

(1910) 07 CAL CK 0048
In the Calcutta High Court

Jugal Pershad Singh

APPELLANT

Vs

Parbhu Narain Jha

RESPONDENT

Date of Decision : 12-07-1910

Acts Referred:

Court Fees Act, 1870 — Article 17(6), 5

Citation : (1910) ILR (Cal) 914

Hon'ble Judges : Richardson, J;Chatterjee, J

Bench : Division Bench

Judgement

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.

2. 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.

3. 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* ILR (1907) WB. 736, and no question arises in regard to it.

4. 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. "

5. 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* ILR (1906) Mad. 96, decided by a Pull 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* 13 C.W.N. 816.

6. The appellants contended that such an objection could not be taken at the hearing, and cited the case of *Ranga Pai v. Baba* ILR (1897) Mad. 398, but in the present case the effect of a decision by the taxing officer u/s 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* ILR (1898) Mad. 269.

7. 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.