

## REFERENCE UNDER THE COURT-FEES ACT.

1933.

February, 7.

*Before James, J.*

SIDESHWARI PRASAD

*v.*

RAM KUMAR RAI.\*

*Court-Fees Act, 1870 (Act VII of 1870), section 12—appeal against decision determining amount of mesne profits—ad valorem court-fee payable—rule applicable whether the profits may have accrued before suit, or after the date of the institution of the suit—memorandum accepted by Stamp Reporter as sufficiently stamped and duly admitted and registered—question not decided by Taxing Officer—appeal pending—change in practice brought about by subsequent decision—Stamp Reporter, whether can reopen the question and call upon appellant to pay ad valorem court-fee—Patna High Court Rules, Chapter VII, rule 19, scope of.*

The rule in *Dhanukhdhari Prasad Pandey's* (1) case that ad valorem court-fee is payable on a memorandum of appeal against a decision determining the amount of mesne profits applies to all appeals from such decisions, whether the profits may have accrued before suit, or after the date of the institution of the suit.

Rule 19, Chapter VII, of the Rules of the Patna High Court provides:—

“Whenever the Stamp Reporter finds that a document which ought to bear a stamp under the Court-Fees Act, 1870, has been through mistake or inadvertence received, filed, or used in the court without being properly stamped, he shall report the fact to the pleader who presented such document. Such pleader shall at once initial the report and shall within three weeks thereafter, or within such further time as the Taxing Officer may allow, note on it whether he accepts or disputes the accuracy thereof. If such note is not made within such time, it shall not be open to such pleader to dispute the accuracy of the report”.

When an appeal, at the time of its presentation, was accepted by the Stamp Reporter as sufficiently stamped in accordance with the practice then prevailing and was duly admitted and registered, but subsequently, while the appeal

\* In the matter of Second Appeal no. 484 of 1930.

(1) (1933) I. L. R. 12 Pat. 188.

1933.

SIDESHWARI  
PRASAD  
v.  
RAM  
KUMAR  
RAI.

was still pending, the Stamp Reporter, following a decision of the Court which interpreted the law and changed the practice, reopened the question and called upon the appellant to pay ad valorem court-fee on the memorandum of appeal. *Held*, (i) that the memorandum of appeal would be deemed to have been received through mistake or inadvertence so as to attract the operation of Rule 19;

(ii) that the Stamp Reporter was not functus officio and that, so long as the appeal may remain pending, he had the power under Rule 19 to reopen the question of whether a document is sufficiently stamped, where the matter has not already been decided by the Taxing Officer.

*Query*: (i) Whether it is proper to treat an appellant, whose memorandum of appeal may have been duly admitted and registered, where the matter of what may be the court-fee payable has not been left open, but has been decided in a manner which appears to be final, as liable to be called upon to pay additional court-fee during the pendency of the appeal, owing to a change in the view of the law taken by the court after the appeal has been admitted.

(ii) Whether the first part of section 12 of the Court-Fees Act, 1870, can be held to empower the Bench hearing the appeal to reject a memorandum as insufficiently stamped.

*Krishna Mohan Sinha v. Raghunandan Pandey*(1), referred to.

Reference to the Taxing Judge under section 5 of the Court-fees Act.

The facts of the case material to this report are stated in the judgment of James, J.

*B. P. Sinha*, for the appellant.

*Government Pleader*, for the Crown.

JAMES, J.—On December the 22nd, 1925, a Full Bench of this Court decided that where the amount of mesne profits accruing pendente lite was left to be ascertained in the course of execution of the decree, no court-fee was payable on the claim until the

(1) (1924) I. L. R. 4 Pat. 336, F. B.

1933

SIDESHWARI

PRASAD.

C.

RAM

KUMAR

RAI

JAMES. J.

amount actually due had been ascertained. Following this decision, the Taxing Judge decided on the 14th July, 1926, that ad valorem court-fee should not be levied on appeals to this Court from decisions determining the amount of mesne profits—*Sheodhin Sinah v. Norangi Lal Ram Marwari*(1). On the 10th of March, 1932, the question of whether ad valorem court-fee was payable on such appeals came before a Division Bench of this Court in *Kedar Nath Goenka v. Maharaja Chandra Mauleshwar Singh*(2), when it was decided that ad valorem court-fee was payable on such a memorandum of appeal. On a question arising between the Stamp Reporter and an appellant after this decision, as to whether ad valorem court-fee was payable or not, the matter was referred to me as Taxing Judge, whose decision of the 18th of November, 1932, was that ad valorem court-fee was payable on the memorandum of appeal. In the present case, the Stamp Reporter had accepted the appeal as sufficiently stamped, before the decision of the Division Bench in *Kedar Nath Goenka's*(2) case, but after the decision of that case he reopened the question and called upon the appellant to pay ad valorem court-fee on the value of his appeal. The case has been referred to me by the Taxing Officer under section 5 of the Court-Fees Act for determination of the question of whether ad valorem court-fee shall be required in such cases, where appeals are still pending before this Court, though at the time of their presentation they were accepted by the Stamp Reporter as sufficiently stamped with a court-fee of Rs. 4, and duly admitted and registered.

Mr. B. P. Sinha on behalf of the appellant argues that a distinction should be drawn between this case and that of *Dhanukdhari Prosad Pande*(3) wherein the Taxing Judge, accepting the view expressed by

(1) (1926) 11 Pat. L. T. 703.

(2) (1932) I. L. R. 11 Pat. 532.

(3) (1933) I. L. R. 12 Pat. 186.

the Division Bench, decided that ad valorem court-fee was payable on appeals from decisions determining the amount of mesne profits. In that case the appeal arose out of a suit for recovery of mesne profits, whereas in the present case the suit was for recovery of possession of land, with no claim for antecedent mesne profits, but with a claim for mesne profits pendente lite. In *Dhanukdhari Prosad Pande's*(1) case it was held that ad valorem court-fee was payable on the amount for which the appellant sought to avoid liability, or on the amount by which he sought to enhance the value of his decree, on the principle that the case was governed by the first article of Schedule I of the Court-Fees Act which prescribes that a memorandum of appeal must bear a court-fee stamp calculated on the value of the subject-matter in dispute in the appeal. The rule applies to all appeals from decisions determining the amount of mesne profits, whether the profits may have accrued before suit, or after the date of the institution of the suit; and no distinction can properly be drawn between this case and that of *Dhanukdhari Prosad Pande*(1) on any such ground.

On the question of whether the rule that ad valorem court-fee is to be regarded as payable in the High Court on a memorandum of appeal of this nature is to be treated as affecting appeals admitted before the decision of the Division Bench of the 10th March, 1932, or the decision of the Taxing Judge of the following 18th of November, Mr. B. P. Sinha argues that when the Stamp Reporter has once accepted an appeal as properly stamped and when it has been admitted and registered, the Stamp Reporter should be treated as functus officio; and he should not be regarded as entitled to reopen the question of the sufficiency of the court-fee. He also argues that since there is no provision in the Court-Fees Act for refund of court-fee which might have been paid in

1933

SIDHESHWARI  
PRASADv.  
RAM  
KUMAR  
RAI.

JAMES, J.

(1) (1933) I. L. R. 12 Pat. 188.

1933.

SIDHSHWARI  
PRASAD

v.

RAM  
KUMAR  
RAI.

JAMES, J.

the opposite circumstances, it would not be fair to exact additional court-fee because during the pendency of the appeal, the practice has been changed by a decision of this Court.

It is suggested by the learned Government Pleader that the question of the sufficiency of the stamp on the memorandum of appeal must always be regarded as open until the appeal is finally heard and disposed of, in view of the provisions of the first part of section 12 of the Court-Fees Act, which directs that every question relating to valuation for the purpose of determining the amount of any fee chargeable on a memorandum of appeal shall be decided by the Court in which such memorandum is filed; and it is suggested that at the final hearing of the appeal it is open to the respondent to object that the memorandum of appeal has not been properly stamped. This view is certainly correct as applying to courts subordinate to the High Court and as applying to the High Court when considering the question of the sufficiency of the stamp in the court below under the second part of the section; but it must at least be regarded as doubtful whether the first part of section 12 of the Court-Fees Act can be held to empower the Bench hearing the appeal to reject a memorandum as insufficiently stamped, in view of the remarks of Sir Dawson Miller in *Krishna Mohan Singh v. Raghunandan Pande*<sup>(1)</sup>, when he expressed the opinion that the power of the High Court to decide the amount of the fee payable on a memorandum of appeal presented to the High Court has been delegated to the Taxing Officer and the Taxing Judge.

However that may be, under rule 19 of Chapter VII of the Rules of the Patna High Court, the Stamp Reporter, when he finds that a document which ought to bear a stamp under the Court-Fees Act has been through mistake or inadvertence received in the Court

(1) (1924) I. L. R. 4 Pat. 336 (358), F. B.

1923.

SIDESHWARI  
PRASADv.  
RAM  
KUMAR  
RAI.

JAMES, J.

without being properly stamped, is required to report the fact to the pleader who presented the document, who is obliged to note within three weeks whether he accepts or disputes the accuracy of the report. There is no doubt that under this rule the Stamp Reporter would be required to take action if he found that a memorandum of appeal which was insufficiently stamped had been accepted by mistake or inadvertence as sufficiently stamped; and that it cannot be said that when the appeal is once admitted and registered, the functions of the Stamp Reporter are necessarily at an end. Mr. B. P. Sinha points out that this rule applies only where an insufficiently stamped document has been accepted by mistake or inadvertence; and he contends that it cannot be applied to a case like that now before me, in which the Stamp Reporter acting correctly in accordance with the rule then prevailing accepted the memorandum of appeal as sufficiently stamped. But the rule does imply that the Stamp Reporter is not completely functus officio when an appeal has once been registered; and although it may be said that it is only where the document was received by mistake or inadvertence that the rule can be applied whereby the party's pleader is not permitted to question the amended report unless he does so within three weeks, it must be held that the Stamp Reporter has power to reopen the question of whether a document is sufficiently stamped, where the matter has not already been decided by the Taxing Officer, so long as the appeal may remain pending. The question remains of whether it is proper to treat appellants, whose memoranda of appeal may have been duly admitted and registered, where the matter of what may be the court-fee payable has not been left open, but has been decided in a manner which appears to be final, as liable to be called upon to pay additional court-fee during the pendency of the appeal, owing to a change in the view of the law taken in this Court after the appeal has been admitted.

1933.

SEDESHWARI  
PRASAD  
v.  
RAM  
KUMAR  
RAI.

JAMES, J.

The learned Government Pleader, adopting the grounds set out by the Taxing Officer of this Court, argues that the appeal should be treated as having been admitted by mistake, and that rule 19 of Chapter VII of the High Court Rules should be held to apply.

As the Taxing Officer has pointed out, decisions of the Courts do not make the law or reverse it; they merely interpret it; and the law, when the Stamp Reporter accepted this memorandum of appeal as sufficiently stamped, was the same as is now, so that if he now corrects his former mistaken report he is not really giving retrospective effect to a decision of the Taxing Judge. The learned Advocate for the appellant accepting this view as technically correct, argues at the same time that whatever may be the formal or technical view of the matter, the view that the law has always been in accordance with the latest decision on any particular point is essentially mere convention or legal fiction, since any matter which has already been finally determined so as to be *res judicata* is not reopened merely because a different view of the law may be taken in some subsequent case. He argues that it would be straining the language of the rule to suggest that the Stamp Reporter acted by mistake or inadvertence when he admitted the plaint in accordance with the rule then prevailing, since if he had acted otherwise at that time, he would have been acting without authority and would have done wrong.

Whatever may be the incidental consequences of holding that the Stamp Reporter is not completely *functus officio* in the matter of these reports until the case is finally decided, I consider that this is the view which should be adopted. Mr. Sinha suggests that if the circumstances were the opposite of what they are, he would have no remedy; but that question may be considered when it arises. In appeals from orders determining the value of *mesne profits* which are still pending for decision in this Court, the Stamp

Reporter should require the memoranda to be stamped in accordance with the rule laid down in *Dhanukdhari Prosad Pande's*<sup>(1)</sup> case.

*Order accordingly.*

### APPELLATE CIVIL.

*Before Kulwant Sahay and Khaja Mohamad Noor, JJ.*

SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

RAMASRAY SINGH.\*

*Cess Act, 1880 (Beng. Act IX of 1880), sections 4, 5, 6, 24—riyat, when required to submit return of the annual value—section 24, scope of—cultivating riyat deriving income by allowing dealers of cattle to hold hat on the land—assessment of cess on the basis of income so derived, whether legal—scheme of the Act—persons holding the hat, whether lessees or licensees—cultivating riyat allowing persons to hold hat on his lands, whether can be construed to have the status of tenure-holder.*

Section 24 of the Cess Act, 1880, provides :—

"The Collector may, whenever he may think fit, cause a notice in the form no. 1 in Schedule (B) contained, to be served on any person holding any lands or possessing any interest therein, although such person may have been mentioned in any return as a cultivating riyat; and thereupon such person shall be bound to make a return of the annual value of such land within one month from the service of such notice in the form in Schedule (A) contained and the provisions of sections 17 and 18 regarding extension of time for lodging a return and regarding fine, respectively, shall be applicable to such person."

*Held*, that section 24 contemplates the case of a riyat who is not cultivating the land himself directly but has let it out to under-riyat for actual cultivation. If there is no under-riyat and if the riyat is himself cultivating the land, he cannot be called upon to furnish a return of the annual value which he derives in respect of the land.

\* Appeal from Appellate Decrees nos. 696 to 708 of 1928, from a decision of Rai Bahadur Jyotirmoy Chattarji, District Judge of Saran, dated the 14th February, 1928, confirming a decision of Maulavi S. A. Hamid, Munsif of Chapra, dated the 18th December, 1926.

(1) (1933) I. L. R. 12 Pat. 188.

1933.

SIDESHWARI  
FRASAD  
v.  
RAM  
KUMAR  
RAI.

JAMES, J.

1933.

February,  
10.