APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Brown.

SPECIAL COLLECTOR OF RANGOON

v.

KO ZI NA AND OTHERS.*

1927

June 22.

Court Fees Act (VII of 1870), s. 8; Art. 1 of First Schedule; Art. 17 (iv) of Second Schedule—Court-fee on appeal by Government against award by Court under Land Acquisition Act.

Held, that an appeal by Government against an award of a District Court under the Land Acquisition Act is taxable under s. 8 of the Court Fees Act or else under Art. 1 of the First Schedule of the Act. Art. 17 (iv) of the Second Schedule of the Act does not apply in such a case. *Kasturi Chetty* v. *Deputy Collector, Bellary*, 21 Mad. 269—*referred to.*

Secretary of State for India v. *Basan Singh*, (1913) P.R. Civil No. 57—*dissented from.*

Gaunt (Assistant Government Advocate) for the appellant.

Christopher for the respondents.

RUTLEDGE, C.J., and BROWN, J.—These appeals have been filed by the Collector against an award by a District Court under the Land Acquisition Act, and the question now for decision is what is the correct court-fee to pay on this appeal. It is contended on behalf of the Collector that the fee required is one of Rs. 10 only, under the provisions of the Second Schedule to the Court Fees Act, item 17 (iv). It was held in the case of *Kasturi Chetty* v. *Deputy Collector, Bellary* (1), that an appeal in such a case by the claimant was taxable under section 8 of the Act, and that Article 17 (iv) of the Second Schedule was not applicable. It is however contended that although a claimant in an appeal from an award by

* Civil First Appeals Nos. 179 to 190 of 1926.

(1) (1886) 21 Mad. 269.

1927

SPECIAL COLLECTOR OF RANGOON v. KO ZI NA AND OTHERS.

RUTLEDGE, C.J., AND BROWN, J.

a Collector is bound to pay court-fee *ad valorem* under the provisions of section 8 of the Court Fees Act, that section does not apply to an appeal on behalf of the Crown. The section lays down that "the amount of fee payable . . . . . on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant." When the person whose land is being acquired is the appellant there is no difficulty in applying the provisions of this section. But when the appeal is filed by the Crown difficulties arise. The Crown is not a claimant and it is impossible therefore to compute the court-fee according to the difference between the amount awarded and the amount claimed by the appellant without a straining of the meaning of the words. But according to the first part of the section its provisions apply to all appeals in such cases whoever may have filed the appeal. That being the case it does not seem to us unreasonable to hold that in the case of an appeal by the Crown the words "the amount claimed by the appellant" mean "the amount the appellant claims should have been awarded." That is certainly not the natural meaning of the words, but if the section does apply to the case of an appeal by the Crown, then it appears to us the only possible interpretation of the closing words of the section in such a case. And the section quite clearly purports to apply to all appeals against an order relating to compensation whoever the appellant may be.

In our opinion however it is not a matter of great moment whether in dealing with an appeal by the Crown we have to disregard the opening sentence

of section 8 or to put a forced construction on the closing words of the section. In our opinion if section 8 does not apply to the case then the matter comes within the scope of Article 1 of the First Schedule of the Court Fees Act. That Article is applicable unless the case is otherwise provided for. If section 8 does not apply then it is contended that this is a case of an appeal in a suit to set aside an award and the appeal is therefore taxable under the provisions of Article 17 (iv) of the Second Schedule. This was the view taken by the Chief Court of the Punjab in the case of *Secretary of State for India* v. *Basan Singh and others* (1). But no reasons were given in that case for the decision on that point. Article 17 (iv) prescribes the court-fee as ten rupees on a "plaint or memorandum of appeal in each of the following suits . . . . . .

(iv) to set aside an award."

The Article is therefore properly applicable to the present case if the proceedings in the District Court can be regarded as a "suit to set aside an award." The District Court proceedings certainly have reference to an award, but that is clearly not sufficient to bring them within the scope of the Article. Section 18 of the Land Acquisition Act lays down that "any person who has not accepted the award (of the Collector) may by written application to the Collector require that the matter be referred by the Collector for the determination of the Court," and thereupon the Collector is bound to make the required reference. The proceedings are thus instituted on reference by the Collector. They are not initiated by a plaint, and are not in the strict sense of the word a suit at all. Still less does it seem to us possible to hold the

(1) Punjab Record, Civil, 1913, No. 57.

1927

SPECIAL COLLECTOR OF RANGOON v. KO ZI NA AND OTHERS.

RUTLEDGE, C.J., AND BROWN, J.

proceedings to be a suit to set aside an award. It is true that the matter for the consideration of the Court in the proceedings is an award by the Collector and that if the Court interferes then the original award ceases to have any effect. But if the setting aside of the award can be properly described as an object of the reference at all it is only a very small part of what is desired in such a reference. No one in such proceedings asks to be put back into the same position as he would have been in had there been no award. It is quite clear that the object of the proceedings is to have an award from the Court instead of an award from the Collector. When matters in dispute between parties are by agreement referred to arbitrators, and the arbitrators make an award, it is open to a party considering himself aggrieved to file a suit to set aside that award, and in such a suit the Court has one point and one point only before it for decision, whether the award should be set aside. It has no power to make a different award from the award of the arbitrators. Such a suit is hardly capable of valuation and the suit would quite clearly come within the scope of Article 17 (iv). In proceedings under the Land Acquisition Act the Court is not asked simply to avoid the award of the Collector. The Court is asked to take the place of the Collector and itself to make an award and an appeal from a Court's order is clearly valuable at the amount by which the appellant wishes the sum awarded to be increased or reduced. We are therefore of opinion that proceedings before the Court on a reference by the Collector under the provisions of section 19 of the Land Acquisition Act cannot be described as a suit to set aside an award within the meaning

1927

SPECIAL COLLECTOR OF RANGOON v. KO ZI NA AND OTHERS

RUTLEDGE, C.J., AND BROWN J.

of the provisions of Article 17 (iv) of the Second Schedule of the Court Fees Act.

It follows that if section 8 of the Court Fees Act is not applicable, the provisions of Article 1 of the First Schedule must be applied, and the result will be the same in either case.

We find that court-fees are payable in these appeals *ad valorem* on the difference between the sum awarded by the Court and the sum which the appellant now claims should have been awarded.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Maung Ba.

1928

Jan. 24.

AHMED RAHMAN AND FOUR OTHERS
v.
A.L.A.R. CHETTIAR FIRM.*

Court-fee on appeal from order passing final decree for sale in mortgage suit—Adjustment of preliminary mortgage decree not an adjustment of suit within the meaning of O. 23, r. 3 of Civil Procedure Code (Act V of 1908)—Effect of non-certification under O. 21, r. 2—O. 34, r. 5.

Held, that where an appeal is preferred against an order which is an order for a final decree for sale in a mortgage suit, such appeal must be against the final decree itself and not against the order as an order, and consequently the appeal must be stamped *ad valorem*.

Where a mortgage decree-holder applies for a final decree for sale of the mortgaged property and the judgment-debtor urges that the decree-holder had allowed him an extension of time for payment, *held* that such an agreement would amount to an adjustment of the preliminary decree and could not be recognized by the Court that is bound to pass the final decree for sale in terms of the preliminary decree, unless the adjustment was certified to the Court under Order 21, rule 2, of the Civil Procedure Code within the prescribed time. The alleged agreement cannot be regarded as an adjustment of a suit within the meaning of Order 23, rule 3, of the Civil Procedure Code.

Bajrangi Lal v. *Mahabir*, 35 All. 476; *Jankibai* v. *Chimna*, 22 Bom. L.R. 811—*followed*.

Krishnaswamy for the appellants.

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* Civil First Appeal No. 330 of 1927 and Civil Miscellaneous Application No. 7 of 1928.