APPELLATE CIVIL.

Before Mr. Justice Tek Chand and Mr. Justice Agha Haidar.

1927

May 5.

BELI RAM AND OTHERS (PLAINTIFFS) Appellants

versus

ISHAR DASS (DEFENDANT) Respondent.

Civil Appeal No. 1021 of 1926.

Court Fees Act, VII of 1870, Schedule II, article 17 clause (vi)—whether applicable to suits under section 92 of the Civil Procedure Code.

This suit was lodged under section 92 of the Code of Civil Procedure, the relief claimed being (1) that the *Mahant* be removed and a new *Mahant* appointed, (2) that along with the *Mahant* so appointed a Committee be formed to fulfil the objects of the Trust, that the property of the Trust be made over to the new *Mahant* and the newly appointed Committee, and that a list of the property be prepared.

Held, that article 17 clause (*vi*) of Schedule II of the Court Fees Act applies to suits under section 92 of the Civil Procedure Code and that there is nothing in the relief claimed in the present suit to take it out of the purview of that clause. The Court Fee stamp of Rs. 10 on the plaint was therefore sufficient.

Ramrup Das v. *Sujaram Das* (1), *Thakuri* v. *Bramha Narain* (2), *Girdhari Lal* v. *Ram Lal* (3), and *Gopi Das* v. *Lal Das* (4), followed.

Raj Krishna Dey v. *Bepin Behary Dey* (5), *Bawa Mangal Das* v. *Mahant Narinjan Das* (6), and *Umrao Mirza* v. *Jones* (7), distinguished.

Sudalaimuthu Pillai v. *Peria Sudaram Pillai* (8), referred to.

First appeal from the decree of Khan Sahib Shahzada *Sultan Asad Jan, Senior Subordinate Judge, Gujranwala, dated the 1st February 1926, rejecting the plaint.*

(1) (1910) 7 I. C. 92.
(2) (1896) I. L. R. 19 All. 60.
(3) (1899) I. L. R. 21 All. 200.
(4) 97 P. R. 1918.
(5) (1912) 17 I. C. 162.
(6) 56 P. R. 1895, p. 289.
(7) (1884) I. L. R. 10 Cal. 599.
(8) (1924) 87 I. C. 25.

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G. C. NARANG and GOBIND RAM, for Appellants.

BADRI DAS and AMIN CHAND, for Respondent.

The judgment of the Court was delivered by :—

AGHA HAIDER J.—The plaintiffs have come up in appeal from an order rejecting their plaint on the ground that it was not sufficiently stamped and that the plaintiffs have not been able, within the time fixed by the Court, to supply the deficiency.

The sole point, which we have to decide is whether or not the plaint is sufficiently stamped, having regard to the nature of the suit and the relief claimed. The suit undoubtedly is one under section 92 of the Code of Civil Procedure and the relief claimed is (1) that the present *Mahant* may be removed and a new *Mahant* may be appointed in his place, and (2) that along with the *Mahant* so appointed a committee may be formed to fulfil the objects of the Trust, the property of the Trust may be made over to the new *Mahant* and the newly appointed committee and the list of the said property may be prepared. And then there is further prayer about the settling of a proper scheme.

The defendant denied the existence of the trust and claimed title in himself. He further pleaded that, having regard to the nature of the suit, *ad valorem* court-fee ought to have been paid.

There cannot be any doubt that Article 17, clause (*vi*) of the Second Schedule of the Court Fees Act applies to cases which are brought under the provisions of section 92 of the Code of Civil Procedure. If any authority were needed, the case reported as *Ramrup Das* v. *Sujaram Das* (1), clearly lays down that a suit under section 92 of the Civil Procedure Code falls within the purview of Article 17, Clause (VI), Sche-

(1) (1910) 7 I. C. 92.

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dule II of the Court Fees Act. Now, the question is whether there is anything in the relief claimed which would take the case out of the purview of Article 17, Clause (VI). We have been referred to a number of cases by the learned counsel for the appellants and our attention has been invited particularly to *Thakuri* v. *Bramha Narain* (1), *Girdhari Lal* v. *Ram Lal* (2), and *Gopi Das* v. *Lal Das* (3). All these cases support the contention of the appellants and in effect lay down that where a suit is brought under the provisions of section 92 of the Civil Procedure Code, a court-fee of Rs. 10 is, under Article 17, Clause (*VI*) of the Court Fees Act, payable. In *Thakuri* v. *Bramha Narain* (1), the learned Judges laid down the principle underlying this proposition very clearly. They say: "if * * * every suit under that section (section 539 old Code, section 92 new Code) in which the appointment of trustees was prayed for, or the removal of a trustee was sought, had to be treated as a suit for possession of the property, the salutary provisions of that section would be seriously interfered with and in many cases defeated. A suit under that section is brought for the protection and preservation of endowed property, and it is safeguarded by the rule which requires that it must be brought by the Advocate-General himself or with the consent of the Advocate-General, or such other officer as the Local Government may appoint in this behalf. Instances may often arise in which the trust property is of considerable value. If court-fees had to be paid with reference to that value whenever it was found necessary to bring a suit to remove a trustee who had committed a breach of his trust such court-fees might be prohibitive and might prevent the institution of the suit."

(1) (1896) I. L. R. 19 All. 60. (2) (1899) I. L. R. 21 All. 200.
(3) 97 P. R. 1918.

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It was argued on behalf of the defendant-respondent that the allegations in paragraph 5 of the plaint really made the suit one for possession of the property in dispute following upon the dispossession of the defendant. This, however, is not the correct way of looking at the pleadings because in the relief, as pointed out above, there is no prayer for the possession of the property for the benefit and advantage of the plaintiffs. The plaintiffs have brought this suit in their capacity as members of the public and do not claim any beneficial interest for themselves. Under these circumstances it cannot be urged, by any stretch of reasoning, that the suit was one for possession of the property which the plaintiffs claimed for their own benefit or advantage.

On behalf of the respondent reliance was placed upon section 7, clause (*iv*) (*c*) of the Court Fees Act. We have already mentioned that the suit was not one which is technically called a suit for a declaration in which a consequential relief was claimed and therefore any cases which might have been decided with regard to the provisions of that section would not have any application to the present case. The learned counsel for the respondent further cited *Raj Krishna Dey* v. *Bepin Behary Dey* (1). That case is clearly distinguishable as it contained a prayer for a declaration followed by a prayer for an injunction. Bawa *Mangal Das* v. Mahant *Narinjan Das* (2), was also quoted, but there is a passage at page 289 of the report which clearly goes a long way to support the contention of the learned counsel for the appellants. The only authority which could be cited in favour of the respondent was the case reported as *Umrao Mirza* v. *M. Jones* (3). It does not however appear from a

(1) (1912) 17 I. C. 162. (2) 56 P. R. 1895, p. 289.
(3) (1884) I. L. R. 10 Cal. 599.

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perusal of the report that it was a case under section 539 of the old Code of Civil Procedure. Any way, this case has been considered in a number of cases and if it lays down anything contrary to the authorities cited by the appellants all that we can say, with due respect, is that we are not prepared to follow it.

The argument put forward on behalf of the plaintiff-appellants before us receives further support from a case reported as *Sudalaimuthu Pillai* v. *Peria Sudaram Pillai* (1), where the case reported as *Umrao Mirza* v. *M. Jones* (2), was considered and the learned Judge remarked :—

" My attention has been drawn to *Umrao Mirza* v. *Jones* (2), but that case was not one under section 92 so far as can be gathered from the report. If it is supposed to lay down a rule which is in conflict with the ruling in *Ramrup Das* v. *Sujaram Das* (3), I think we should prefer to follow the later decision of the Calcutta High Court ".

In this connection we may invoke in aid another principle of law which is well-established. The Court Fees Act is a fiscal statute and like all such statutes it must be interpreted in a liberal and generous spirit in favour of the subject so as to make its operation less onerous, having due regard to the language used in the enactment.

We are satisfied that the judgment of the learned Judge of the Court below was erroneous and cannot be maintained. We set aside the decree of the Subordinate Judge and remand the case for trial on the merits. Costs would be costs in the cause.

A. N. C.

Appeal accepted.
Case remanded.

(1) (1924) 87 I. C. 25. (2) (1894) I. L. R. 10 Cal. 599.
(3) (1910) 7 I. C. 92.