 only which the appellants have paid under Article 17, clause (3), of Schedule II of the Act, although the relief in the appeal is only for a declaration.

It is conceded that the view is opposed to authorities; for instance, vide *Rup Chand v. Fateh Chand* (1). It is, however, contended that the view taken in those cases is not correct and is not borne out by true interpretation of the relevant provisions in the Court-Fees Act and a plain reading of Article 17, Schedule II, referred to above and relied upon by the appellants. That Article says :

“Plaint or memorandum of appeal or cross-objection in each of the following suit :—

- (i) to alter or set aside a summary decision or order of any of the Civil Courts, not established by Letters Patent, or of any Revenue Court;
- (ii) to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates;
- (iii) to obtain a declaratory decree where no consequential relief is prayed;
- (iv) to set aside an award;
- (v) to set aside an adoption.
- (vi) Every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.”

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The contention is that the Article will apply only to a memorandum of appeal in the suits of the nature mentioned in the aforesaid clauses of the Article; for instance, the Article will apply to a memorandum of appeal in a suit to obtain a declaratory decree "where no consequential relief is prayed" (clause 3); but where the suit is for a declaratory decree and consequential relief the memorandum of appeal from a decree in that suit will not come under the Article although the relief in the appeal may be only to obtain a declaratory decree and no consequential relief is prayed. In short, it is said that the reliefs in the plaint, and not the reliefs in the memorandum of appeal, will determine the clause under which the court-fee is to be levied.

It is said that the suit in the present case was a suit to obtain a declaratory decree where consequential relief was prayed for and consequently the suit did not come under clause (3) or clause (6) of Article 17, but it came under section 7, clause (iv)(c), of the Act. This section reads as follows :

"The amount of fee payable in suits to obtain a declaratory decree or where consequential relief is prayed shall be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal."

It is said that the suit unquestionably came under this clause and hence the amount of fee payable in the appeal should be computed according to the amount at which the relief sought was valued in the memorandum of appeal. It seems to be a very plausible argument, but it is difficult to give practical effect to it. Conceding that section 7, clause (iv)(c), applies to the memorandum of appeal in the present case, the question is how the amount of the fee payable upon the memorandum of appeal should be computed. The suit was to obtain a declaratory decree where consequential relief was prayed. The consequential relief was a prayer for a temporary injunction directing that the partition of the property should not take place during the pendency of the suit. Where in a declaratory suit consequential relief is sought,

it is the value of the consequential relief that determines the duty to be levied upon the plaintiff. There is no dispute as to this, and in fact it is concluded by authorities. I need not discuss in detail the following authorities cited at the Bar : [*Chethru Mahto v. Khaja Muhammad Karim Nawab* (1), *Secretary of State for India v. Basawa Singh* (2), *Rachappa Subrao Jadhav Desai v. Shidappa Venkatrao Jadhav Desai* (3), *Raj Krishna Dey v. Bipin Behari Dey* (4) and *Sahib Ditta v. Narinjan Das* (5)]. Most of these authorities were considered by this Court in the case of *Shama Pershad Sahi v. Sheoparsan Singh* (6), and it was there laid down that where consequential relief is sought the plaintiff is bound to fix a reasonable valuation upon the consequential relief. Reference in this case has been made to the cases of *Umatul Batul v. Nauji Kuar* (7) and *Boidya Nath Adya v. Makhan Lal Adya* (8).

In the case of *M. Azimuddin Sahib v. S. E. S. Kadirsu Rowther* (9), it was held that in a suit for declaration and for injunction as a consequential relief the plaintiff is entitled to value the injunction alone for the purpose of jurisdiction and court-fee, and the declaration and the injunctions are not to be separately valued. Therefore in acting under section 7, clause (iv)(c), the court-fee will be payable upon the value of the consequential relief. In the present appeal no consequential relief has been sought. Therefore the appellants cannot be required to value the relief which they have not at all asked for, and consequently no court-fee can be paid upon an imaginary relief. Therefore, although the suit originally came under section 7, clause (iv)(c), its nature changed after the relief for injunction ceased

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(1) (1919) 4 Pat. L. J. 297.

(5) (1912) 15 Ind. Cas. 272.

(2) (1912) 17 Ind. Cas. 764.

(6) (1920) 5 Pat. L. J. 394.

(3) (1918-19) L. R. 46 I. A. 24.

(7) (1907) 6 Cal. L. J. 427.

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to exist. Hence the aforesaid provision will no longer apply. In order to get rid of this difficulty, the learned Government Advocate says that it is in the absolute discretion of the appellants to value the relief in any way they like and they can even put an arbitrary value upon the relief under section 7, clause (iv)(c), and relies upon the cases of *M. Azimuddin Sahib v. S. E. S. Kadirsa Rowther* (1) and *Vachhani Kashabhai v. Vachhani Nambha Bavaji* (2). Be that as it may, the consequential relief no longer exists and hence a non-existent relief cannot be valued. The suggestion of the learned Government Advocate does not at all solve the difficulty. The memorandum of appeal, therefore, is incapable of being dealt with under section 7, clause (iv)(c).

The learned Government Advocate then suggests that the court-fee payable on the memorandum of appeal should be calculated upon the value of the subject-matter in dispute and *ad valorem* court-fee should be paid under Schedule I, Article 1, of the Act. That Article is for the purpose of determining the amount of court-fee payable after the pecuniary valuation of the suit or appeal is determined. The pecuniary valuation is determined by reference to section 7 and by finding out under which of the clauses in that section the particular plaint or memorandum of appeal would come. The suit was for a temporary injunction as a consequential relief. The injunction was sought for pending the disposal of the suit and was granted at an early stage of the suit. Thereafter the suit was reduced into a mere suit for declaration and it was tried as such with the result that the declaration was given in favour of the plaintiffs. Therefore at the stage when the plaintiffs filed their memorandum of appeal they appealed against the suit in which declaration without consequential relief was prayed. The nature of the relief sought may vary, as in this case, at the stage when the appeal is

(1) (1918) 43 Ind. Cas. 998.

(2) (1909) I. L. R. 33 Bom. 307.

preferred, and the court-fee leviable will be upon the altered relief in appeal [vide *Kishun Dut Misir v. Kasi Pandey* (1), where the suit for possession, pure and simple, was decreed, but a condition was imposed in the decree that the plaintiff should pay off all incumbrances on the property]. The plaintiff obtained possession of the property, but appealed against the condition as to the payment by him of all encumbrances on the property. It was held that he was to pay court-fee upon the value of the encumbrances as that was the relief sought for in the appeal. The appellants in the present case only want in appeal a declaration without any consequential relief, and, I think, in the circumstances the suit should be treated as falling under Article 17, Schedule II of the Act. The arguments against the view are not convincing enough to entitle us to alter the prevailing practice or to go against the weight of authorities in the other High Court. The learned Vakil on behalf of the appellants presses for his costs on the ground that the learned Government Advocate has opposed in this case.

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REVISIONAL CRIMINAL.

Before Adami and Bucknill, J.J.

RAMESHWAR SINGH

v.

KING-EMPEROR.*

1924.

March, 25.

Penal Code, 1860 (Act XLV of 1860), sections 116 and 161—Attempt to bribe, whether were offer amounts to.

A mere offer to pay an illegal gratification to a public servant, although no money or other consideration is actually produced, amounts to an attempt to bribe.

* Criminal Revision No. 126 of 1924, from a decision of W. H. Boyce, Esq., I.C.S., Sessions Judge of Bhagalpur, dated the 4th February, 1924.

(1) (1920) 5 Pat. L. J. 455.