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would be a valid notice under section 77 of the Act. But in the present case there is no such allegation and no such proof. The fact that a particular officer is appointed by the Agent to investigate into and settle claims for loss of goods does not show that the Agent delegated his powers to receive notice to such officer. I am clearly of opinion that in the present case it has not been shown that the Divisional Traffic Manager had any delegated powers to receive the notice, and that the notice given to the Traffic Manager was not a sufficient compliance with the requirements of law.

Under the circumstances it is clear that the present suit cannot be maintained for want of notice to the Agent within six months of the date of delivery of the goods and the claim of the plaintiff must therefore be dismissed. This appeal is decreed and the plaintiff's suit dismissed. The ground of dismissal, however, is a technical ground and the plaintiff has actually suffered loss on account of the non-delivery of the goods to him: I am, therefore, of opinion that although the suit is dismissed he is not liable to pay costs, therefore, although the appeal is decreed, no costs are allowed to the appellant in any court.

Ross, J.—I agree.

Appeal decreed.

APPELLATE CIVIL.

Before Jwala Prasad and Bucknill, J.J.

KHIRI CHAND MAHTON

v.

MUSSAMMAT MEGHNI.*

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March, 24

Court-fees Act, 1870 (Act VII of 1870), section 7(iv) (c)—suit for separate and essential declarations—ad valorem court-fee payable—test to be applied.

*In the matter of court-fee in Second Appeal no. 1388 of 1925.

A relief which is unnecessary and follows as a matter of course from the decision in favour of the plaintiff on the other reliefs is not a consequential relief.

But where, in a suit, the first relief related to a declaration as to the general title of the plaintiff to all the properties inherited by her from her husband and the second relief related to a particular deed of transfer executed by defendant no. 1 in favour of defendant no. 2 with respect to a particular part of the estate inherited by the plaintiff from her husband, *held*, that the two reliefs were not co-extensive but separate and necessary and, therefore, that the suit was one for a declaration and consequential relief, an ad valorem court-fee being payable under section 7(*iv*) (*c*), Court-fees Act, 1870.

Shaikh Rafiquddin v. *Haji Shaikh Asgar Ali* (1), *Mahabir Prasad* v. *Shyam Bihari Singh* (2), and *Ram Ekbal Singh* v. *Sarjug Prasad Misser* (3), approved.

Mussammat Noowooagar Ojain v. *Shidhar Jha* (4), *Parvatibai* v. *Vishvanath Ganesh* (5) and *Jhumak Kamti* v. *Debu Lal Singh* (6), distinguished.

Appeal by defendant no. 2.

The facts of the case material to this report are stated in the Order of the Court.

Sant Prasad, for the appellant.

Shadhi Shaikher Prasad Singh and *Lachmi Narain Sinha*, Government Pleader, for the respondents.

JWALA PRASAD AND BUCKNILL, JJ.—The question is: what court-fee is payable upon the plaint in the present case filed in the court of the Munsif of Bihar and upon the memorandum of appeal filed by the defendant in the court of the District Judge of Patna?

In the plaint the reliefs sought are as follows:

(*1*) It may be held by the court that the disputed properties form portion of the properties left by the husband of the plaintiff; that defendant no. 1 has no title thereto and that she has no right to transfer the same.

(1) (1921) 63 Ind. Cas. 38.
(2) (1924) I. L. R. 3 Pat. 795.
(3) M. J. C. 49 of 1921.
(4) (1918) 3 Pat. L. J. 194.
(5) (1905) I. L. R. 29 Bom. 207.
(6) (1916) 22 Cal. L. J. 415.

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(2) On determination of relief no. 1 it may be held that defendant no. 1 had no right to execute the sale-deed, dated the 3rd August 1920 and that neither it has affected the title of the plaintiff nor has defendant no. 2 acquired any right thereby.

(3) If during the pendency of this suit the plaintiff be dispossessed of the disputed properties, then on court-fee being taken she may be awarded a decree for recovery of possession of the disputed properties.

(4) The costs in court with interest up to the date of realization may be awarded to the plaintiff against the defendants.

(5) Such other reliefs as be deemed equitable by the court may be decreed in favour of the plaintiff.

The plaintiff's case as laid in the plaint is based upon the following facts:—

It is said that one Tarni Mahton had two sons Puran Mahton and Budhan Mahton. He died while joint with his sons, and after his death the two sons continued to be members of a joint Mitakshara family. Defendant no. 1 Mussammat Jogia is wife of Puran Mahton. The plaintiff is the wife of Budhan Mahton. Puran is dead. It is said that when he died he was joint with Budhan Mahton and consequently the latter succeeded to the properties by right of survivorship as the sole surviving male member. Budhan died in 1909. The plaintiff's case is that she has succeeded to the property as his widow under the Hindu Law and that the defendant no. 1 Mussammat Jogia, wife of Puran, is entitled only to maintenance. Continuing, the plaint states that the plaintiff obtained possession of the property and has been enjoying it; and that the defendant no. 1 has not acquired any right to it nor any right to transfer or encumber the family property....In the record-of-rights, however, Mussammat Jogia defendant no. 1 got her name recorded as in possession and occupation of the family property along with the plaintiff, and the names of both the plaintiff and defendant no. 1 were recorded in the khatian with respect to the raiyati kasht lands of the family.

Defendant no. 1 though she had no right of any sort in the property nor had she possession thereof,

executed a sale-deed, on the 3rd of August, 1920, in respect of half of the properties left by the husband of the plaintiff, in the farzi name of defendant no. 2. It is also stated in the plaint that the defendant no. 3 for self and on behalf of other properties got a kabuliat and kishtbandi bond executed by the plaintiff in respect of the area and made defendant no. 2 also join in the execution of the said deed on the ground that her name was already entered in the survey khatian.

The aforesaid transactions, namely, the entry in the record-of-rights and the kabuliat are attacked by the plaintiff. She says that

"although the sale-deed in question has not affected her title, yet the existence thereof is apprehended to cause dispute hereafter and a cloud is thereby cast over the title of the plaintiff in respect of the disputed properties; hence this suit".

The cause of action is said to have arisen on the 3rd of August, 1920, the date of the execution of the aforesaid sale-deed.

The plaint was stamped with a court-fee of Rs. 15 under Article 17 of the Court-fees Act. The defendant in his written statement took a distinct plea as to insufficiency of the court-fee, and upon that plea issue no. 3 was raised in the trial court:

"Is the court-fee paid sufficient?".

But at the actual hearing of the case this issue was not pressed. The suit, therefore, was determined by the Munsif upon the aforesaid court-fee.

The defendant no. 2, the transferee, appealed to the District Judge and paid a court-fee of Rs. 15 upon the memorandum of appeal; and upon an objection raised by the District Judge an additional court-fee of Rs. 15 was paid upon the ground that reliefs (1) and (2) constituted two separate declarations. The appeal was dismissed in the court below, and hence the defendant has filed a second appeal in this court.

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Under the orders of the Taxing Officer of this court, dated the 9th November, 1925, the appellant has paid the additional court-fee, as according to the Taxing Officer, an ad valorem court-fee was chargeable under section 7, clause (4) (*c*) of the Court-fees Act. If this view of the Taxing Officer is correct, the court-fees paid upon the plaint and the memorandum of appeal in the court below were insufficient, and the plaintiff and the defendant both have to make good their respective deficiencies.

The question as to the sufficiency or otherwise of the court-fee payable in the courts below does not lie within the province of the Taxing Officer; but it has to be determined by the court under section 12 of the Court-fees Act. Accordingly, this being the preliminary question before the appeal can be allowed to proceed, it has been placed before this Bench for a decision as to whether ad valorem court-fee should be charged upon the plaint and the memorandum of appeal in the court below under section 7, clause (4) (*c*) of the Court-fees Act.

The Taxing Officer in his order directing ad valorem court-fee to be paid upon the memorandum of appeal has relied upon a decision of mine as Taxing Judge in the case of *Ram Ekbal Singh* v. *Sarjug Prasad Misser*(1). The second relief in that case quoted by me in my judgment was similar to the second relief in this case. It sought to have an adjudication by way of a declaration that certain sales and transfers made by the defendants in that case were without any valid necessity and without any consideration and were not binding upon the plaintiff after the death of the limited owner who was a Hindu lady. I held that that relief clearly came under section 42 of the Specific Relief Act and was chargeable with a fixed court-fee of Rs. 10 which under the then provisions of the Court-fees Act was

(1) M. J. C. 49 of 1921.

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chargeable. The first relief sought in that case was as follows :—

"That it may be held by the court that the plaintiff is a near gotia and reversionary heir of Mangal Prasad Singh."

That relief related to the title of the plaintiff in that case to the property in dispute and his locus standi to question the validity of the transfer made by the widow of the late holder of the property. The plaintiff in the present case is the widow of Budhan Mahton and claims to have succeeded to the properties on account of Budhan's brother, husband of defendant no. 1, having died in a state of jointness. This is the title claimed by her to the property and upon that title her right to question the validity of the transfer made by defendant no. 1 in favour of the defendant no. 2 rests. If that title was not at all disputed nor was there any reason for any apprehension on the part of the plaintiff of the title being seriously denied by the defendant, then the mere asking for a declaration by the court to declare her title in order to enable her to seek the principal and the second relief would not make the relief essential, and would not require any additional court-fee to be paid. In that case relief no. 1 would have been deemed simply a surplusage or as an ornamental relief. This is the view taken by me in the Miscellaneous Judicial case referred to above. I do not think that the other reliefs in the present case demand any serious consideration for they do not seem to affect the real character of the suit. The third relief was only a contingent one depending upon the finding of the court that the plaintiff was not in possession of the property and in that event she offered to pay court-fee for getting the relief for recovery of possession. That contingency has not arisen and the courts below have held that the plaintiff has been all along in possession of the property. Therefore that relief has become unnecessary and the occasion for calling for additional court-fee has not arisen.

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The fourth relief obviously is immaterial relating to costs. Depending upon the adjudication in her favour of the other reliefs, the fifth relief is what is often said to be an omnibus relief which does not in itself ask for a specific relief so as to make the plaintiff liable to pay court-fee upon it.

A number of authorities have been cited to us at the Bar, one of which is of our own court: *Mussammat Noowooagar Ojain* v. *Shidhar Jha*(1), in which Roe, J., held that a suit for avoidance of a registered deed of gift was chargeable with ad valorem court-fee upon the ground that the court was bound, upon deciding the suit in the plaintiff's favour, to send a copy of the decree to the office in whose book the deed was registered. The report of the case does not show the details of the reliefs sought in the case. The decision was entirely based upon certain previous authorities cited therein. One of these cases is *Parvatibai* v. *Vishvanath Ganesh*(2). In that case, however, there was a specific relief sought for sending a copy of the decision noted in the book containing a copy of the document with a view to have the cancellation of the deed noted in the register of documents kept in the Sub-registrar's office. In this case there is no prayer for sending a copy of the decision to the Sub-registrar and we cannot import a relief into the plaint in order to make the relief consequential and thus to charge court-fee thereon. If the court is bound to send a copy of the decree to the office of the Registrar it is no business of the party to ask for it, but it is the duty of the court to send it of its own accord.

The next case relied upon is *Jhumak Kamti* v. *Debu Lal Singh*(3). In that case it was held that a relief for a declaration coupled with a relief for confirmation of possession makes the suit one for a declaration and consequential relief. In that case

(1) (1918) 3 Pat. L. J. 194. (2) (1905) I. L. R. 29 Bom. 207.
(3) (1916) 22 Cal. L. J. 415.

also there was a specific prayer made by the plaintiff for confirmation of possession. No such prayer has been made in the present case, and upon the principle already stated we cannot add that prayer to the reliefs sought by the plaintiff and make the relief a consequential one.

The decision of this court in *Sheikh Rafiq-ud-din* v. *Haji Shaikh Asgar Ali*(1) (Das and Adami, J.J.) has been cited to show that two declarations do not necessarily make a suit for a declaration and a consequential relief. Similarly, the case of *Mahabir Prasad* v. *Shyam Bihari Singh*(2), has been cited to show that a relief which is unnecessary and follows as a matter of course from the decision in favour of the plaintiff on the other reliefs, is not a consequential relief. In that case the principal relief asked for a declaration that a certain transfer made by a judgment-debtor of the plaintiff was with a view to defeat the decree of the plaintiff and an additional relief was asked that the plaintiff be declared entitled to realise the decree from the estate of the defendant judgment-debtor. It was held that the last relief was a surplusage, for the plaintiff would be entitled to execute the decree and attach the property without any declaration by the court upon the decision obtained on other reliefs in his favour.

In the case of *Shaikh Rafiq-ud-din* v. *Haji Shaikh Asgar Ali*(1), the two reliefs asked for, as a matter of fact constituted one relief, and the declaration of the first relief rendered unnecessary the declaration with respect to the second relief.

Upon the principles of the aforesaid decisions the question is whether the two principal reliefs claimed by the plaintiffs in the present case are separate and necessary, or the decision of one of them renders the decision of the other relief unnecessary, or the other is obtainable without any further declaration by the court and merely upon the strength of the decision of

(1) (1921) 63 Ind. Cas. 38. (2) (1924) I. L. R. 3 Pat. 795.

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one of the reliefs. The first relief in the present case relates to a declaration as to the general title of the plaintiff to all the properties inherited by her from husband. The second relief relates to the particular deed of transfer executed by defendant no. 1 in favour of defendant no. 2 with respect to a particular property as part of the estate inherited by her from her husband. The second relief is admittedly essential; the first relief will be essential only when upon the plaint it would appear that it is necessary for the plaintiff to have any doubt or cloud cast upon the estate inherited by her, removed. The two astounding facts stated in the plaint: the entry of the name of defendant no. 1 in the record-of-rights and in the kabuliat in favour of the proprietor, would go to show that the plaintiff is apprehensive of the claim of defendant no. 1 not only to the property in suit but to a moiety of the entire estate in question and that the deed in question was only a first move in the matter, with a view to have it established that the husband of defendant no. 1 died while separate from that of defendant no. 2. The plaintiff, on the other hand, claims the entire property on the ground that the husband of defendant no. 1 pre-deceased her husband and died while joint with him, the whole estate having passed by survivorship to the husband of the plaintiff.

Therefore, in the present case we are not prepared to hold that the two reliefs are co-extensive or that one of them is surplusage. We are prepared to give the plaintiff an option to state which of the aforesaid reliefs she would wish to be deleted as being superfluous and not required by her. If she does not intimate her intention within three days it will be presumed that both the aforesaid reliefs are essential, which will render the plaintiff liable to pay ad valorem court-fee on her plaint as estimated by the Stamp-Reporter.

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The learned Vakil on behalf of the plaintiff states to-day that the plaintiff is not willing to strike

off any of the reliefs. For the reasons already given in the aforesaid order, ad valorem court-fee must, therefore, be paid on the plaint as well as on the memorandum of appeal in the lower appellate court. The defendant, who was appellant in the lower appellate court, has already paid the deficit court-fee; and the learned Vakil for the plaintiff says that he is ready to deposit the court-fee payable upon the plaint. Let him do so.

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APPELLATE CIVIL.

Before Jwala Prasad and Bucknill, J.J.

MAHANTH RUKMIN DAS

v.

DEVA SINGH.*

1926.

March, 31.

Suits Valuation Act, 1887 (*Act VII of* 1887), *section* 11, *meaning of—under-valuation, appeal to the District Judge by reason of—Second Appeal to High Court—Valuation increased beyond the pecuniary jurisdiction of District Judge—order of District Judge, whether without jurisdiction.*

The plaintiff valued the present suit, for the purposes of jurisdiction, at Rs. 2,550. The defendants in their written statement contended that the suit was under-valued and the court-fee paid was insufficient. Upon this plea the Subordinate Judge framed an issue which, however, was not pressed at the trial and was accordingly decided in favour of the plaintiff. The suit was decreed and on appeal to the District Judge by the defendant the plaintiff did not object to the valuation of the appeal or to the jurisdiction of the District Judge to entertain the appeal. The decree of the first court was reversed and the plaintiff preferred a second appeal to the High Court which, however, held that the valuation of the suit, and, therefore, of the appeal, should have been Rs. 8,000. The appellant made

* In the matter of appeal from Appellate Decree no. 666 of 1923, from a decision of Rai Bahadur J. Chatterjee, Additional District Judge of Patna, dated the 9th April, 1923, reversing a decision of Maulavi Saiyid Ghalib Hussain, Additional Subordinate Judge of Patna, dated the 21st February, 1922.