

## APPELLATE CIVIL.

Before Sir Sydney Robinson, Kt., Chief Justice, and Mr. Justice Baguley.

MA SHIN

v.

MAUNG SHWE HNIT AND ONE.\*

1924

Aug. 26.

*Cross objection relating solely to costs—Whether to be treated as one requiring Court-fee under Article I, of Schedule I or as a petition under clause (d), Article I, Schedule II of the Court-Fees Act (VII of 1870)—Court-fees whether payable ad valorem—Valuation of cross-objection on costs.*

*Held*, that cross objections, by the respondent relating solely to costs must be stamped *ad valorem* on the amount or value of the sum claimed as costs.

*Babaji Hari v. Raja Ram*, 1 Bom., 75; *Sharada Soonduree Debee v. Gobind Monee*, 24 W.R., 179—*followed*.

*Doorga Dass Chowdry v. Romanath Chowdry*, 8 Moo. I.A., 262—*distinguished*.

*Kemal Kumari Debi v. Rungpur North Bengal Bank, Ltd.*, 25 C.W.N., 934—*dissented from*.

*Anklesaria*—for the Respondent.

ROBINSON, C.J.—The plaintiffs in this suit sold a piece of land belonging to them to the defendants. A deed of sale was drawn up and executed. The plaintiffs then brought the present suit, alleging that, owing to a mistake, another piece of land belonging to them had been specified in the deed as having been sold, and they sought cancellation of the deed, or rectification by inserting the proper description of the land that was intended to be sold and bought.

The learned District Judge granted the plaintiffs a decree, cancelling the deed on their paying into Court, by a specified date, the amount of the purchase price and the costs of the defendants in both Courts.

From that decree the defendants appeal, and the plaintiffs have filed a cross-objection as to costs only,

\* Special Civil Second Appeal No. 247 of 1924 against the decree of the District Court of Insein in Civil Appeal No. 4 of 1924.

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urging that the lower appellate Court, having decreed the suit, erred in disallowing the plaintiff-respondents' costs, and directing them to pay the costs of the defendant-appellants. They were called upon to pay Court-fees on the amount claimed by them; they objected, but the matter having been the subject of a decision of a Bench of this Court last year in Civil Regular Appeal No. 166 of 1923, the Taxing Master ordered them to pay the full Court-fees on the amount claimed, and they have done so under protest. They then applied that they be heard by the Court on this question, and they rely on the case of *Kamal Kumari Debi v. Rungpur North Bengal Bank, Ltd.* (1).

This petition has been directed to be laid before a Bench of this Court, and now comes up for decision.

The learned Judge, in the case quoted above, has dealt with all previous decisions, except some of the very earlier ones. All the decisions cited, as well as the decisions in *Sharoda Soonduree Debee v. Gobind Monee* (2), and *Babaji Hari v. Raja Ram* (3), take the view that the memorandum of cross-objections must be stamped *ad valorem*.

The learned Judge is unable to follow them, partly because in some no reasons are given, partly because the point was assumed, and partly because the dictum of their Lordships of the Privy Council in *Doorga Dass Chowdry v. Ramanath Chowdry* (4), was not referred to. Some of the authorities, no doubt, deal with cross-objections as to matters in dispute in a suit as well as to the order as to costs.

I desire to confine this decision to the point immediately before us, and it must not be taken

(1) (1920) 25 C.W.N., 934.

(2) (1892) 24 W.R., 179.

(3) (1877) 1 Bom., 75.

(4) (1859-61) 8 Moo. I.A., 262.

as expressing any opinion as regards any other matter.

The questions we have to decide are: Whether a cross-objection which relates to costs, and costs only must be stamped under Article I of Schedule I of the Court Fees Act, or merely treated as a petition under clause (d), Article I, Schedule II of that Act.

With the greatest respect, I regret I am unable to agree with the learned Judge in Calcutta. His decision appears to me to be based almost entirely on the dictum of their Lordships of the Privy Council in *Doorga Dass Chowdry's* case (4). He says in that case the question was whether costs of suit could be added in calculating the appealable value of Rs. 10,000 to the Privy Council, and the Judicial Committee held that "the costs of a suit are no part of the subject matter in dispute."

Their Lordships of the Privy Council were dealing with an Order in Council, and whether special leave to appeal should be granted. The appealable sum was admittedly under Rs. 10,000, and the Lord Chancellor, in refusing leave, pointed out that the interest accruing subsequent to the decree could not be added to the capital sum decreed for the purpose of reaching the appealable amount. And he goes on: "Here the interest, under any circumstances, would not be sufficient, for, to arrive at the necessary amount, you must add, as you seek to do, the costs. Now, the costs of a suit are no part of the subject matter in dispute, *and cannot be used for the purpose you seek . . . .*"

These last words are not quoted by the learned Judge in Calcutta, and it is clear, to my mind, that their Lordships were dealing with a special point, and that their dictum must not be extended further

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than the point that was immediately before them. They were laying down what was an obvious proposition that the amount decreed as costs could not be added to make the amount or value of the subject matter up to Rs. 10,000. In general terms, no doubt, costs do not form part of the subject matter in dispute ; they ordinarily merely follow the result.

Section 16 of the Act, VII of 1870, required a respondent filing a cross-objection to pay the Court-fee before being heard. That section has now been repealed, and cross-objections have been included in Article I of Schedule I of the Act instead. There is no ground for supposing that it was intended to make any change in the law when this was done ; the only change being that Court-fees have to be paid when the cross-objection is filed and not merely before the hearing. In my opinion, it is wrong to assume that the words "amount or value of the subject matter in dispute" mean, in reference to a cross-objection, "the amount or value of the subject matter in dispute in the suit." To do that, it would be necessary to add words to the Schedule which do not appear there, and the "amount or value of the subject matter in dispute" in a cross-objection as to costs only, must, I think, be clearly read as meaning the "amount or value of the sum claimed as costs."

In my opinion, therefore, the decision of a Bench of this Court in Civil First Appeal No. 166 of 1923 was correct, and the order of the Taxing Master following that decision was also correct.

BAGULEY, J.—I concur.