

(1940) 09 AHC CK 0020
In the Allahabad High Court

Chhakauri Singh	Vs	APPELLANT
Sri Krishna Pande and Others		RESPONDENT

Date of Decision : 13-09-1940

Acts Referred:

Citation : AIR 1941 All 134 : (1941) 11 AWR 17

Hon'ble Judges : Allsop, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Allsop, J.—The question which is to be decided is what amount of court-fee should be charged on a memorandum of appeal against a decree passed in a suit to obtain an injunction. The law in force when the suit was instituted was that the court-fee charged on the plaint should be ad valorem according to the amount at which the relief sought was valued in the plaint, it being left to the plaintiff's discretion to place whatever valuation he wished upon his relief. The plaintiff valued his relief at Rs. 5 and paid the proper court-fee on that amount. At the time when the second appeal was filed in this Court, the law had been amended by a local Act, Act 19 of 1938. After the substitution of the words "second appeals from decrees in suits" for the word "suits" in accordance with the provisions of Section 2(iv) and the omission of the portions which are irrelevant, Section 7 is now as follows:

The amount of fee payable under this Act in the second appeals from decrees in suits next hereinafter mentioned shall be computed as follows:

In second appeals from decrees in suits...to obtain an injunction.... According to the amount at which the relief sought is valued in the plaint:

Provided that such amount shall be not less than one-tenth of the market-value of the property involved in or affected by the relief sought or Rs. 50, whichever is greater.

2. According to the Stamp Reporter we should look to the date upon which the memorandum of appeal was filed and assess the court-fee not upon the amount at which the relief was valued in the plaint but upon the amount at which it should have been valued at that date in accordance with the terms of the proviso. According to learned Counsel for the appellant we ought to look to the date of the plaint and assess the court-fee upon the amount at which the relief was in fact valued, and rightly valued, in the plaint. The question is not free from difficulty, but on the whole I think that the contention of learned Counsel must prevail. The Legislature has decided that it is the amount mentioned in the plaint which is the basis of the valuation and, therefore, I think, we must look back to the date of the institution of the suit as we would in suits for moveable property other than money u/s 7(iii) of the Act which mentions suits for moveable property other than money where the subject-matter has a market value and lays down that the court-fee shall be calculated upon such market-value at the date of presenting the plaint. The proviso to Section 7(IV-B) also mentions market value and in some cases the fee payable would depend upon such market-value. It seems to me that the market value would be such value at the date-of presenting the plaint. If we are to go back to the date of the presentation of the plaint, then, as the proviso was not in force on that date, the relief was rightly valued at Rs. 5 and the court-fee paid on the memorandum of appeal was sufficient. I hold accordingly.