

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Dalip Singh.

NAZAR MUHAMMAD (PLAINTIFF) Appellant

versus

**KALA RAM AND OTHERS (Vendees) } (DEFENDANTS)
WASU RAM (Vendor) } Respondents.**

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Jan. 17.

Civil Appeal No. 2471 of 1923.

Court-fees Act, VII of 1870, section 7 (v)—higher Court-fee payable upon appeal against part of the decree than upon appeal against the whole decree—Anomaly—whether appellant can take advantage of—Punjab Pre-emption Act, I of 1913, section 25—Market value—Appeal—for enhancement of—Court-fee.

In a pre-emption case the appeal was mainly one for enhancement of the price fixed by the lower Court as the market value of the land, but pleas of limitation, etc., were also inserted in the memorandum in order that the court-fee upon the appeal should be payable (under section 7 (v) of the Act) only on the revenue assessed on the land.

Held, that the appellant was entitled, notwithstanding his admitted intention to attack only a part of the decree, to take advantage of the anomaly existing in this respect under the law of court-fees, and to appeal against the whole decree in order to avoid payment of the higher court-fee applicable to an appeal against a part thereof.

First appeal from the decree of Lala Devi Dayal, Dhawan, Senior Subordinate Judge, Multan, dated the 3rd July 1923, awarding the plaintiff possession by pre-emption of the lands in dispute on payment of Rs. 23,436-5-0, etc.

N. C. PANDIT, GHULAM MOHY-UD-DIN and SHIB RAM, for Appellant.

FAKIR CHAND and CHANDER GUPTA, for Respondents.

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The judgment of the Court was delivered by :—

ZAFAR ALI J.—This was a suit for possession by pre-emption of certain agricultural lands, wells, etc., situate in village Thatta Ghalwan, *tahsil* Shujabad, district Multan. The three vendees who are brothers figure as defendants Nos. 1—3 and the vendor is defendant No. 4.

The price recited in the deed of sale is Rs. 43,500. Out of this sum Rs. 9,022-8-0 was paid to the vendor before the Sub-Registrar and the balance was stated to be the aggregate of various mortgage moneys and other debts that he already owed to the vendees. The plaintiff, whose right of pre-emption was not disputed, asserted that the said price was fictitious and that the price actually paid was Rs. 15,000, which was also the market value. The evidence of some of the vendees' own witnesses went a long way to show that Rs. 43,500 was a fictitious sum. One of them, namely, Bahadur Khan (D. W. 14), who was one of the attesting witnesses to the deed of sale, deposed that it was agreed to between the parties to the sale that Rs. 2,000 or Rs. 3,000 would be repaid by the vendor out of the sum to be received by him before the Sub-Registrar. The vendor, who too was a witness for the vendees, deposed that he had repaid Rs. 6,000. The mortgage amounts, with one or two exceptions, were also found to include fictitious items. Thus it became clear that the price recited in the deed of sale had not been fixed in good faith nor had been actually paid. A retired Sub-ordinate Judge, to whom the trial Court had issued a commission to make an enquiry for the purpose of determining the market value, inspected the lands, examined a number of witnesses and then reported

that the market value was Rs. 28,359-5-0. Both parties were dissatisfied with this report and filed objections thereto but produced no further evidence. The trial Court accepted, as correct, the rates at which the commissary valued the lands, but discovered two arithmetical errors in his calculations, and found that the correct valuation came to Rs. 27,436-5-0. Out of this sum, Rs. 4,000 was payable to a mortgagee and the balance Rs. 23,436-5-0 to the vendees. Both parties have appealed.

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As regards the appeal by the defendants-vendees the plaintiff's counsel has raised a preliminary objection that the appeal is not properly valued for purposes of court-fees. These defendants had pleaded, *inter alia*, that the suit was barred by time and that it must also fail for the reason that the plaintiff had not claimed the whole of the property sold. Both these pleas were put in issue, but at the time of the final arguments in the Court below the vendees' counsel did not press them. In spite of this, these pleas are again raised by them in their grounds of appeal, so that they seek not only enhancement of the market value but also dismissal of the plaintiff's suit. If they had appealed only against the finding about the market value they would have paid court-fees on the difference between the value claimed and the value fixed by the Court below, *i.e.*, a sum of Rs. 16,064; but they have paid court-fees on Rs. 1,940, which is ten times the amount of the revenue assessed on the land. The plaintiff's counsel contends that the real object of the appeal is to have the value enhanced but that to avoid payment of court-fees on a larger amount: the defendants have resorted to the trick of adding grounds for dismissal of the suit

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which they had abandoned in the Court below. Mr. Fakir Chand, who had filed the appeal and now appears to argue it, candidly admits that there is no force in these grounds but states that he drafted the appeal in accordance with the instructions received from his clients and that the appeal as it stands is properly stamped. It is an anomaly of the law of court-fees that a person who appeals only against a part of the decree should have to pay more court-fee than the one who appeals against the whole of it. But a litigant is entitled to appeal against the whole of a decree though he intends to attack only a part of it. The objection was not pressed and we overruled it.

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We therefore dismiss both the appeals and leave the parties to bear their own costs in this Court.

N. F. E.

Appeals dismissed.