

Smt. Shanti Devi vs Mt. Kubra Begum And Anr. on 22 September, 1953

Equivalent citations: AIR1954ALL184, AIR 1954 ALLAHABAD 184

JUDGMENT

1. This is a court-fee matter. It has come up before us in this way. The appellant filed an application under Section 12, Agriculturists Relief Act. His application was dismissed on the merits on the ground that the transaction of which the redemption was sought was not a mortgage but was a sale. The applicant then filed the above appeal in this Court with a court-fee stamp of -/15/-. The stamp reporter's report showed that the court-fee paid on the memorandum of appeal was deficient by Rs. 802/3/-. The applicant objected to the deficiency report. He also made an application for amendment of the memorandum of appeal praying that the heading of the appeal may be amended from P. A. (First Appeal) to F. A. F. O. (First Appeal From Order). The application came up for orders before one of us and it was rejected on the ground that even if the application were allowed, the court-fee payable on the memorandum of appeal would be an 'ad valorem' court-fee. The applicant was directed to pay the court-fee within a fortnight. This order was passed on 20-2-1952. The applicant failed to do so and the Joint Registrar has listed the appeal before us for orders.

2. The contention of learned counsel is that the order of the learned Single Judge may be reviewed. He urges that if an application under Section 12, Agriculturists' Relief Act were allowed & the mortgage was ordered to be redeemed then the order would be decree no doubt and 'ad valorem' court-fee would be payable thereon, but the same cannot be said when the application is dismissed, because in that case there is no final decision and the applicant can file a suit for redemption.

The contention of the learned counsel is not correct. The dismissal of an application under Section 12, Agriculturists' Relief Act 'on the merits' is as much a decree as the order allowing the application. The Court has found that the transaction in question was not a mortgage but was a sale. It was, therefore, held that the plaintiff had no right of redemption. This is a conclusive determination of the rights of the parties with regard to the matter in controversy in the application so far as regards the Court expressing it is concerned. It is, therefore, a decree as defined in the Civil Procedure Code. Even if it is an order in form it has the force of a decree. An appeal both against the dismissal of an application under Section 12, Agriculturists' Relief Act as well as against the order allowing the application is appealable under Section 23 of the Act. Under Article 2B of Schedule I, Court Fees Act, as amended by U. P. Act 19 of 1938 the memorandum of appeal filed under Section 23 U. P. Agriculturists' Relief Act, 1934 has to be stamped with the same fee as would be leviable on the memorandum of appeal as under Article 1. Article 1 of Schedule I lays down that "ad valorem court-fee is to be paid on a memorandum of appeal not otherwise provided for in this Act."

The other relevant provision in the Court-fees Act relating to memorandum of appeals is Article 11 of Schedule II. That Article refers to a memorandum of appeal when the appeal is not from a decree or an order having the force of a decree. As we have already observed this is an appeal either from a

decree or from an order having the force of a decree. Therefore Article 11, Schedule II does not apply. No Article other than Article 1 of Schedule I of the Act applies to the case.

3. Learned counsel then wants one month's time to make good the deficiency. The time prayed-for is allowed.