
(1910) 06 AHC CK 0016
In the Allahabad High Court

Khachera

APPELLANT

Vs

Kharag Singh

RESPONDENT

Date of Decision : 17-06-1910

Acts Referred:

Citation : 7 Ind. Cas. 315

Hon'ble Judges : Tudball, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tudball, J.—This matter raises a question of the amount of Court-fees payable upon the objections raised by the respondent to the decree of the Court below. The lower Court has granted a decree to the respondent for Rs. 1,700-2-10 to be recovered by sale of a portion of the mortgaged property. Some of the defendants have appealed. The respondent has filed objections under which he asks this Court to declare that the property of one Data Ram, which has been exempted from the operation of the decree in his favour, is also liable to be sold in execution of that decree. According to the office report the fee which is chargeable upon the memorandum of objection is to be calculated under Clause (i), Section 7 of the Court-Fees Act on the full amount decreed by the lower Court.

2. To this objection is taken and reference is made to the Pull Bench ruling reported in Kesavarapu Ramahrishna Reddi v. Kotta Kota Reddi 30 M. 96 : 1 M.L.T. 311 : 16 M.L.J. 458 (F.B.).

3. In Second Appeal No. 640 of 1899 a similar point was raised and a Division Bench of this Court in the course of its judgment remarked: "To such a case no other clause or section of the Court Fees Act appears applicable except Clause (i) of Section 7."

4. It appears to me from the above language that the point was not fully discussed on that occasion. The ruling of the Madras High Court appears to me to

take a more correct view. It is further contended before me that the objector, as a matter of fact, is only asking for a declaration, and his objection should at the most bear the fee of Rs. 10. In my opinion, there is considerable force in this objection; but in view of the ruling in Second Appeal No. 640 of 1899, the point is one which should be referred to a Bench of two Judges to obtain an authoritative decision on the point. I accordingly refer this matter to a Bench of two Judges.

5. The Division Bench returned the case to the Taxing Judge holding that they had no jurisdiction to decide the reference. Their Lordships drew the attention of the Taxing Judge to the case of Reference, u/s 28 of Court Fees Act VII of 1870, A.W.N. (1895) 56 and to Section 5 of the Court Fees Act.

6. The Taxing Judge then passed the following.

7. The Bench to which this matter was referred finds that it has no jurisdiction to deal with it. I have had, however, the opportunity of consulting my learned brothers who constituted that Bench (Knox and Karamat Husain, JJ.). The matter was argued before them and I find that their opinion agrees with mine, i.e., that the ruling of the Madras High Court in Kesavarapu Ramakrishna Reddi v. Kotta Kota Reddi is the correct and equitable view. The respondent in this case seeks to bring certain property within the operation of his decree. Its value is Rs. 800 (this being less than the amount of the decretal debt) and that is the value of his cross-objections. He must, therefore, pay ad valorem fee on the value of this property. He seeks more than a mere declaration. There is consequential relief in his demand, viz., an order that the property be sold if the decretal debt be not paid. He will, therefore, pay the ad valorem fee as noted above.

8. I allow one month to make good the deficiency.