

## Murari Lal vs Chhidda And Ors. on 16 November, 1950

**Equivalent citations: AIR1951ALL499, AIR 1951 ALLAHABAD 499**

### JUDGMENT

Malik, C.J.

1. This unfortunate case has had a very chequered history in this Court and, though it was filed as far back as 1940, even a preliminary question about the proper court-fee payable on the memorandum of appeal remains undecided.

2. The plaintiffs filed a suit for declaration that a sale-deed dated 6-7-1921, executed by Mt. Aliman and Niazan, mothers and certificated guardians of the plaintiffs, was null and void as against the plaintiffs and claimed possession and mesne profits. The main ground was that the certificated guardians of the minors had not obtained the sanction of the Court before transferring the property. The suit was filed in forma pauperis and it was decreed on condition of the plaintiffs' paying to the defendant Rs. 344-12-0 out of which a sum of Rs. 128-12-0 was to be credited to Government on account of the court-fees payable on the plaint. The defendant filed an appeal in the lower appellate Court and he paid a court-fee of Rs. 15 in respect of the relief for declaration and an ad valorem court-fee of Rs. 9-12-0 on the amount of Rs. 128-12-0 which was made payable to the Government out of the sum of Rs. 344-12-0 awarded to the defendant-appellant under the decree.

3. There was an objection raised to the amount of court-fees paid by the defendant-appellant in the lower appellate Court. The lower appellate Court made a reference to this Court which was decided by a Bench on 20-12-1945 (Misc. Case No. 238 of 1940). There is no dispute now about the court-fees payable in the lower appellate Court. The appeal failed and the defendant-appellant filed a second appeal here, which was valued at Rs. 1800 and a court-fee of Rs. 24-12-0 was paid on it. The Stamp Reporter made a report in 1942 and claimed that a further amount of Rs. 167-12-0 was due as deficiency. The report of the Stamp Reporter was put up before the Taxing Officer who was of the opinion that as the question relating to the amount of court-fee payable had come up before a Bench of this Court in the reference mentioned above, the question of the amount of the court-fee payable on the memorandum of the second appeal should be decided by the Taxing Judge. This reference was obviously under Section 5, Court-fees Act. The Taxing Judge before whom the case was put up on 28-4-1947, referred it for decision by a Division Bench. As a result of that reference, this matter has been put up before us today.

4. A preliminary objection has been taken on behalf of the State by the learned Standing Counsel that the Bench has no jurisdiction to decide the question of the amount of court-fees payable on the memorandum of appeal. His objection, in short, is that the Taxing Judge derives his jurisdiction on a reference by the Taxing Officer, and there is no provision in the Court-fees Act for the Taxing Judge to make a further reference to a Bench. The scheme of Section 5, Court-fees Act, which deals

with this matter is that the question of determination of the amount payable as court-fee on a memorandum of appeal filed in the High Court is to be decided by a Taxing Officer nominated by the Chief Justice. The decision of such an officer is final. But when a question is, in the opinion of the Taxing Officer, one of general importance, he can refer it to the final decision of the Chief Justice, or the Taxing Judge nominated by the Chief Justice. It is thus on reference by the Taxing Officer that the jurisdiction of the Chief Justice or of the Judge arises. There is no provision for any further reference either by the Chief Justice or by the Taxing Judge. Learned counsel for the appellant has, however, urged that the words "such Judge" in Section 5 may mean "such Judges" and he has relied on the provisions of Sub-section (2) of Section 13, General Clauses Act, that singular includes plural. That might, however, cover a case where more than one Judge have been nominated as Taxing Judges, and the Taxing Officer make a reference to the Judges or Bench of Judges so nominated. The jurisdiction of the Taxing Judge or Judges arises on a reference by the Taxing Officer. The point is no longer res integra. In *Kachera v. Kharag Singh*, 33 ALL. 20 : (7 I. C. 315), a reference was made by a Taxing Officer to Tudball J. who referred the case to a Bench of two Judges. The case came up before Knox and Karamat Husain JJ. whose attention was drawn to a decision of this Court in the reference under Section 28 of Act VII [7] of 1870, 1895 A. W. N. 56 : (17 ALL. 238) and the learned Judges held that they had no jurisdiction to decide the reference and returned the papers to the Taxing Judge. The same view was taken in several decisions of the Patna High Court, namely, *Kuldip Sahay v. Harihar Prasad*, 3 Pat. 146 : (A. I. R. (11) 1924 Pat. 161) and *Dhanukdhari Prasad v. Ramadhikari Missir*, 12 Pat. 188 : (A. I. R. (20) 1933 Pat. 81) but a contrary opinion was expressed in *Deoji Goa v. Tricumji Jivandas*, A. I. R. (22) 1935 Pat. 396 : (14 Pat. 658 S. B.). In the last case the learned Judges were of opinion that the word 'Judge' would include 'Judges' and, therefore, held that the Division Bench to which the case had been referred could consider and decide the matter. The point does not seem to have been pressed before the Special Bench that the jurisdiction of the Judge or Judges arises on a reference by the Taxing Officer, and if the Taxing Officer had not made a reference to the Special Bench but the reference by him was only to the Taxing Judge, there was no provision for any further reference by the Taxing Judge, in Section 5, Court-fees Act.

5. We are bound by the decision in *Kachera v. Kharag Singh*, 33 ALL. 20 : (7 I. C. 315) and direct that the papers may be put up for orders before the learned Taxing Judge immediately, as the matter has long been delayed.