between landlord and tenant only, but also between the tenant and other persons who claimed to have acquired an interest from the landlord. The construction of two words "illegally ejected" suggested in that decision is *obiter* and does not appear to be a final decision. On the other hand, in *Jamla Singh* v. *Kingsley* (1) there is a decision that illegal ejectment is included in dispossession but that was not a decision on the Court-Fees Act. The decisions in *Bala Sidhanta* v. *Permal Chetti* (2) and *Pramatha* v. *Amiruddi* (3) indicate that in a suit under section 7 (*xi*) (*e*), of the Court-Fees Act, the Court will not try a question of title. The present suit is one for possession of land after determination of the question of title and the title was gone into. The case in my opinion falls within section 7 (*v*) of the Act and the Court-Fee is payable on the market-value of the land *i.e.* Rs. 300.

1924.

KRISHNA CHANDRA GAUNTIA *v.* RAJA MAHAKUR.

ROSS, J.

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Jwala Prasad, J.

GANGADHAR MISRA

v.

RANI DEBENDRABALA DASI.

1925.

Oct., 20.

Court-Fees Act, 1870 (*Act VII of* 1870), *section* 7(*iv*)(*c*)—*declaratory suit—order for ad interim injunction—appeal—ad valorem court-fee payable.*

The plaintiff-appellant brought a suit for a declaration of his title only, but subsequently obtained in the Court below, an order for ad interim injunction. His suit was dismissed and he appealed to the High Court; the injunction was subsisting at the date of the appeal. Under section 7(*iv*)(*c*) of the Court-Fees Act, 1870, the amount of fee payable under that Act in a suit to obtain "a declaratory decree..............where consequential relief is prayed", is to be computed according

(1) (1912-13) 17 Cal. W. N. 1201. (2) (1909) 27 Mad. L. J. 475.
(3) (1919-20) 24 Cal. W. N. 151.

1925.

GANGADHAR MISRA
v.
RANI DEBENDRA-BALA DASI.

to the amount at which the relief sought is valued in the plaint or memorandum of appeal. Under article 1 of Schedule I of the Act an ad valorem fee is payable in such a case but under article 17(*iii*) of Schedule II a fixed fee is payable on a memorandum of appeal in a suit to obtain "a declaratory decree where no consequential relief is prayed". *Held*, that although there was no specific prayer in the memorandum of appeal for an interim injunction the suit was nevertheless a declaratory one with consequential relief, and, therefore, that an ad valorem court-fee was payable.

The facts of the case are stated in the following Order of Reference by the Taxing Officer, Circuit Court, Cuttack:—

This court-fee matter arises out of an appeal by the plaintiffs. The suit was brought on the footing that they were the tankidars of mauza Pratap Ramchandrapur with its two independent off-shoots of Bakshibad and Dianbad and that as such they were entitled to realize rents from their "khatak" or subordinate tankidars, the defendants numbered 4 to 187. The "peskash jama" (or tanki revenue) of the mauzas was to be paid to Government, not direct, but through the zamindars, defendants 1 and 2, who, however, according to the plaint, fraudulently got themselves recorded in the Settlement Khewats as having "khas dakhali", or direct, zamindari rights in the mauzas. These dakhali rights were also affirmed by the Revenue Court in a suit, no. 1313 of 1917-18, brought by the zamindars, against the appellants and some of the subordinate tankidars, for the rents of Bakshibad and Dianbad. The zamindars also brought a similar rent suit, no. 1865 of 1923-24, regarding the parent mauza of Pratap Ramchandrapur. According to the plaint, this is what led to the institution of the suit; and the prayers made were:—

(*ka*) that it be declared that defendants 4 to 187 have no relationship of landlord and tenant with defendants 1 to 2 but are "khatak" tankidars under the plaintiffs and have been paying the "tanki jama" to them; and

(*kha*) that a decree may be passed awarding to the plaintiff such other reliefs as they may be entitled to.

There was also a prayer for the costs of the suit with future interest, but that will obviously not affect the category or valuation of the suit and can be left out of account.

The plaintiffs valued the suit at Rs. 11,000 for jurisdictional purposes, and they paid a court-fee of Rs. 15 on the ground that the suit was one for a declaration pure and simple.

They valued the appeal in the same way and paid the same court-fee on it. The Stamp Reporter objected that this was not a pure declaratory suit, since a cloud having been cast on their title, the appeal, like the suit, sought in effect to get rid of that cloud and clear up the title and possession of the plaintiffs-appellants. On the authority

1925.

GANGADHAR MISRA v. RANI DEBENDRA-BALA DASI.

of the two Patna cases [*Harnarayan Pandey* v. *Suresh Pandey* (1) and *Rachhya Raut* v. *Mussammat Chandoo* (2)], he considered that the appellants ought to pay an ad valorem fee on the market-value of the mauzas in dispute. This view was not accepted by the appellants, and the matter was thus referred to me under section 5 of the Court-Fees Act.

The learned vakil for the appellants has contended before me that the appeal, like the plaint, has been properly stamped, for the reasons given by the learned Subordinate Judge in dealing with issues 4 and 5. He has also urged that if ad valorem fees be held payable, the valuation should be made, on the lines of section 5(*v*) of the Act, at ten-times the amount annually payable to Government for these mauzas, lying as they do in a temporarily-settled estate.

I desire to refer at the outset to some confusion that seems to have occurred owing to the way in which the plaint has been framed. The Stamp Reporter thought that relief was prayed for in respect of two mauzas (Bakshibad and Dianbad) only; and the learned vakil for the appellants also was unable to tell me why exactly the third and parent mauza (Pratap Ramchandrapur) had been brought in. A careful perusal of the plaint, with particular reference to paragraph 18, shows that relief was prayed for in respect of all the three mauzas. The result is that the deficit, if any, will have to be calculated with respect to all the three mauzas.

Turning now to the contentions before me, the first question is whether the suit can be properly regarded as a declaratory suit within the meaning of Article 17(*iii*) of the Second Schedule of the Act. The learned vakil for the appellants adopts the reason given by the learned Subordinate Judge for answering this question in the affirmative; and that reason is that, being in joint possession, the plaintiffs could not consistently have prayed for any relief but the declaration that they are entitled to realize the tanki rents from the subordinate tankidars. But *Raj Krishna Dey* v. *Bipin Behari Dey* (3) is an example of a case where a suit, brought for a declaration that the plaintiff was *sole* shebait notwithstanding an entry in the collectorate register that he was joint with the defendant, was held to be not a pure declaratory suit. It is true that in that case the plaintiff had to add a prayer for consequential relief on an objection made by the defendant under section 42 of the Specific Relief Act; but even so, the case is a complete answer to the contention that in the present case the plaintiffs could not have asked for any but a declaratory relief. Objections under section 42 of the Specific Relief Act are, however, matters for the Court and not for the Taxing Officer, as the learned vakil has rightly urged before me. But is it quite correct to say that the plaint in the present case did not really ask for any other relief? In the first place, there is that prayer (*kha*) for such other reliefs as the plaintiffs may be found entitled to; and it seems to me that the prayer does not cease to be a prayer for further relief merely because it is couched in general terms. Secondly, the plaint is unmistakably designed to reduce the three mauzas into the possession of the plaintiffs to the exclusion of the zamindars, and almost inevitably foreshadows an injunction in respect of the rent-suit of 1923-24 brought by the zamindars. This view is confirmed by

(1) (1921) 63 Ind. Cas. 203. (2) (1921) 6 Pat. L. J. 662.

(3) (1913) I. L. R. 40 Cal. 245.

1925.

GANGADHAR MISRA *v.* RANI DEBENDRA-BALA DASI.

the fact that during the progress of the suit the plaintiffs actually moved for and obtained such an injunction, and as far as can be gathered from the order-sheet of the suit, the provisional injunction issued by the learned Subordinate Judge is in force at the present moment. In a somewhat similar case [*Deokali Koer* v. *Kedar Nath* (1)] the first two prayers, which were for declaratory reliefs, were followed by a prayer for any other relief " which the Court may find the plaintiff entitled to ". The declarations sought were found to be not warranted by section 42 of the Specific Relief Act, but before coming to the conclusion that the suit was not one " to obtain a declaratory decree where no consequential relief is prayed ", Jenkins, C. J., observed that " the third prayer expressly seeks relief, though it is general in its terms ". In confirmation of the view, apparently, that consequential relief was prayed for in that case, his Lordships proceeded to refer to the interim injunction obtained by the plaintiff, and remarked that an injunction is consequential relief. Were it not for the fact that *Deokali's* case (1) can, not altogether without force, be distinguished on the ground that the declaration sought in the present case is substantially warranted by section 42 of the Specific Relief Act, I should have considered myself bound, on the authority of that ruling, to hold that the present is not a suit within Article 17(*iii*) of the Second Schedule of the Court-Fees Act.

Coming to the second contention on behalf of the appellants, it seems clear on the authorities that in the face of the prayer for the declaration, the present suit cannot be regarded as one for possession within section 7(*v*) of the Court-Fees Act [vide *Harihar Prasad Singh* v. *Shyam Lal Singh* (2), *Raja Dhakeswar Prasad Singh* v. *Jivo Chaudhury* (3), *Ugramohan Chaudhury* v. *Lachmi Prasad Chaudhury* (4), *Shama Prasad Sahi* v. *Sheoparsan Singh* (5), and *Khetramohan Mahapatra* v. *Ganesh Lal* (6)].

I am therefore inclined to hold that the present suit comes under section 7(*iv*) of the Court-Fees Act, which provides for suits " to obtain a declaratory decree or order where consequential relief is prayed ", and as the plaintiffs (with whom I am at present concerned in their capacity of appellants only) seem to be seeking relief in respect of all the three mauzas, they ought, in my opinion, to pay ad valorem fees on Rs. 11,000, their own valuation of the subject-matter of the suit and appeal. But I have not been able to find any direct authority for or against my view. There are reported decisions in which it has been laid down that we ought not to look beyond the plaint in determining court-fees, but the contrary seems to have been done and the object and effect of plaints considered in several other reported cases. The questions that arise for decision in the present court-fee matter are :—

(*1*) Whether a general prayer for relief, such as is found in (*kha*) in the present case, will suffice to convert what would otherwise be a declaratory suit into a suit within section 7(*iv*)(*c*) of the Court-Fees Act; and

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(1) (1912) I. L. R. 39 Cal. 704.
(2) (1913) I. L. R. 40 Cal. 615.
(3) (1918) 3 Pat. L. J. 448.
(4) (1920) 5 Pat. L. J. 339.
(5) (1920) 5 Pat. L. J. 394.
(6) (1921) 6 Pat. L. J. 101.

(2) Whether such a general prayer for relief, taken with the interim injunction subsequently obtained by the plaintiffs, will have that effect.

These questions are of general importance, in my opinion, and must, therefore, be referred for decision under section 5 of the Act.

Let the papers be therefore placed before the Taxing-Judge at Patna for a final decision under section 5 of the Court-Fees Act.

JWALA PRASAD, J.—This is a reference made by the Registrar of the Cuttack Circuit Court relating to revenue.

The plaintiff-appellants must pay ad valorem court-fee under section 7 (*iv*) (*c*) of the Court-Fees Act.

Two reliefs are sought for in the plaint—

(*ka*) that it be declared that defendants 4 to 188 have no relationship of landlord and tenant with defendants 1 and 2 but are "Khatak" tankidars under the plaintiffs and have been paying the "tanki jama" to them;

(*kha*) any other reliefs to which the plaintiffs may be entitled may be granted to them.

The third prayer is for costs which may be ignored. The general relief contained in *kha* does not by itself subject the plaint to the liability of ad valorem court-fee inasmuch as such a prayer is almost customary and being vague and indefinite is never deemed to be a substantial relief. The prayer *ka* is couched in terms that would make it declaratory but the plaintiffs have obtained an ad interim injunction in the lower court which still subsists. The plaintiffs have lost the case and in appeal seek reliefs which they had sought in the first court. The ad interim prayer is a substantial prayer which makes the relief a consequential one bringing the case within section 7 (*iv*) (*c*) of the Court-Fees Act. In the case of *Krishna Das Laha* v. *Hari Charan Banerji* (1) the plaintiff had described the suit as one for declaration

(1) (1911) 14 Cal. L. J. 47.

1925.

GANGADHAR MISRA v. RANI DEBENDRA-BALA DASI.

JWALA PRASAD, J.

of title with consequential relief, although the relief was in the nature of a declaration only. Therefore there was no dispute as to the category in which the suit fell But the case of *Deokali Kuer* v. *Kedar Nath* (1) lends strong support to the view which I have taken. In that case there was no specific prayer in the memorandum of appeal for an interim injunction and there was, as in the present case, only a prayer for declaration of plaintiff's title. But in that case, as in the present, there was an interim injunction on the court below on the application of the plaintiff and that was construed by Sir Lawrance Jenkins, C. J., as bringing the case within section 7 (*iv*) (*c*).

The questions put in the reference are answered as above and the plaintiff is bound to pay ad valorem court-fee.

REVISIONAL CRIMINAL.

Before Bucknill and Adami, J.J.

1925.

Oct., 27.

BADRI GOPE

v.

KING-EMPEROR.*

Penal Code, 1860 (*Act XLV of* 1860), *sections* 99 *and* 186—*Obstruction to public servant—Attachment under unsealed writ, illegality of—Right of private defence—Code of Civil Procedure*, 1898 (*Act V of* 1898), *Order XXI, rule* 24(2).

Where a Civil Court peon, in execution of an unsealed writ of attachment, attached a bullock and calf belonging to the judgment-debtor, the latter being absent at the time, and the judgment-debtor subsequently followed and obstructed the peon and others who were with him, and rescued the cattle

* Criminal Revision no. 341 of 1925, from an order of H. R. Meredith, Esq., I.C.S., Sessions Judge of Monghyr, dated 26th June, 1925, affirming the order of Maulavi H. Shamsul Huda, Deputy Magistrate of Monghyr, dated 1st June, 1925.

(1) (1912) I. L. R. 39 Cal. 704.