

(1928) 03 CAL CK 0023
In the Calcutta High Court

Jyoti Prosad Singha Deo Bahadur

APPELLANT

Vs

Jogendra Ram Roy and Others

RESPONDENT

Date of Decision : 29-03-1928

Acts Referred:

Citation : AIR 1928 Cal 878

Hon'ble Judges : Mitter, J

Bench : Division Bench

Judgement

Mitter, J.—This is a reference under the Court-fees Act. The facts which have given rise to this reference may be briefly stated as follows : The plaintiff, who is the appellant before this Court, filed a suit for partition in the Court of the Subordinate Judge of Asansole. There was a preliminary decree and ultimately there was a final decree on 30th July 1926, and the plaintiff-appellant, was awarded the costs of commission as against certain of the defendants. His costs of the commission were, however, not embodied in the decree. These costs amounted to Rs. 1573-5-9. Against that order amending the decree the defendants now respondents, moved the Subordinate Judge on 21st December 1927 rescinding his previous order of 4th June 1927 so far as it related to the costs of the commission. He then directed that the direction of payment of costs of the commission to the plaintiff be deleted from the decree. Against this decree as finally amended the plaintiff has preferred the present appeal in which this question of Court-fees arises. The suit out of which this appeal arises was a partition suit and the question of Court-fees with reference to such suits is determined by the provisions of Schedule 2, Article 17. Schedule 2, Article 17, Clause (6), Court-fees Act, reads as follows:

Plaint or memorandum of appeal in each of the following suits:

VI. Every other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act.

2. It has been held in several cases in this Court and the position now taken is

firmly established, that a suit for partition of a joint property is, with reference to the matter of Court-fees, governed by Schedule 2, Article 17, Clause (6), Court-fees Act. References may be made in this connexion to the case of Bidhata Rai v. Ram Charitar Rai 12 C.W.N. 37 and to the later case of Rajani Kanta Bag Vs. Raja Bala Dasi and Others, .

3. It has been contended by the learned vakil for the appellant that as a partition suit has been held to fall within Article 17 the only question which has to be considered is as to whether the memorandum of appeal in the present case arises out of a suit for partition for if it does he is liable to pay Court-fees of Rs. 15 as is provided for in this article. There are two cases one of the Madras Court and the other of the Patna Court which have to be considered in this connexion. It may be noticed that in both cases the appeals did not arise out of suits for partition but they arose out of the decisions in money suits and the article which governs such cases would be Schedule 1, Article 1, Court-fees Act. It is true that some of the observations made in those cases are somewhat general. For instance in the Madras case reported In re Makki [1896] 19 Mad. 350 the question was whether when apart from, and independently of, any other reliefs which an appellant seeks in an appeal from a decree, he seeks distinct relief on the ground that by the decree under appeal the costs of the parties in the proceedings which terminated with the decree have not been properly assessed or apportioned, should the value of such distinct relief be reckoned as part of the subject-matter in dispute for the purposes of Schedule 1, Court-fees Act or should the said value be excluded from computation and the answer to the question was that as the appellant had made the costs the subject-matter of the dispute and, therefore, the Court-fee stamp is leviable. Similarly in the case of T.K. Rowlins v. Lachmi Narayan Jha [1918] 3 Pat. L.J. 443, the question was

what is the correct Court-fee when relief is sought with regard to costs independently of the result of the main contests between the parties

and the answer was

when the appeal against costs is distinct and separate from other parts of the appeals, Court-fees must be paid ad-valorem on the costs decreed.

4. There the question arose in the case of appeals or cross-objections in suits for redemption or foreclosure, when the amount declared by the Court to be due at the date of the decree could be ascertained by reference to the judgment and decree. These cases, therefore, do not bear directly on the present question.

5. The present case seems to be clearly governed by the plain language of Article 17, Schedule 2, Clause (6) and the moment it is shown, as has been shown in this case, that the memorandum of appeal arises in the suit where it is not possible to estimate the money value of the subject-matter in dispute and which is not otherwise provided for by the Act the plaintiff can claim that the Court-fees payable are Rs. 15. So far as this Court is concerned it has always been recognized that in appeals against decrees from partition suits the proper Court-

fees payable are Rs. 10 and this has been raised to Rs. 15 by the amendment of 1922. It does not matter whether the ground of attack is with reference to the allotment of specific portion of immovable or movable property or the ground of attack is the question of costs. Suppose in a partition suit a sum of money has been awarded to one of the parties as owelty money and the party against whom the payment of the owelty money has been directed is aggrieved by such a decree then he is entitled to prefer an appeal to this Court; and it can hardly be said that in such a case although the matter arises in a partition suit the Court-fees leviable would be the amount of the owelty money which forms the subject-matter of the complaint in the appeal.

6. I do not see how the question of costs can depend on any different footing. If, for instance, the plaintiff in the present case had appealed against a portion of the partition decree which was unfavourable to him and in addition had appealed against the order of costs it could not be contended that he was bound to pay in addition to Rs. 15 as provided for by Article 17 an ad valorem Court-fee on the specified amount of costs which has been disallowed against him.

7. I think, therefore, the proper Court-fee payable is Rs. 15.