

## APPELLATE CIVIL.

Before Bhide J.

MUSSAMMAT NIAMATI BAI (PLAINTIFF)

Appellant,

versus

DAULAT RAM AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 1823 of 1932.

*Court-fees Act, VII of 1870, Section 7 (iv) (f), Sch. II, Article 17: Accounts Suit—Appeal—proper valuation of— for purpose of Court-fees — Procedure — if Memorandum of appeal is not properly stamped.*

The plaintiff-appellant filed a suit for rendition of accounts. A preliminary decree was passed and referees were appointed with the consent of the parties for the purpose of going into the accounts. The trial Court passed a decree in accordance with the referees' report, disallowing the plaintiff's objections on the ground that the referees having been appointed with her consent it was not open to her to raise any objections. Plaintiff appealed to the District Judge on a Court-fee Stamp of Rs. 10 under Sch. II, Art. 17 of the Court-fees Act. The respondent objected that the Court-fee should be *ad valorem* on the amount actually claimed by the plaintiff-appellant. This objection was upheld by the District Judge and the appeal dismissed.

*Held*, that under section 7 (iv) (f) of the Court-fees Act it was for the plaintiff-appellant to value properly the relief sought in the memorandum of appeal and that she should have paid *ad valorem* Court-fees on that amount.

The appeal was from the 'decree' of the lower Court; although it was prayed that the case should be remanded for appellant's objections to be decided on the merits, the real relief sought was that the amount claimed in appellant's objections should be decreed in addition to that allowed by the referees.

*C. K. Ummar v. C. K. Ali Ummar* (1), *Nukala v. Enkatanendam* (2), and *Faizullah Khan v. Mauladad Khan* (3), followed.

*Srinavasacharlu v. Perindevamma* (4), not followed.

*Kanji Mal v. Panna Lal* (5), distinguished.

Held further, however, that, though the counsel for the appellant had not expressed his readiness to make up the Court-fee in the course of his arguments, the proper course in the circumstances of the case was to inform him of the decision of the Court on the point and give him a reasonable opportunity to value the relief sought in appeal and to pay Court-fee thereon.

*Faizullah Khan v. Mauladad Khan* (3), referred to.

*Second Appeal from the decree of Sardar Sewaram Singh, District Judge, Multan, dated the 15th June, 1932, dismissing the appeal (as being insufficiently stamped) from the order of Agha Khan Ahmad Khan, Subordinate Judge, 1st Class, Muzaffargarh, dated the 16th December, 1931, granting the plaintiff a final decree for Rs. 1,837-15-3.*

HAR GOPAL, for Appellant.

NAWAL KISHORE, for Respondents.

BHIDE J.—This second appeal arises out of a suit for rendition of accounts. A preliminary decree was passed on the 9th January, 1931, and thereafter two persons were appointed as referees with the consent of the parties for the purpose of going into the accounts. The trial Court passed a decree in accordance with their report disallowing the objections raised by the plaintiff, on the ground that it was not open to her to raise any objections, as the referees were

(1) (1931) I. L. R. 9 Rang. 165. (3) (1929) I. L. R. 10 Lah. 737, 742 (P.C.).

(2) 1933 A. I. R. (Mad.) 331. (4) (1916) I. L. R. 39 Mad. 725 (F.B.).

(5) (1915) 28 I. C. 262.

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appointed with her consent. An appeal was preferred by the plaintiff to the District Judge on a court-fee stamp of Rs. 10. This was objected to by the respondents on the ground that *ad valorem* court-fee should have been paid on the amount actually claimed by the plaintiff. This objection was upheld by the learned District Judge and the appeal was dismissed. From this decision the plaintiff has preferred the present appeal.

The sole point that requires decision in this case is that of court-fee. The learned counsel for the appellant has urged that the suit being one for accounts the plaintiff had the option of fixing the valuation both for the plaint and for the memorandum of appeal. In support of this contention he has relied on *Faizullah Khan v. Mauladad Khan* (1), a decision of their Lordships of the Privy Council. He has further cited *C. K. Ummar v. C. K. Ali Ummar* (2), *Nukala v. Enkatanandam* (3), and in support of his contention that the plaintiff was entitled to fix the valuation for the purpose of the appeal different to that placed by her on the plaint. The learned counsel for the respondent has referred to *Srinivasacharlu v. Perindevamma* (4), and *Kanji Mal v. Panna Lal* (5). The latter ruling does not appear to be in point as all that was really decided therein was that a suit for accounts is governed for the purpose of court-fee by section 7 of the Court-fees Act and not by article 17, schedule 2 of that Act. As regards that point it may be stated here that article 17 (*vi*) of schedule II was relied upon by the appellant in the Court below and also in the

(1) (1929) I.L.R. 10 Lah. 737 (P.C.). (3) 1933 A.I.R. (Mad.) 330.

(2) (1931) I.L.R. 9 Rang. 165 (F.B.). (4) (1916) I.L.R. 39 Mad. 725 (F.B.).

(5) (1915) 28 I. C. 262.

memorandum of appeal, but at the time of arguments before me, the learned counsel for the appellant gave up this position and relied solely on the wording of section 7 (iv) (f) of the Court-fees Act, which is clearly applicable to a suit for accounts and would therefore exclude clause VI of article 17 of the second schedule. The other ruling, *viz.* *Srinavasacharlu v. Perindevamma* (1), a Full Bench ruling of the Madras High Court—no doubt supports the contention of the learned counsel for the respondent, that once a value is put upon a plaint for the purposes of court-fees, that should also govern the court-fee on appeal. In that case, the appeal was filed by a defendant, but it is urged that the same rule would *a fortiori* govern an appeal filed by a plaintiff as in the present case. This ruling of the Madras High Court was discussed by a Full Bench of the Rangoon High Court in *C. K. Ummar v. C. K. Ali Ummar* (2), and it was pointed out therein that the Madras view is not supported by the wording of section 7 (iv) (f) of the Court-fees Act and is also in conflict with the decision of their Lordships of the Privy Council in *Faizullah Khan v. Mauladad Khan* (3). The interpretation placed upon the latter judgment by the Rangoon High Court was followed recently by a Division Bench of the Madras High Court in *Nukala v. Enkatanendam* (4).

After carefully considering the point at issue in the light of the above authorities, it seems to me clear that it was for the appellant to value the relief sought in the appeal. She did not, however, do so and paid a court-fee of Rs. 10 only under article 17 of the second

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(2) (1931) I.L.R. 9 Rang. 165 (F.B.). (4) 1933 A.I.R. (Mad.) 330.

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schedule of the Court-fees Act. As stated already, the learned counsel for the appellant conceded that this was wrong. It was suggested that the plaintiff should be taken to have valued her relief at a figure for which a court-fee stamp of Rs. 10 would be sufficient. But I do not think that this would be proper, as the court-fee of Rs. 10 was not paid on this basis at all. It was for the plaintiff to value properly the relief sought in the memorandum of appeal as required by law, but she had not done so. In the circumstances it seems to me that the proper course would have been to ask the plaintiff to value the relief sought for the purposes of the appeal and pay the court-fees thereon. The value of the relief sought would, in my opinion, in the present case naturally be the amount which the plaintiff claims in excess of the amount decreed in her favour by the trial Court. Although the plaintiff prayed in her appeal that the case should be remanded for her objections being decided on merits, the real relief she wanted was the amount claimed in her objections. It should be noted in this connection that the appeal lay from the decree and not from the order refusing to decide the objections on merits. The case might have been different, if it were impossible for the plaintiff to say what amount she would be entitled to. But as the learned District Judge points out in his judgment the plaintiff claimed definite items amounting to about Rs. 1,450 in excess of the sum recommended by the referees.

The learned District Judge has remarked in the course of his judgment that the appellant's counsel has not expressed readiness to make up the court-fees. The appellant has filed an affidavit that she was prepared to make up the court-fee and was not given an

opportunity. Even if counsel for the appellant had not expressed his readiness in the course of his arguments, to make up the court-fee, the proper course in the circumstances of the case would have been, I think, to inform him of the decision of the Court on the point and give him a reasonable opportunity to value the relief sought in appeal as required by section 7 (iv) (f) of the Court-fees Act and pay court-fee thereon. I would invite attention in this connection to the remarks of their Lordships of the Privy Council in *Faizullah Khan v. Mauladad Khan* (1).

I accept the appeal and remand the case to the learned District Judge for re-decision with the direction that the plaintiff shall value the relief sought in appeal and pay *ad valorem* court-fee thereon, as required by section 7 (iv) (f) of the Court-fees Act, within one month of this date. If she does so, the appeal shall be heard on the merits and in that case the costs of this appeal shall be borne by the parties. If on the other hand, she fails to do so, the appeal will be liable to be rejected and the costs of the present appeal will also be borne by her. Court-fee on this appeal to be refunded.

N. F. E.

*Appeal accepted.*

*Case remanded.*

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