

1925.

RUP LAL
SINGH
v.
SECRETARY
OF
STATE FOR
INDIA.

KULWANT SAHAY, J.—I agree that in case of carts let on hire, the Native and police officer referred to in paragraphs 3 and 4 of section 3, clause 1, of the Regulation can legally impress them against the consent of their owner.

Reference answered in the affirmative.

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Ross, J.

KRISHNA CHANDRA GAUNTIA

v.

RAJA MAHAKUR.*

1924.

July, 29.

Court-Fees Act, 1870 (Act VII of 1870), section 7(v) and (xi)(e)—Occupancy land, suit by tenant against landlord for possession of.

A tenant instituted a suit against his landlord for possession of occupancy land after determination of title. The question of title was decided in favour of the plaintiff and the suit was decreed. The defendant appealed to the District Judge. That appeal was dismissed and he appealed to the High Court. For the purposes of court-fee and jurisdiction the suit was treated as a suit under section 7(v)(b) of the Court-Fees Act, 1870, and was valued at five times the annual rental of Rs. 3. In the appeal to the High Court it was agreed that the annual rent should be taken to be Rs. 50.

Under section 7(v) of the Act, in a suit for "the possession of land" the court-fee is to be computed according to the value of the subject-matter. In a suit which falls within clause (b) of section 7(v) the value of the subject-matter, was before the amendment of the Court-Fees Act by section 3 of the Bihar and Orissa Court-Fees (Amendment) Act, 1922, deemed to be five times the revenue payable to Government. In a suit under clause (d), however, the annual value of the subject-matter is deemed to be the market-value of the land.

* Second Appeal no. 26 of 1924 (Cuttack).

In the High Court it was contended that the suit was governed by section 7(xi)(e). Under that clause, in a suit between landlord and tenant "to recover the occupancy of immoveable property from which a tenant has been illegally ejected by the landlord", the court-fee is to be computed "according to the amount of the rent of the immoveable property to which the suit refers, payable for the years next before the date of presenting the plaint".

Held, that the suit fell within section 7(v) and that the court-fee was payable on the market-value of the land.

In a suit under section 7(xi)(e) the Court will not try a question of title.

Bala Sidhanta v. Permul Chetti (1) and *Pramatha v. Amiraddi* (2), followed.

Appeal by the defendant.

The facts of the case material to this report are stated in the following order of the Taxing-Officer :

This is a court-fee matter, arising out of a suit instituted by the respondent for declaration of title as an occupancy raiyat to and recovery of possession of 9.31 acres of gounti raiyati land. According to the plaint, the appellant had first settled the disputed land with the plaintiff-respondent on an annual rental of four purugs of paddy; and had later on agreed to settle the land with the plaintiff in perpetuity for a nazarana or salami of Rs. 300; but had afterwards dispossessed him and succeeded against him in a proceeding under section 145 of the Criminal Procedure Code. For the purposes of the court-fee and the jurisdiction, the suit was valued under section 7(v)(b) of the Court-Fees Act at five times the annual rental of Rs. 3 (which was taken to be the equivalent of the four purugs of paddy). The first Court decreed the suit; and the defendant appeals to this Court, after an unsuccessful appeal to the lower appellate Court, and has, on both occasions, valued the appeal in the same manner as the respondent valued the suit.

The Assistant Registrar as Stamp Reporter would treat the suit as one, not under section 7(v)(b), but under section 7(iv)(c), of the Court-Fees Act, and would assess the court-fee in each Court on Rs. 300, taking this amount as a minimum for the market-value of the disputed land since the plaintiff had set up a settlement on a salami of that amount. If this be correct, there would be a deficit of Rs. 26-6-0 in the court-fee on the plaint and, if that should bind the appellant, also on each of his two appeals.

It has, however, been urged on behalf of the appellant that section 7(iv)(c) cannot apply as against him, because the decree of the first Court, which is all that he is interested in getting upset, shows

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(1) (1909) 27 Mad. L. J. 475.

(2) (1919-20) 24 Cal. W. N. 151.

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that no declaration was treated as sought and none was given either [*Ramakrishna Reddi v. Kotta Koti Reddi* (1) and *Haidari Begum v. Gulzar Bano* (2)]. I am inclined to accept this contention as sound.

It has been further urged that the suit being one between landlord and tenant for recovery of possession of land from which the tenant-plaintiff had been dispossessed, section 7(xi)(e), of the Court-Fees Act, should be held to apply and the matter valued according to the rent of the preceding year, namely, four purugs of paddy. But section 7(xi)(e) speaks of a tenant being "illegally ejected", and these words have been held to differ in scope from the word "dispossessed", in *Sunder Mal Marwari v. Murray* (3). This interpretation was, however, not followed in *Jamla Singh v. Kingsley* (4), but this latter ruling does not bear on the Court-Fees Act. I am thus inclined to think that the appeal must be valued not under section 7(xi)(e) but under section 7(v) of the Act.

The learned Vakil for the appellants has not been able to show me that if section 7(v) be held to apply, the matter comes within clause (a) or (b) or (c) of section 7(v). The valuation must, therefore, be based on "the value of the subject-matter" or "the market-value of the land". In order to avoid delay and cost of an enquiry on this point the learned Vakil has agreed that Rs. 300 might, in the circumstances, be taken as the value of the subject-matter of the appeal. He has, however, asked me to refer to the Taxing-Judge the question whether this matter is not governed by section 7(xi)(e) as a question of general importance, especially, in view of the facts that *Sunder Mal Marwari v. Murray* (3) was not followed in *Jamla Singh v. Kingsley* (4) and there is no ruling of the Patna High Court on the point.

Even if section 7(xi)(e) be held to apply, the taking of four purugs (1 purug = 7 maunds) as equal to Rs. 3 only is manifestly wrong, and the learned Vakil has—again to avoid delay and cost—agreed that the annual rent may be taken to be worth Rs. 50.

Under the provisions of section 5 of the Court-Fees Act I direct that the matter be placed before the Taxing-Judge for final decision. The points arising are:—

- (i) Whether the suit falls under sub-section (iv)(c) or (v) or (xi)(e) of section 7 of the Court-Fees Act; and
- (ii) Whether the appeal should be valued under sub-section (iv)(c), (v) or (xi)(e) of section 7 of the Court-Fees Act.

Ross, J.—No one appears in this case. The cases referred to on the question, whether the case falls within section 7 (xi) (e) of the Court-Fees Act or not, are not of much assistance. The decision in *Sunder Mal Marwari v. Murray* (3) really proceeded on another ground, namely, that the suit was not one

(1) (1907) I. L. R. 30 Mad. 96. (2) (1914) I. L. R. 36 All. 322.

(3) (1912) 16 Cal. L. J. 375. (4) (1912-13) 17 Cal. W. N. 1201.

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 ejection is included in dispossession but that was not a decision on the Court-Fees Act. The decisions in *Bala Sidhanta v. Permul Chetti* (2) and *Pramatha v. Amiruddi* (3) indicate that in a suit under section 7 (vi) (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.

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Ross, J.

REFERENCE UNDER THE COURT-FEES ACT, 1870:

Before Jwala Prasad, J.

GANGADHAR MISRA

v.

RANI DEBENDRABALA DASI.

*Court-Fees Act, 1870 (Act VII of 1870), section 7(iv)(e)—
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)(e) 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.

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Oct., 20.