
(1941) 11 BOM CK 0008
In the Bombay High Court
Case No : First Appeal No. 96 of 1940

Alabux Nazaralli Bohori

APPELLANT

Vs

Abdullalli Khanbhai Bohori

RESPONDENT

Date of Decision : 07-11-1941

Acts Referred:

Court Fees Act, 1870 — Section 12(ii)

Citation : (1942) 44 BOMLR 117

Hon'ble Judges : N.J. Wadia, J; John Beaumont, J

Bench : Division Bench

Judgement

John Beaumont, C.J.—This is an appeal against a final order made in a partition suit by the Joint First Class Subordinate Judge of Jalgaon, and a preliminary point arises in connection with the Court-fee. The suit, as I have said, was a partition suit, and for some reason or other admittedly the plaint was insufficiently stamped. The stamp was Rs. 15 Court-fee stamp, and the amount should have been Rs. 235. At the hearing a preliminary order was made declaring that the plaintiff was entitled to a share in the property, and directing that the plaintiff was entitled to recover her costs from the defendants, and there was a reference to the Commissioner to partition the property. That order was made on March 17, 1939. The Commissioner framed a scheme of partition, and a final order was made on August 28, 1939, partitioning the property in accordance with the scheme. Against that order this appeal is brought. An objection has been taken that the proper Court-fee ought to be paid on the plaint.

2. Now, u/s 12 of the Court-fees Act, 1870, it is provided that every question relating to valuation for the purpose of determining the amount of any fee chargeable under the chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit. But then Sub-section (ii) provides that whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question

has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of Section 10, Sub-section (2), shall apply. It is not disputed that the question as to the amount of Court-fee was wrongly decided to the detriment of the revenue, and, therefore u/s 12(ii), it is obligatory upon this Court to require the party by whom such fee has been paid, i.e. the plaintiff, to pay the additional fee. But the plaintiff is not the appellant. Certain defendants are the appellants, and they contend that they are in no way in default, and ought not to be prejudiced by the failure of the plaintiff to pay the Court-fee. But u/s 10(ii), which is expressly made applicable to a case of this nature by Section 12, it is provided that in such¹ a case the suit shall be stayed until the additional fee is paid, and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed. Clearly in a case falling u/s 12(ii) the reference in Section 10(2) to the "suit" must be read as a reference to the "appeal", and we are bound, as it seems to me, to stay the appeal until the additional fee is paid. No doubt, the effect of such an order is to stay the appeal of the appellant, because the respondent has not paid the proper fees, and in *Narain Singh v. Chaturbhuj Singh* (1898) ILR 20 All. 362 a single Judge of the Allahabad High Court decided that that was an unjust result which the Court could not order. But, in my opinion, the learned Judge, whether or not he approved of the Act, was bound to give effect to its mandatory words. I think, however, that in point of fact there is no such serious injustice as suggested. If the respondents do not pay the fee, and if the appellants wish to save their appeal, they will have to pay the Court-fee themselves in the name of the respondents, and then the appeal will come on for hearing. At the hearing it will, in my opinion, be open to the Court of appeal to decide on whose shoulders this additional fee should fall. That is a matter which can be dealt with at the hearing of the appeal. But at the moment it seems to me that the mandatory provisions of Section 12(ii) compel us to direct the respondents to pay the proper additional Court-fee, and to stay the appeal until that is done. We direct the money to be paid in the lower Court within a month.