
(1948) 11 AHC CK 0024
In the Allahabad High Court

Chief Inspector of Stamps	Vs	APPELLANT
Wakf Allalaulad through Mohamad Ali		RESPONDENT

Date of Decision : 30-11-1948

Acts Referred:

Court Fees Act, 1870 — Section 6B, 7(vi)

Citation : AIR 1949 All 508

Hon'ble Judges : Seth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Seth, J.—This is an application in revision by the Chief Inspector of Stamps u/s 6B, of the amended Court-fees Act as it applies to these Provinces.

2. Two suits were instituted for the preemption of the same sale-deed. The plaintiff in suit No. 1549 of 1943 was one Dr. Diwan Singh. The plaintiff in the other suit, No. 1694 of 1943, was wakf allalaulad. The Court of first instance found that Diwan Singh had a preferential right of pre-emption and, therefore, gave a decree by which Diwan Singh was to have the first option of pre-emption, and wakf allalaulad was to have the right of pre-emption only Diwan Singh failed to deposit the pre-emption money within the time specified by the Court. Aggrieved by this decision wakf allalaulad filed an appeal in the Court below. The wakf paid the court-fee in accordance with Section 7 (vi) of the amended Court-fees Act. It was objected that court-fee was payable in accordance with Schedule 1, Article 1 of the Act. The Court below overruled this objection and declared that the court fee paid on the memorandum of appeal was sufficient. This application in revision is directed: against this order of the Court below holding: the court-fee paid to be sufficient.

3. It is conceded that if the case comes u/s 7 (vi), Schedule 1, Article 1 would not be applicable. It is, however, contended that the case does not come within Section 7 (vi) of the amended Court-fees Act. Section 7 (vi) reads as follows:

In suits to enforce a right of pre-emption according to the value (computed in accordance with paragraph (v) of this section) of the land, building or garden in respect of which the right is claimed.

It has to be read along with Section 2 (iv) of the same Act, where suit has been defined to include a first or second appeal from a decree in suit and also a Letters Patent appeal. The point for consideration, therefore, is whether this is an appeal in which the relief claimed, in substance, is a relief to enforce a right of pre-emption. I am clear in my mind that the relief claimed is such. The Court of first instance allowed wakf alalaulad to enforce a right of pre-emption subject to the condition that Diwan Singh did not enforce his right of pre-emption. The relief claimed by the wakf alalaulad in the appeal was that the appellant should be allowed to enforce that right of pre-emption in spite of the existence of Diwan Singh's claim.

4. The learned Counsel for the applicant contends that all that the appellant wanted was that the Court should hold that he has a preferential right of pre-emption against Diwan Singh, He may have desired the Court to hold like that, but the decision of the Court itself was not all that he desired. He also wanted that decision to be enforced. The court-fee has to be determined not according to what a party wishes to be decided, but according to the relief that he claims on the basis of the decision. In this view of the matter it is clear to me that the case came within the purview of Section 7 (vi) of the amended Court-fees Act. The decision of the Court below is perfectly correct.

5. This application in revision is dismissed. As no one appears for the opposite party, there shall be no order for costs.