

CIVIL REFERENCE.

Before Mr. Justice Norris and Mr. Justice Beverley.

PETU GHORAI (PLAINTIFF), APPELLANT, *v.* RAM KHELAWAN LAL
BHUKUT (DEFENDANT), RESPONDENT.* 1891
February 2.

*Bengal Tenancy Act—Bengal Act VIII of 1885, ss. 103, 106, 108 (cl. 3)
—Court-fees Act VII of 1870, Sch. II, Art. 17, Cl. VI—Record
and Settlement of Rents—Practice—Appeal from decision of Revenue
Officers.*

The court-fee payable on a memorandum of appeal presented to the High Court under section 108 (clause 3) of the Bengal Tenancy Act of 1885 is that prescribed by Article 17 (clause VI) of Schedule II of the Court-fees Act.

THIS reference arose out of an appeal preferred against an order of the District Judge of Midnapore rejecting an appeal preferred to him from a decision of the Settlement Officer of that district on the ground that the memorandum of appeal was inadequately stamped, and that the deficiency was not paid when called for.

The proceedings before the Settlement Officer out of which the appeal to the District Judge arose were taken under Chapter X, sections 103, 106 of the Bengal Tenancy Act of 1885, and the appeal to the High Court against the District Judge's order rejecting the appeal was preferred under clause 3 of section 108 of the same Act.

On the filing of this appeal, which was presented as one against an appellate order as distinguished from a decree, and on which a 2-rupee stamp had been affixed, a question arose as to the proper court-fee payable on the memorandum of appeal.

The Deputy Registrar referred to the High Court the question whether the appeal was to be registered as an appeal from an appellate order or as an appeal from an appellate decree.

* Civil Reference in Miscellaneous Appeal 224 of 1891 against a decision, dated 11th October 1891, of J. Pratt, Esq., District Judge of Midnapore, rejecting an appeal from the decision of Baboo Rajendra Nath Ray, Settlement Officer of Midnapore, dated the 1st September 1890.

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His order of reference ran as follows :—

“Section 107 declares that an order passed under Chapter X shall have ‘the force of a decree,’ and all appeals, such as the present, have hitherto been treated and registered by the office as appeals from appellate decrees. If the appeal is to be treated as an appeal from an appellate decree, the amount of court-fee payable on the memorandum of appeal would be Rs. 10 under clause VI, Article 17, Schedule II of the Court-fees Act of 1870, as the vakeel states that the subject-matter cannot be assessed at a money value. It has, however, been described as an appeal from an order, and a court-fee of only Rs. 2 has been paid on it under Article 11, Schedule II of the Court-fees Act, which prescribes Rs. 2 as the court-fee on a memorandum of appeal to the High Court against an order ‘not having the force of a decree.’”

The vakeel for the appellant contends that clause VI of No. 17 of Schedule II of the Act does not apply, as the proceedings before the Settlement Officer were not initiated by a suit. It should be noted, however, that although that is so, section 107 of the Tenancy Act directs that in all proceedings under Chapter X, the procedure to be adopted is that laid down in the Code of Civil Procedure for the trial of suits. He also urges that, inasmuch as appeals from orders passed under section 158 of the Tenancy Act, which orders under clause 3 of that section are also declared to have the force of decrees, have been held by this Court—*Bhupendra Narayan Dutt v. Nemaye Chand Mandal* (1)—to be appeals from orders, and, for the purpose of court-fee, to come under Article 11 of Schedule II of the Court-fees Act, this appeal should also be treated as an appeal from an order, and not as an appeal from a decree.

On the hearing of this reference—

Babu *Harendra Nath Mookerjee* appeared for the appellant and contended as stated in the referring order.

The order of the Court (NORRIS and BEVERLEY, JJ.) was as follows :—

The question referred to us is as to the proper court-fee to be paid on a memorandum of appeal presented to this Court under section 108, clause 3 of the Bengal Tenancy Act.

(1) Misc. App. 275 of 1887, decided by Tottenham and Ghose, JJ., on 2nd August 1887.

The practice hitherto has been to treat such appeals as appeals from appellate decrees.

It is contended, however, that the appeal should be regarded, for the purpose of the court-fee, as an appeal from an order, and that a court-fee of Rs. 2 is sufficient under Schedule II, Article 11 of the Court-fees Act.

This contention is based—

(i) On the argument that the disputes referred to in section 106 of the Bengal Tenancy Act are not expressly described as *suits*.

(ii) On the authority of an order made by a Division Bench of this Court (TOTTENHAM and GHOSE, JJ.) on the 2nd August 1887, in which it was held that an appeal under section 158, clause 3 of the same Act, must be treated as an appeal from an order, and that the memorandum of appeal from an order under that section is subject to a court-fee of Rs. 2 only.

On the first point it is to be observed that by section 106 it is provided that “in all proceedings under the last foregoing section the Revenue Officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.” And by the rules therein referred to (Chapter VI, Rule 32), the proceeding is to be “dealt with as a suit between the parties under the Tenancy Act, in which the objector shall be plaintiff and the other parties defendants.”

As regards the second contention, it is to be observed that by clause 3 of section 158 “the order on any application under this section shall have the effect of * * a decree,” and a memorandum of appeal against such an order is expressly excluded from the purview of Article 11, Schedule II of the Court-fees Act.

We are of opinion, therefore, that the practice which has been hitherto observed is correct, and that the memorandum of appeal in the present case should bear a court-fee of Rs. 10 under Article 17, Clause VI of that Schedule.

T. A. P.

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