

INDIAN LAW REPORTS. [VOL. XXXVII.  
APPELLATE CIVIL.

*Before Mr. Justice Chatterjee and Mr. Justice Richardson.*

1910  
July 12.

JUGAL PERSHAD SINGH

v.

PARBHU NARAIN JHA.\*

*Appeal, valuation of—Court-fees Act (VII of 1870) s. 5, Sch. I, Art. 1, and Sch. II, Art. 17, cl. (6)—Valuation of appeal when no amount claimed, but liability of certain properties disputed—Memorandum of appeal—Taxing Officer—Acceptance of court-fee by Deputy Registrar, finality of.*

Where the appellant in an appeal against a mortgage decree does not dispute the amount decreed, but raises the question of the liability of certain properties, the value of the appeal for the purpose of the court-fees is the value of such properties. Sch. II, Art. 17, cl. (6) of the Court-fees Act (VII of 1870) has no application to such a case.

*Kesavarapu Ramakrishna Reddi v. Kotta Kota Reddi (1), Bunwari Lal v. Daya Sunker Misser (2) referred to.*

A memorandum of appeal was admitted by the Deputy Registrar of the High Court, and no question was raised as to the sufficiency of the court-fees. At the hearing of the appeal, it was objected on behalf of the respondents that the court-fee was insufficient:—

*Held*, that there having been no decision under section 5 of the Act by the Taxing Officer, who was the Registrar of the High Court, it was open to the respondents to raise the objection at the hearing of the appeal.

*Kasturi Chetti v. Deputy Collector, Bellary, (3) referred to.*

APPEAL by the defendants, Jugal Pershad Singh and others.

This appeal arose out of a suit to enforce a mortgage bond. The bond was executed by one Janki Pershad Singh in favour of the plaintiffs in his own name and in the name of his son, defendant No. 1, who was at the time a minor. After the execution of the bond, two other sons were born to Janki Pershad. The plaintiffs brought this suit, on the death of Janki Pershad, against the three sons. The defendants Nos. 2

\*Appeal from Original Decree, No. 526 of 1908, against the decree of Rajendra Nath Dutt, Subordinate Judge of Bhagulpur, dated June 30, 1908.

(1) (1906) I. L. R. 30 Mad. 96.

(2) (1909) 13 C. W. N. 815.

(3) (1898) I. L. R. 21 Mad. 269.

and 3, who were minors, were represented by their mother as guardian *ad litem*. The family was governed by the Mithila law.

Defendants pleaded, *inter alia*, that Janki Pershad, their father, was a man addicted to drinking, and that the debts incurred by their father was tainted with immorality, and that neither the defendants nor their ancestral property was liable for such debts.

The Court below held that the major portion (Rs. 12,155) of the money was borrowed by Janki Pershad for the payment of antecedent debts, and the remainder (Rs. 844 and odd) for his current expenses, and passed a mortgage-decree in favor of the plaintiffs in respect of the sum of Rs. 12,155, making the entire mortgaged properties liable. As regards the remainder, the decree provided that this sum with interest would be realised from all the ancestral properties in the hands of defendants Nos. 1 to 3.

Against this decision the defendants appealed to the High Court, and paid a court-fee of Rs. 10 only on the memorandum of appeal.

•*Babu Joy Gopal Ghose* (with him *Babu Kshetra Mohan Sen* and *Babu Sailendra Nath Palit*), for the respondents, took a preliminary objection that the court-fees paid by the appellants were insufficient. The appellants should have paid *ad valorem* court-fees: see *Kesavarapu Ramakrishna Reddi v. Kotta Kota Reddi* (1).

*Babu Provash Chandra Mitter*, for the appellants. The case is governed by Schedule II, Article 17, clause (6) of the Court-fees Act. It is not possible in this case to estimate at a money-value the subject-matter of dispute. I do not dispute the amount claimed, but my objection is that the mortgaged properties are not liable for the debts. Moreover, the objection as to the court-fee could not be taken at the hearing of the appeal, inasmuch as it was admitted as sufficient by the Deputy Registrar: see *Ranga Pai v. Baba* (2).

*Cur. adv. vult.*

(1) (1906) I. L. R. 30 Mad. 96.

(2) (1897) I. L. R. 20 Mad. 308.

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CHATTERJEE AND RICHARDSON JJ. The plaintiffs in the suit sued the defendants upon a mortgage bond, dated the 15th March 1898, executed in favour of the plaintiff by Babu Janki Pershad Singh, deceased, in his own name and the name of his son, the defendant No. 1, who was at the time a minor. Afterwards two other sons were born to Janki Pershad, who are the minor defendants, Nos. 2 and 3, represented in this litigation by their mother as guardian *ad litem*. The family of the defendants is governed by the Mithila law, which, for the present purpose, is the same as the law of the Mitakshara.

The principal sum secured by the mortgage is Rs. 13,000, and in regard to the circumstances in which the bond was executed, there is now no controversy, the parties having accepted the findings of the learned Subordinate Judge. The major portion of the money (Rs. 12,155-3-6) was borrowed by Janki Pershad for the payment of antecedent debts, and the remainder (Rs. 844-12-6) for his current expenses. The debts paid off and the fresh debt incurred are not justified by legal necessity, but at the same time they are not tainted by immorality or illegality, and the old debts carried a higher rate of interest than that payable under the mortgage.

The Subordinate Judge has given the plaintiffs in respect of the sum of Rs. 12,155-3-6 a mortgage-decree in the usual form, making the security enforceable for that amount with interest against the entire mortgaged properties. The decree further entitles the plaintiffs to recover the sum of Rs. 844-12-6 with interest from all the ancestral properties in the hands of the defendants Nos. 1 to 3. The distinction thus made between the two sums is founded upon a line of cases ending with *Kishun Pershad Chowdhry v. Tipan Pershad Singh* (1), and no question arises in regard to it.

The defendants Nos. 1 to 3 (there were other defendants in the suit) are the appellants before us, and the only grounds of appeal to which reference was made at the hearing are the following :—*Firstly*, that in respect of the sum of Rs. 844-12-6, the suit is barred by limitation ; and, *secondly*, that in respect

of the sum of Rs. 12,155-3-6, the Subordinate Judge "should have held that the mortgage was not operative and binding against the appealing defendants so far as their shares in the mortgaged properties were concerned."

The plaintiffs, who are the respondents, took the preliminary objection that the court-fees paid by the appellants are insufficient. In respect of the second ground of appeal above stated, the appellants paid a fee of Rs. 10 under Schedule II to the Court-fees Act, 1870, Article 17, clause (6), stating that it was "not possible to estimate at a money value the subject-matter in dispute." The respondents controverted this proposition, and in support of their objection referred us to the case of *Kesavarapu Ramkrishna Reddi v. Kotta Kota Reddi* (1), decided by a Full Bench of the Madras High Court. The objection is clearly well-founded and it is unnecessary for us to say more, because the meaning of the clause of the Court-fees Act in question has recently been explained in the case of *Bunwari Lal v. Daya Sunker Misser* (2).

The appellants contended that such an objection could not be taken at the hearing, and cited the case of *Ranga Pai v. Baba* (3), but in the present case the effect of a decision by the taxing officer under section 5 of the Court-fees Act need not be considered, for the simple reason that there is no decision by that officer. The taxing officer is the Registrar on the Appellate side. The order for the registration of the appeal is signed by the Deputy Registrar and the matter never came before the Registrar at all: *Kasturi Chetti v. Deputy Collector, Bellary* (4).

The appellants, therefore, must pay an additional court-fee to make up the deficiency in the fee paid. If the requisite additional fee is not paid within fourteen days, the appeal will stand dismissed with costs.

s. c. g.

(1) (1906) I. L. R. 30 Mad. 96.

(2) (1909) 13 C. W. N. 815.

(3) (1897) I. L. R. 20 Mad. 398.

(4) (1898) I. L. R. 21 Mad. 269.

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