

# **Abdul Hai And Anr. vs Shyam Kishore And Ors. on 1 March, 1951**

**Equivalent citations: AIR1952ALL176, AIR 1952 ALLAHABAD 176**

**Author: Ghulam Hasan**

**Bench: Ghulam Hasan**

## **JUDGMENT**

1. This is an appeal against the order of Sri S. Abdul Qasim Zaidi, District Judge, Rae Bareli, dated 19-7-1948, directing the appellant to pay ad valorem court-fee in appeal in a redemption suit.

2. It appears that the appellant filed a suit for redemption of a mortgage, the principal sum secured by which was Rs. 2,000. The mortgage was executed on 22-6-1915. The suit was decreed for redemption on payment of Rs. 57,079-3-0. In appeal court-fee was paid only on Ra. 2000 The respondents drew the attention of the learned District Judge (sic) and contended before him that the court-fee should be paid on the amount by which the decree was challenged. The appellant drew the attention of the Court to the provisions of Section 2(iv) and Section 7(ix), Court-fees Act, and contended that the court-fee payable was only on the amount secured by the mortgage even in the appellate Court. This contention did not find favour, and relying on *Sangat Bakhsh Singh v. Rawat Dijdeo* 25 Oudh Cas 30 and *Ram Sarup v. Gaya Prasad*, 8 Oudh W. N. 836 the Court ordered court-fee to be paid ad valorem on the amount by which the decree was challenged.

3. In this appeal before us the appellant presses the same arguments that he advanced before the District Judge and we think that his contention has force. There is no doubt that in *Sangat Bakhsh Singh v. Rawat Dijdeo*, 25 Oudh Cas 80 and *Ram Sarup v. Gaya Prasad*, 8 Oudh W. N. 836 which followed 25 Oudh Cas 30, the view taken was that in appeal the court-fee is payable on the amount by which the decree is challenged provided the right of redemption is not challenged. This was the state of law in Oudh before the Court-fees Act was amended in 1988 and in fact specific provision has been made under Section 2(iv), Court-fees Act, wherein it is specifically laid down that 'suit' includes a first or second appeal from a decree in suit, and also a Letters Patent Appeal. Under Section 7(ix), it is laid down that in suits against a mortgagee for the recovery of the property mortgaged, court fee is payable according to the principal money expressed to be secured by the instrument of mortgage. It, therefore, follows that even in appeal the court-fee must be paid on the principal money expressed to be secured by the instrument of mortgage. This is the view which has been taken also in the erst while Allahabad High Court in *Abdul Haq v.*

*Shamshuddin*, A. I. R. (28) 1911 ALL. 857 and *Kishen Lal v. Preduman Kishen Singh*, A.I.R, (33) 1946 ALL. 303. The first case was decided by a learned single Judge, but the second case was a decision of a Bench who accepted the reasoning of the learned single Judge in *Abdul Haq v.*

Shamshuddin, A.I.R, (as) 1941 ALL. 357. We respectfully agree with the view expressed in A. I. R. (33) 1946 ALL. 303. In these circumstances we are of the opinion that the court-fee paid before the District Judge is sufficient. The appeal is accordingly allowed and the appeal shall be disposed of by the learned District Judge according to law.