

## APPELLATE CIVIL.

*Before Coldstream J.*

RAM SINGH (PLAINTIFF) Appellant,

*versus*

MST. SAHIBO AND OTHERS (DEFENDANTS)

Respondents.

**Regular Second Appeal No. 860 of 1937.**

*Court Fees Act (VII of 1870), Sch. II, art. 22, as amended by the Court Fees (Punjab Amendment) Act, VII of 1922 — Proper Court fee in a suit by a reversioner challenging alienations of ancestral land by a widow.*

*Held*, that a memorandum of appeal in a suit by a reversioner under the Punjab Customary Law for a declaration that an alienation by a widow shall not affect the plaintiff's reversionary rights, the property being ancestral, must bear a Court fee of Rs.20, *vide* Sch. II, art. 22 of the Court Fees Act of 1870, as amended by the Court Fees (Punjab Amendment) Act of 1922.

*Held also*, that the question as to what Court fee is payable in a suit must be determined by the allegations in the plaint.

Civil Revision No. 533 of 1936 (15th January, 1937) *per* Bhide J. and *Asa Ram v. Jagan Nath* (1), relied upon.

*Mussammat Jantan v. Ahmad* (2), distinguished.

*Second appeal from the decree of Mr. S. S. Dulat, Additional District Judge, Ferozepore, dated 2nd March, 1936, affirming that of Khan Abdul Samad Khan, Subordinate Judge, 3rd Class, Moga, dated 19th December, 1936, dismissing the plaintiff's suit.*

R. P. KHOSLA, for Appellant.

MOHAMMAD MONIR, for Advocate-General, for Respondent.

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(1) I. L. R. (1934) 15 Lah. 531 (F.B.). (2) 1928 A. I. R. (Lah.) 221.

Singh, No. 860 of 1937. Ram Singh sued in the Court of the Subordinate Judge, 3rd Class, Ferozepore, for a declaration that an alienation of ancestral land by the defendant *Mst. Sahibo*, widow of Tota Singh, in favour of two sons of a cousin of her deceased husband would not affect his reversionary rights. The trial Court dismissed the suit and the appeal by Ram Singh was dismissed by the Additional District Judge in the judgment now appealed from.

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The suit and the first appeal were each stamped with a Court fee stamp of Rs.10 and the appeal to this Court is similarly stamped. In the opinion of the Taxing Officer, which is supported by the Crown, the appeal should bear a stamp of Rs.20 in accordance with Article 22 of Schedule II to the Court Fees Act—as amended by the Punjab Court Fees Act, VII of 1922. For Ram Singh it is argued that the proper Court fee is Rs.10, as paid under Article 17 (iii) of the Act. His Counsel's case is that as the powers of a widow following customary law in dealing with property of her deceased husband in her hands are similar to those of a Hindu widow following customary law, the question whether the property was ancestral is immaterial and therefore Article 22 will not apply. He relies on *Mussammatt Jantan v. Ahmad* (1).

For the Crown it is contended that the nature of the plaint determines the Court fee payable and that the plaint in this case asserted that it was custom that rendered the alienation voidable at the instance of the plaintiff who came forward as a reversioner. In support of his contention he cites the judgment of Bhide J. in Civil Revision No.533 of 1936, where it was remarked that the Court fee on the petition was

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insufficient in view of the wording of Article 22 of the Court Fees Act, for " although the alienation was by a woman the land was stated in the plaint to be ancestral."

I have no doubt that in the present case the proper Court fee is fixed at Rs.20 by Article 22. It is the allegation in the plaint that determines the fee [*Asa Ram v. Jagan Nath* (1)]. The Court and the parties treated the question of the ancestral nature of the land as material and an issue on the point was struck for trial and determined. The plaintiff alleged a special custom which restrained the widow from alienating ancestral property and stated that the land was ancestral. The facts of the case dealt with in *Mussamat Jantan v. Ahmad* (2) were not entirely the same as here. It does not appear that the plaint in that case asserted that the land concerned was ancestral and counsel moreover made a statement that it was immaterial whether it was or not. Having regard to the words of Article 22 and of the plaint which based the plaintiff's claim on the facts that the land was ancestral and the plaintiff a reversioner I do not see how Article 22 can be held not to apply. The decision is that the Court fee leviable is Rs.20. The deficiency in the Court fee paid in the Courts is to be made good.

A. N. K.

(1) I. L. R. (1934) 15 Lah. 531 (F.B.). (2) 1928 A. I. R. (Lah.) 221.