

(1934) 08 BOM CK 0006
In the Bombay High Court
Case No : First Appeal No. 277 of 1931

Mahomedali Shekh Ibhamji Hora	Vs	APPELLANT
Akbarali Badruddin Abdualli Hora		RESPONDENT

Date of Decision : 21-08-1934

Acts Referred:

Court Fees Act, 1870 — Section 7(9)

Citation : AIR 1935 Bom 69 : (1934) 36 BOMLR 1234

Hon'ble Judges : Murphy, J; Macklin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Macklin, J.—This appeal against a mortgage decree has been brought on the ground that the appellant-defendant is an agriculturist. A preliminary objection has been taken by the respondent to the effect that the appeal is not properly stamped. The appellant bases the appeal upon his alleged agricultural status, which status was not accepted in the lower Court. In the lower Court he was ordered to pay a sum of Rs. 14,092-10-6 (with interest) upon a mortgage under the ordinary law and not under the Dekkhan Agriculturists' Relief Act. The defendant-appellant has paid Court-fees on an estimated claim of Rs. 200.

2. It has been argued by Mr. Shah for the plaintiff-respondent that in effect the decree against which this appeal is brought is a money decree and that the Court-fee should, therefore, be payable upon the whole decretal amount. The argument is based upon the rulings in Pochalal Ranchhod Vs. Umedram Kalidas, and Srinivasacharlu v. Perindevamma I.L.R (1915) Mad. 725 . where it was held that when the plaintiff sued for a fixed sum and the defendant appealed asking for accounts to be taken he must pay Court-fees upon the valuation of the suit as fixed in the plaint and not upon his own valuation. Objection is taken to this argument by Mr. Jayakar on the ground that these rulings cannot apply to the present appeal, because the suit was not a money suit but was a mortgage suit. But this argument will not help the appellant. If it is a mortgage suit, then prima

facie it is covered by Section 7, Sub-clause (9), of the Court-fees Act, and the principle enunciated in the rulings quoted above will still apply, viz., that even if the defendant wishes to have accounts taken according to a certain system, still the suit was a mortgage suit and he must pay Court-fees upon the amount at which the suit was valued in the plaint and not on the amount at which he values it himself.

3. It was, however, suggested that Section 7, Sub-clause (4), of the Court-fees Act applies, which provides that in suits for accounts the Court-fee payable is according to the amount at which the relief sought is valued in the plaint or memorandum of appeal; and it is suggested from these last words that the appellant has the right to value his appeal at his own valuation. The sub-clause begins with the words "in suits", and it is clear that the meaning of the clause is that it is only when the suit itself is for account that the Court-fee may be according to the amount at which the relief sought is valued either in the plaint or in the memorandum of appeal against the decree in the suit. But this again was not a suit for accounts.

4. It was next suggested that Sub-clause (c) of Clause (4) of Section 7, which applies to suits to obtain a declaratory decree or order where consequential relief is prayed, might apply to this case, because in effect what the appellant is asking for is a declaration that he is an agriculturist and therefore is entitled to have accounts taken in a certain manner. But we do not think that it can be said that he is seeking to obtain a declaratory decree. Prima facie he is attempting to get rid of a decree for Rs. 14,000 not perhaps entirely but at any rate for an amount substantial enough to make it worth his while to appeal. The case of the appellant on this preliminary point is that he is asking only for the suit to be remanded for fresh accounts to be taken on the ground that he is an agriculturist. But this suit cannot be remanded unless the entire decree is set aside. If the entire decree is to be set aside, then at the present stage it is clear that the appellant must pay Court-fee on the entire decree, because that, for the purposes of the present appeal, is the amount which he wishes to get rid of. And u/s 13 of the Court-fees Act he can obtain a certificate of refund in the event of his appeal being granted.

5. For these reasons we uphold the preliminary objection as to stamp and grant one month's time for the payment of the proper stamp on the memorandum of appeal.

Murphy, J.

6. In this matter the preliminary objection as to stamp was upheld and the appellant was given one month's time in which to make good the deficiency. The Court-fees have not since been paid in time. The appeal is, therefore, dismissed with costs.