

1903  
RCH  
APPELLATE  
CIVIL.

30 C. 498.

"The lease of the land on which the garden and tank stand is protected from cancellation. If clause 4, s. 37 be strictly construed, it follows that the whole of the two plots which form one lease, is protected from the plaintiff's claim for *khas* possession. In my opinion the meaning of that clause is that, that portion of land on which gardens and tanks stand should be exempted from the claim."

On appeal the District Judge of Jessore held that the defendants-appellants were protected by their lease from ejectment from both the plots of land in dispute; and he accordingly allowed the appeal. Against that judgment the plaintiffs now appealed.

*Senior Government Pleader* (Babu Ram Charan Mitter) for the appellants contended that the lease that was produced in the case, was not a lease granted by the defaulting proprietor. "Lease" in cl. (4) s. 37 of Act XI of 1859, means a lease by the proprietor; and the nature of the "dwelling-house" contemplated therein must be of a permanent character. The [500] lease in this case was granted by a tenure-holder, and it therefore does not come within the purview of that section.

Dr. Ashutosh Mookerji and Babu Jodu Nath Kanjilal for respondents were not called upon.

MACLEAN, C. J. I do not think we can interfere in this case. I am not disposed to accept the view of the learned Government Pleader that a lease in sub-section 4 of section 37 of Act XI of 1859 can only mean a lease from the zemindar. There is no such qualification in the section. It only says "leases of lands whereon, &c.; and, in the present case there is undoubtedly a lease of land. I am not disposed to think that a tin shed is a "permanent building" within the meaning of the section. The inclination of my opinion is the other way; but it has been found here that there are gardens and tanks on the land and that there is only one lease covering the whole land in dispute, and that being so, it seems to me that the lessees have brought themselves within the exception.

The appeal, therefore, must be dismissed with costs.

MITRA, J. I concur.

*Appeal dismissed.*

30 C. 501.

#### APPELLATE CIVIL.

[501] MAHOMED ALI AMJAD KHAN v. SECRETARY OF STATE FOR INDIA.\* [1st April, 1903.]

*Decree—Court-fee—Memorandum of appeal, valuation of—Land Acquisition Act (I of 1894) suit under—Court-fees Act (VII of 1870) ss. 8, 11.*

In cases under the Land Acquisition Act (I of 1894), the decree awarded in appeal must be limited to the amount for which court-fee had been paid on the memorandum of appeal.

[Ref. 53 P. R. 1906=103 P. L. R. 1906; 36 Bom. 360.]

APPEALS by the plaintiff, Mahomed Ali Amjad Khan.

These appeals arose out of the proceedings taken under the Land Acquisition Act. The Government acquired two plots of land in the town of Sylhet, belonging to the plaintiff. Up to 1897 there was a bungalow on each of these plots, both of which used to be occupied by European officials. After an earthquake these bungalows having fallen down, the Government acquired these two plots of land. The District Judge of

\* Appeals from Original Decrees Nos. 66 and 87 of 1900, against the decree of B. V. Nicholls, Offg. District Judge of Sylhet, dated Nov. 17, 1899.

Sylhet allowed compensation at a certain valuation. The plaintiff appealed to the High Court against the decision of the District Judge, claiming compensation at a higher rate than allowed by the learned Judge, and, for the purposes of court-fee, valued one of the appeals at a sum lower than what he could have got, if the decree of the Lower Court were varied by the Appellate Court.

On the 25th of November 1902, these appeals came on for hearing before a Division Bench (PRINSEP and STEPHEN, JJ.) of this Court.

Babu *Rajendra Nath Bose* and Dr. *Ashutosh Mookerjee* for the appellant.

*Senior Government Pleader* (Babu *Ram Charan Mitter*) for the respondent.

[On the 4th of February, 1903, judgment was delivered in these appeals; and with respect to appeal No. 87, judgment was given for an amount more than what had been claimed by the appellant in his memorandum of appeal. The learned Government Pleader [502] brought this fact to the notice of the Hon'ble Judges who delivered the judgment, and submitted that the decree should be limited to the amount claimed in the memorandum of appeal, for which court-fee had been paid. Thereupon, their Lordships desired the vakil for the appellant to present an application offering to pay in the deficit court-fee. The application was accordingly made on behalf of the claimant, and the senior Government Pleader also put in an application for the Secretary of State. The Court then hearing both sides supplemented the judgment, passed on the 4th of February 1903, as follows :—]

PRINSEP AND STEPHEN, JJ. It was not pointed out to us, when delivering the judgment in these cases, that the amount found to be due to the appellant in appeal No. 87 on the calculation made, was more than what he had claimed in his memorandum of appeal. If that had been pointed out at the time we delivered judgment, the amount which we were prepared to decree would have been reduced. We find now that, in his memorandum of appeal, the proprietor of the land, taken by the Government, has estimated the value of the amount which he considers due to himself for the purposes of court-fee, at a sum lower than what has been allowed him in the calculation made by us.

The Court-fees Act, in allowing a sum in excess of the amount claimed, limits it to certain suits, and amongst those we do not find a suit of this description specified in section 11 of the Court-fees Act. On the other hand, we find that section 8 of that Act lays down the principle on which court-fees should be calculated on the memorandum of appeal in a case of this description, and applying this principle to the present case, we find that the appellant in appeal No. 87 claimed only Rs 438, whereas by the terms of our decree, he has obtained Rs. 1,084-6. We think, therefore, that the decree must be limited to the amount at which the memorandum of appeal has been valued, and that the decree previously made will accordingly be so far modified as to allow the appellant the amount claimed in the memorandum of appeal, viz., the sum of the Rs. 438 over and above the amount given him by the District Judge.

*Decree modified.*

1903  
APRIL 1.  
—  
APPELLATE  
CIVIL.  
—  
30 C. 501.