

him merely referred to the fact that the suit had been valued for the purposes of jurisdiction at Rs. 5,100 and, if that were right, it was clear that he had no jurisdiction to hear the appeal but that the High Court was the proper tribunal. When the matter came before this court, and the appellant who was the defendant had no option in the matter, the Registrar pointed out that the proper valuation both for the purposes of jurisdiction and for the purposes of court-fee was the lower valuation, namely Rs. 4,312-6-6 and that in these circumstances the proper court was the Court of the District Judge and not this court. The matter has been referred to us and we think that the learned Registrar was right in the conclusion at which he arrived. A party is not entitled, where the valuation of the suit can be correctly ascertained as in this case, to put a purely fancy value on the suit for the purpose of jurisdiction. Where the value can be ascertained as in this case he cannot enhance the value merely for the purpose of jurisdiction. The result is that we must return this memorandum of appeal for presentation in the proper court which is the Court of the District Judge and at the same time we must set aside the order of the District Judge dated the 21st January, 1927, refusing to try the case on the ground that he had no jurisdiction.

Order set aside.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Kulwant Sahay, J.

JAGDESH CHOWDHURY

v.

RADHA DUBEY.*

1927.

DHATURI
SINGH
v.
KEDAR
NATH
GOENKA.

1927.

March, 22

Court-fees, refund of—High Court, inherent power of—second appeal dismissed on the ground of non-maintainability—court-fee, whether should be refunded.

*Second Appeal no. 97 of 1927.

1927.

JAGDESH
CHOWDHURY
v.
RADHA
DUBEY.

The High Court has inherent power to make an order directing the Taxing Officer to issue the necessary certificate to enable an appellant to apply to the revenue authorities to obtain a refund of any excess court-fee paid on a memorandum of appeal.

Chandradhari Singh v. Tippan Prasad Singh (1), followed.

But where, however, the High Court dismisses a second appeal on the ground that no second appeal lay from the decision appealed against the court-fee paid on the memorandum of appeal cannot be refunded.

The facts of the case material to this report are stated in the judgment of the court.

L. N. Singh, for the appellants.

A. B. Mukherji, Government Pleader, for the Crown.

DAWSON MILLER, C.J. AND KULWANT SAHAY, J.
This is an application on behalf of an unsuccessful appellant to recover the court-fee filed with his memorandum of appeal in a second appeal to this court. Apparently at first the appellant was under the impression that the appeal was an appeal from an order and he was proposing to pay a court-fee of Rs. 4, but on further consideration he in fact paid a sum of Rs. 382-8-0 which was the proper court-fee payable upon an appeal in such a case. When the matter came before this court his appeal was dismissed on the ground that in the circumstances no appeal lay from the decision of the lower appellate court. The appellant now asks that the court should refund the court-fee of Rs. 382-8-0 upon two grounds. In the first place he says that the Stamp Reporter, when he was about to file his appeal and pay the court-fee of Rs. 4, advised him that this was not an appeal from an order but really an appeal from a decree, and that therefore he had better pay the Rs. 382-8-0 and the appellant took that advice. It was purely optional to the appellant whether he paid the Rs. 382-8-0 or whether he took a firm stand and supported

(1) (1918) 8 Pat. L. J. 452.

1927.

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his own opinion, if he really ever had any strong opinion in the matter, that the proper appeal open to him was an appeal from an order. He might have insisted upon paying the fee of Rs. 4 and prosecuting his appeal as one from an order. Of course he would take the risk of having it dismissed on the ground that it was not in fact an appeal from an order. He however thought better of it and it does not seem to us, merely because the Stamp Reporter had given him some friendly advice about the matter which he took without question, that that is any ground for refunding the fee. The matter was entirely one for the discretion of the appellant himself.

The second point urged is that in fact he might have treated this case as one in revision and applied in revision for an order setting aside the decision of the lower appellate court and, had he done so, in that case the only fee he would have had to pay would have been a fee of Rs. 3. It seems to us that the short answer to the case is that he did not treat the case as one in revision. He did not apply in revision and there is no reason to suppose that had he done so he would have been any more successful than he was in fact by going before the court in appeal from appellant deliberately chose to bring an appeal from a decision of the lower appellate court. The question was one for him. Having instituted his appeal he was entitled to have it treated as an appeal and to raise all the points which might be raised in an appeal and not only the points which might be raised in a case of revision. In the latter case the question would be restricted to one of jurisdiction. In an appeal the points open to him would include not only jurisdiction but all questions of law. He chose that course and he alone is responsible for it and he alone must bear the consequences if he fails. We have been referred to the case of *Chandradhari Singh v. Tippan Prasad Singh* (1) where it was laid down that the High Court has inherent power to make an order directing the Taxing Officer to issue

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the necessary certificate to enable an appellant to apply to the revenue authorities to obtain a refund of an excess court-fee paid on a memorandum of appeal. We do not for a moment wish to question in any way the propriety of the decision in that case to which one of us was a party and we have no doubt whatever that the court has inherent power in proper cases. This, however, does not seem to us to be such a case. The application for revision must be dismissed.

Application dismissed.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Kulwant Sahay, J.

JANAK PRASAD

v.

ASKARAN PRASAD.*

1927.

March, 22.

Court-fees—appeal, dismissal of, on the ground of non-payment of deficit court-fee—fee already paid, whether can be refunded—sum of money paid into court, whether can be a court-fee—Registrar, power of, to order deposit of money as condition precedent to the case being tried.

When an appeal has been dismissed on the ground that a deficit in the court-fee ordered to be paid has not been paid the amount of court-fee deposited with the memorandum of appeal or during the hearing of the appeal is not liable to be refunded.

A sum deposited in court as a court-fee is nevertheless a court-fee although it is not converted into the shape of a stamp.

The Registrar of the High Court has no power to direct an appellant to deposit any sum of money in court as a condition precedent to having his case tried.

The facts of the case material to thus report are staid in the judgment of the court.

*Miscellaneous Judicial Case no. 149 of 1926.

(1) (1918) 3 Pat. L. J. 452.