

(1873) 05 CAL CK 0004
In the Calcutta High Court
Case No : Rule Nisi No. 258 of 1873

In Re: Moulvie Syud Zoynooddeen Hossein Khan

Date of Decision : 29-05-1873

Acts Referred:

Citation : (1873) 05 CAL CK 0004

Judgement

Markby, J.—In this case it is stated in the affidavit on which the rule was granted, that the petitioner instituted a suit in the Court of the Subordinate Judge of Fureedpore for declaration of his maliki right over a patni tenure, and he alleged that the defendants had executed a hiba in his favor in consideration of a diamond ring worth Rs. 30,000. The suit was valued at Rs. 5,600, being twenty times the malikana of Rs. 280 which the petitioner alleged he was entitled to. The Subordinate Judge, on an objection taken by the defendants that the stamp-duty paid was insufficient, held that the plaintiff was bound to value his suit at Rs. 30,000, the consideration mentioned in the hibanama. The plaintiff accordingly paid the deficiency, the suit proceeded, and it was ultimately dismissed. The plaintiff then appealed to this Court, and again valued his appeal at Rs. 5,600, and that valuation appears to have been accepted by this Court without objection. Now the plaintiff has come to us asking us to issue a certificate authorizing him to receive back from the Collector the difference between Rs. 330 and 975 which he alleges he was wrongly ordered to pay by the Subordinate Judge. A notice of this application was served upon the Board of Revenue, and the Government pleader has now appeared. He does not attempt to support the correctness of the decision of the Subordinate Judge, and he states that the Government are willing, if the Court think it can be done, to refund the excess fees so paid; but he submits that the Government have no power to do so of its own motion, and that this Court has no power to order it to be done.

2. Now the only question upon which we can now express any authoritative opinion is as to whether or not this Court can order that money to be refunded by issuing a certificate as asked for. We think we are bound to say that we have no such power. This Court can only order a refund in such cases as it is specially

authorized to do so. And what those cases are, is stated in ss. 13, 14, and 15 of the Court Fees" Act under which, in the cases specified, certificates authorizing refunds may be granted; but the case does not fall within the language or spirit of either of those sections. There appear to be two cases in which this Court has acted upon those sections. One is in the matter of the Petition of Prosunno Chunder Roy Chowdhry (1), and the other is in the matter of the Petition of Doorga Dass Dutt (2). We think it is impossible to bring this case within those decisions, and therefore we must reject this application which asks us to issue a certificate authorizing the petitioner to get a refund from the Collector. But at the same time, as we have been asked to do so, we have no hesitation in expressing our opinion that, if the Government think that the plaintiff had been improperly ordered to pay a sum of money which was not due, there can be no possible difficulty in their refunding that amount to him notwithstanding the absence of any special provision of the law authorizing them to do so.

(1) Before Mr. Justice Morkby.

In the matter of the Petition of Prosunno Chundee Roy Chowdhry.

The 2nd September 1872.

This was a case referred to the High Court by the Deputy Registrar as follows:--

"The stamp law is silent as regards the refund of excess stamp fee paid in, or as regards the refund of stamp fee paid in by mistake.

"In a matter on the original side, where excess stamp fee had been paid in by an executor on a probate, the Board of Revenue, on the application of the executor for a refund of the excess, held that the law provided for no such refund (a).

"A Full Bench has, however, held (per the late Hon^{ble} Chief Justice Sir Barnes Peacock):--It appears to have been the object of the Legislature that where there has been no final decision, and the stamp-duty paid on the petition of appeal has consequently become ineffectual, the party should be entitled to a refund of the stamp-duty" (b).

"As regards the particular matters now before the Court, it is presumed that the applications, though not directly for review, are of that nature, and may therefore be treated as failing under the purview of s. 15, Act VII of 1870."

Baboo Anund Chunder Ghosal for the petitioner.

Markby, J.--I see no reason why the stamp should not be refunded in this case on the authority of the case referred to.

(2) B.L.R., Sup. 511.

(a) Since writing the foregoing, I find that the Government has directed, on a reference from Bombay, that excess stamps paid in by mistake in matters of administration should be refunded (see Gazette of India of 17th September 1872, p. 782).

(b) In the Matter of Doorga Dass Dutt, B.L.R., Sap. 511.