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Appellate Court on the last occasion which would show that it was influenced in any way by the last judgment of the first Court being treated as a judgment rather than as a finding, nor is it pointed out that the absence of the first judgment of the First Court from its consideration has in any way affected the last decision of the Lower Appellate Court; that being so, the second contention of the appellant must also fail.

We may add that cases may arise, and a perusal of the concluding portion of the first judgment of the Lower Appellate Court which was placed before us, shows, that the present was a case of that nature, in which, although a complete remand under s. 562 may not be warranted by the Code, still nothing short of a retrial of all the issues, rendered necessary by the previous imperfect trial of them, would satisfy the requirements of justice. In such a case the provisions of the Code have to be strained to a certain extent, in order to enable the Appellate Court to decide the appeal properly. But that of course is a matter for the Legislature to consider.

In the result the appeal fails and must be dismissed with costs.

S. C. G. *Appeal dismissed.*

Before Mr. Justice Rampini and Mr. Justice Brett.

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H. C. STUDD AND OTHERS (DEFENDANTS) *v.* MATI MAHTO (PLAINTIFF).*

Court Fees Act (VII of 1870), s. 12—Class to which a suit belongs—Decision as to such class—Insufficient stamp—Appeal.

Section 12, clause I of the Court Fees Act is no bar to an appeal, when the question to be decided by the Lower Court is merely the class of the suit, in order to ascertain under what Schedule of the Act it must be taken to fall for the purpose of fixing the Court fee payable on the plaint or memorandum of appeal.

In the matter of Omrao Mirza v. Mary Jones (1), *Chunia v. Ramdial* (2),

* Appeals from Appellate Decrees Nos. 2469, 2675 to 2702 of 1898; against the decree of Babu Brij Mohun Pershad, Subordinate Judge, of 14th of March 1898, reversing the decree of Moulvi Mahmud Hossain, Munsiff of Mozafferpur, dated the 3rd of December 1897.

(1) (1882) 12 C. L. R., 148.
(2) (1877) I. L. R., 1 All., 360.

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Annamalai Chetti v. *Cloete* (3), *Kanaran* v. *Komappan* (4), *Dada Bhau Kittur* v. *Nagesh Ram Chandra* (5), approved of.

THESE suits were brought by the respective plaintiffs in the Court of the Munsiff of Mozafferpur asking that certain deeds of *Navistakbhand* (agreement to cultivate land with indigo) purported to have been executed by them in favour of the proprietors of the Dhooli Indigo Factory should be declared to be fabricated, that it should also be declared that the plaintiffs were not bound by them as they were wholly invalid, and that the said deeds should be cancelled and set aside. The plaint in each case was stamped with the *ad valorem* stamp calculated on the value of the respective lands. In each case the defendants raised the objection that the Court fee paid by the respective plaintiffs was insufficient in law. The Munsiff found that the Court fee paid was insufficient and ordered that the plaintiffs should make up the deficit. He then proceeded into the merits of the case and found that the plaintiffs had failed to make out their cases, and dismissed all the suits, but gave no costs to the defendants. On appeal to the Subordinate Judge he reversed the findings of the Munsiff, both as regards the Court fees and on the merits, and decreed all the suits with costs. Against these decrees the defendants appealed to the High Court and the only point urged before the Court was that, inasmuch as the Munsiff had decided that the Court fee paid by the respective plaintiffs was insufficient, such decision was final under the provisions of s. 12 of the Court Fees Act (VII of 1870) and the Subordinate Judge had no jurisdiction to interfere with such decision.

Mr. *W. C. Bonnerjee* and Babu *Sarashi Charan Mitter* on behalf of the appellants.

Dr. *Ashutosh Mookerji* and Babu *Jnanendra Nath Bose* on behalf of the respondents.

1901, MARCH 25.—The judgment of the High Court (RAMPINI and BRETT, JJ.) is as follows :—

These appeals arose out of suits brought by the plaintiffs

(3) (1881) I. L. R., 4 Mad., 204.
(4) (1890) I. L. R., 14 Mad., 169.
(5) (1898) I. L. R., 23 Bom., 486.

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respondents in the Court of the Munsiff of Mozafferpur praying that certain deeds of *Navistakbhand* (or agreements to cultivate certain of their lands with indigo), which purported to have been executed by them in favour of the proprietors of the Dhooli Indigo Factory should be declared by the Court to be fabricated and spurious, that the plaintiffs were not bound by them as they were wholly invalid and null, and that the Court would also cancel and set aside the deeds. The plaintiffs in each case put in their plaints stamped with the *ad valorem* stamps calculated on the value of the lands, and one of the first objections taken by the defendants in their written statements in each case was that "the Court fee paid by the plaintiff is insufficient in law and, unless the plaintiff pays sufficient Court fee required by law, the suit cannot be proceeded with." The Munsiff does not appear to have taken up this objection, until he delivered judgment. He then came to the following finding: "As regards the Court fee stamp I am of opinion that it is insufficient. I have heard on this point the pleaders of both parties. The plaintiffs should make up the deficit." He then proceeded to go into the merits of the case, and finding the plaintiffs had failed to make out their cases he dismissed all the suits, but gave no costs to the defendants.

On appeal to the Sub-Judge of Mozafferpur, that officer reversed the findings of the Munsiff, both as regards the Court fees and on the merits, and gave the plaintiffs decrees against the defendants with costs.

Against these decrees, the defendants have appealed. The learned counsel has confined his arguments to one point only in this Court, *viz.*, to that stated in the second ground of appeal which runs as follows: "For that, inasmuch as the Munsiff decided that the Court fee paid by the plaintiff was insufficient, such decision was final under s. 12 of the Court Fees Act (VII of 1870), and the learned Subordinate Judge had no jurisdiction to interfere with such decision, and, therefore, committed an error of law in deciding that point."

The learned counsel has argued that the decision of the Munsiff was on a question relating to valuation for the purpose of determining the amount of the fee payable on the plaints and that

as clause I of s. 12 of the Court Fees Act declares that such a decision shall be final as between the parties to the suit, and, as the deficit fee was not paid in any case, therefore the suits could not proceed, and the Subordinate Judge had no power to entertain the appeals, but should have dismissed them on that ground.

The Munsiff's finding is stated very baldly, and his procedure in hearing the suits on the merits before the fees, which he regarded as insufficient, were paid was not correct. From the judgment of the Subordinate Judge however it would appear that the question raised, which the Munsiff decided adversely to the plaintiffs and the Subordinate Judge decided in their favour, was whether the suits were for declaratory decrees only, in which case a fixed fee of ten rupees on each under Article 17 of Schedule II of the Act would be payable, or for declaratory decrees with consequential relief, in which case an *ad valorem* stamp was necessary. The Munsiff apparently held that they came under the first class, and the Sub-Judge that they came under the second.

In this Court it has been held in the case of *In the matter of Omrao Mirza* v. *Mary Jones* (6) that s. 12 of the Court Fees Act applies merely to the valuation of the property for the purpose of calculating the Court fee, when there is no question as to the Article of the Schedule of the Act with reference to which the valuation is to be made, and does not apply to a case in which it is contended that the property has been wrongly valued, but that the relief has been improperly estimated by putting it under a wrong Article in the Schedule of the Act. In that case, as in these before us, the question was whether the stamp necessary was an *ad valorem* stamp or a stamp of ten rupees under Article 17 of Schedule II of the Act.

In the case of *Chunia and another* v. *Ramdial and another* (7) the High Court of Allahabad took the same view and laid down that s. 12 of the Court Fees Act does not prevent a Court of appeal from determining whether or not consequential relief is

(6) (1882) 12 C. L. R., 148.
(7) (1877) I. L. R., 1 All., 360.

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sought, so that it may determine under what class of cases the suit falls for the purposes of the Court Fees Act.

In the case of *Annamalai Chetti* v. *Cloete* (8) the High Court of Madras held that s. 12 of the Court Fees Act which makes the decision of a Court in which a plaint or memorandum of appeal is filed final on questions relating to valuation for the purposes of determining the amount of any fee chargeable, does not affect the question as to the class of suits in which a particular suit ranks. And a similar view was taken in the case of *Kanaran* v. *Kamappan* (9). In the case of *Dada Bhau Kittur* v. *Nagesh Ram Chandra* (10) it was held that an appeal lies against a decision as to the class to which a suit belongs, although it does not lie against a decision as to the valuation of the suit in that class.

As there is a concurrence of authority against the view put forward by the learned counsel for the appellants his argument must fail. We hold that s. 12, clause I of the Court Fees Act is no bar to an appeal when the question before the lower Court was to decide merely the class of the suit in order to ascertain under what Schedule of the Act it must be taken to fall for the purpose of fixing the Court Fee payable on the plaint or memorandum of appeal. At the same time we may say that we think that the decision of the Subordinate Judge on the question of the Court fee leviable appears to have been correct.

As no other point is argued in support of these appeals they must fail and we accordingly dismiss them with costs.

S. C. B. *Appeals dismissed.*

(8) (1881) I. L. R., 4 Mad., 204.
(9) (1890) I. L. R., 14 Mad., 169.
(10) (1898) I. L. R., 23 Bom., 486.