MISCELLANEOUS CIVIL.

Before Addison and Din Mohammad JJ.

1936

Dec. 8.

RAM GOPAL—Petitioner

versus

GAURI SHANKAR AND OTHERS—Respondents.

Civil Miscellaneous No. 818 of 1935.

Court Fees Act, VII of 1870, Schedule I, Articles 4 and 5 — Court fee leviable on an application for review of judgment — amount of.

Held, that according to the wording of Articles 4 and 5 of Schedule I of the Court Fees Act, the Court fee to be paid on an application for review of judgment, must be either the fee or one-half of the fee, as the case may be, which is prescribed for the original plaint or original memorandum of appeal, even if the review relates only to a part of the relief.

Order of Taxing Judge in Civil Appeal No.690 of 1928 and *Nanda Lal v. Jogendra Chandra Datta* (1), followed.

A. A. R. Chettyar Firm v. Daw Htoo (2), and *In re Punya Nahako* (3), dissented from.

Petition under Order 47, rule 1, and section 151, Civil Procedure Code, for review of the judgment passed by Jai Lal and Sale JJ. in First Civil Appeal No.448 of 1927, dated 11th July, 1935.

JAGAN NATH AGGARWAL and S. M. SIKRI, for Petitioner.

DEWAN RAM LAL, Government Advocate, for Respondents.

The order of the Court was delivered by—

ADDISON J.—Under section 5 of the Court-fees Act the Taxing Officer referred to the Hon'ble Chief Justice the question of the interpretation of the words "the fee leviable on the plaint or memorandum of

(1) (1924) 82 I. C. 297. (2) (1933) 146 I. C. 560.
(3) I. L. R. (1927) 50 Mad. 488.

appeal " appearing in Articles 4 and 5 of Schedule I in the Court-fees Act. The Hon'ble Chief Justice has sent the reference to this Bench for decision.

The question involved is the Court-fee leviable on an application for review of judgment. The interpretation put upon the words in this Court has been uniform, at least since 1921, when apparently the matter was first raised. It was held then that the word " appeal " meant the appeal originally filed, and that even if the review related to a part of the relief, the same Court-fee should be paid as was paid on the appeal, if the application was put in on the 90th day, and one-half thereof if it was put in on or before the 89th day, *i.e.*, according as the application came within the purview of Article 4 or Article 5 of the 1st Schedule to the Court-fees Act.

The matter again came before the Taxing Officer in 1932 in Civil Appeal No.690 of 1928 and it was again referred to the Taxing Judge who made the following order :—

" The wording of Article 5 is quite clear and all the High Courts take the same view except Madras and Bombay. The plaint can only mean the original plaint. The English used cannot be twisted into any other meaning. Similarly the memorandum of appeal means the original memorandum. I see no reason to differ from the previous view taken by this Court that under this Article must be paid Court-fee amounting to one-half of the Court-fee leviable on the original appeal. I am not concerned with the reasonableness of the law or otherwise."

Since that decision a Single Judge of the Rangoon High Court has followed the Madras and Bombay High Courts who hold the opposite view and his

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decision was reported as *A. A. R. Chettyar Firm v. Daw Htoo* (1). The learned Judge said that he was inclined to agree with the judgment of Wallace J., in *In re Punya Nahako* (2), as it seemed to him that if the view of the Calcutta, Allahabad and the Lahore High Courts were to prevail, then a glaring piece of injustice would be done to an applicant seeking a review only on the question of costs awarded against him, and where the original plaint and memorandum of appeal bore an *ad valorem* Court-fee on the amount of the claim in suit out of all proportion to the value of the relief sought in review. The Taxing Judge of this Court, on the other hand, in 1932 said that he was not concerned with the reasonableness of the law or otherwise.

The interpretation put upon the Articles in *In re Punya Nahako* (2) was that a petition for review of an original or appellate decree must be valued on the reliefs prayed for in the petition, *as if* the petitioner were then filing a plaint or memorandum of appeal for those reliefs. This interpretation departs from the wording of the Articles and adds considerably to the words of the Articles. The decision was founded on the argument that the word " leviable " was not the same as the word " levied." It was pointed out, however, by a Division Bench of the Calcutta High Court in *Nanda Lal* v. *Jogendra Chandra Datta* (3) that " the use of the term ' leviable ' in Article 5 of Schedule I to the Court-fees Act does not justify the inference that the Legislature intended to introduce a fiction into the law, namely, an imaginary representation of the plaint or memorandum of appeal at the time when the application for review is filed."

(1) (1933) 146 I. C. 560. (2) I. L. R. (1927) 50 Mad. 488.
(3) (1924) 82 I. C. 297.

With all respect we consider that this is a complete answer to the argument on which the Madras judgment is founded. It may be that the law is hard but that is no reason why Judges should refuse to follow plain words. The Court-fee leviable on an application for review of judgment is either one-half of the fee or the fee leviable on *the* plaint or memorandum of appeal. The word " the " is significant and it must be held that it denotes the original plaint or memorandum of appeal. " Leviable " means which may be levied, *i.e.* which is permitted by the Statute to be levied, *i.e.* which is prescribed for the plaint or memorandum of appeal. The word " levied " could not have been inserted in Articles 4 and 5, for no Court-fee is levied, say, in the case of a suit or appeal which is allowed to be instituted in *forma pauperis*. Again, it may be that a smaller fee than that prescribed has been levied on the plaint or memorandum of appeal without its being noticed, and the use of the word " levied " would have carried the same mistake into the matter of the Court-fee payable on an application for review of judgment. We have no hesitation in holding that the only interpretation that can be given to the language used is that the Court-fee to be paid on an application for review of judgment must be either the fee or one-half of the fee leviable on *the* plaint or memorandum of appeal, *i.e.* which is prescribed for the original plaint or original memorandum of appeal, and we so decide.

We were asked to take action under section 149 of the Civil Procedure Code and to give time for putting in the proper Court-fee. This, however, is a matter which is not presently before us and it will have to be decided by the Judge or the Bench before whom the application will come in the ordinary course. The only

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question before us is the taxing question referred under section 5 of the Court-fees Act, and at the present stage we have no jurisdiction to go further. There will be no order as to costs.

P. S.

Reference answered.

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

1936

Dec. 17.

BAKHSH (PLAINTIFF) Appellant

versus

AZMAT ALI AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 273 of 1936.

Custom — Alienation — Nangianas *of Shahpur District — without male issue — whether have unrestricted powers of alienation —* Wajib-ul-arz — Riwaj-i-am.

Held, that *Nangianas* of Shahpur District, in the absence of male issue, have unrestricted powers of alienation.

Wajib-ul-arz and *Riwaj-i-am* (1896), page 73, followed.

Ghulam Ali v. Inayat Ali (1), *Ali v. Ziada* (2), *Bahaduri v. Qadu* (3), and *Sher Muhammad Khan v. Dost Muhammad Khan* (4), relied upon.

First appeal from the decree of K. S. *Agha Mohammad Sultan Mirza, Subordinate Judge, 1st Class, Sargodha, dated 25th March, 1936, dismissing the plaintiff's suit.*

MEHR CHAND SUD and P. R. KHOSLA, for Appellant.

GHULAM MOHY-UD-DIN, BHAGU MAL and ABDUL AZIZ KHAN, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—The plaintiff is the collateral of Pir Bakhsh. The latter has no issue and executed a sale

(1) 1933 A. I. R. (Lah.) 158.
(2) I. L. R. (1935) 16 Lah. 656: 1935 A. I. R. (Lah.) 208.
(3) 1921 A. I. R. (Lah.) 213.
(4) 1925 A. I. R. (Lah.) 231.