(1919) 07 PAT CK 0037

In the Patna High Court

Musammat Chanderbati Kuer APPELLANT

Vs

Gorey Lal Singh and Others RESPONDENT

Date of Decision : 24-07-1919

Acts Referred:

Citation : 52 Ind. Cas. 508

Hon'ble Judges : Mullick, J;Atkinson, J

Bench : Division Bench

Judgement

1. This is a case which has been placed before this Division Bench for orders under Order XLI of the Civil Procedure Code, the plaintiff-appellant before this Court having failed to pay the Court-fees asked by the Registrar upon her memorandum of appeal. The plaint in the suit was rejected by the trial Court on the ground that it was insufficiently stamped and the appeal is directed against that order.

2. The Registrar of this Court, who has been empowered under the Court fees Act to exercise the powers of Taxing Officer for the purposes of Section 5 of the Act, has held that the valuation made by the trial Court is correct and that the appellant must pay an ad valorem fee calculated according to Section 7, Clause 4 of the Act.

3. It is contended by the learned Vakil for the appellant that the Taxing Officer''s order is not final for the purpose of Section 5, because the one and only question for decision in the appeal is the question of valuation. It is contended that in such a case the Taxing Officer has no jurisdiction to assess a fee higher than that paid in the Court below or to determine the class under which the suit falls, because by doing so he practically tries the appeal.

4. The terms of Section 5, however, are imperative and contain no restrictions on the power of the Taxing Officer. On the contrary the Act seems to contemplate that the Taxing Officer is bound to determine what is the proper fee payable upon the memorandum of appeal and that the order shall be final, unless and until the

Appeal Court makes an order of remand in which event the appellant will be entitled to a refund of the excess paid by him.

5. It has been held in this Court in the case of Lagan Bart Kuer v. Khakhan Singh 43 Ind. Cas. 521 & 962 : 3 P.L.J. 92 that when the Taxing Officer has made his order, the Division Bench has no jurisdiction to re-open the valuation before the appeal is admitted.

6. As has been pointed out by the learned Government Advocate, the effect of our holding otherwise would be that in the present case the appellant could obtain a decision upon the merits of his appeal without ever paying the full Court fee it he was so minded.

7. The Court Fees Act being a fiscal enactment, its language must be construed in its popular sense and I think the valuation of the Taxing Officer is to be taken as final, whenever there is no express authority to the contrary. The appellant being unable to pay the Court-fee demanded, the memorandum of appeal is rejected under Order XLI, Rule 3 of the Civil Procedure Code. Memo of appeal rejected.

