

Pokhan Singh And Anr. vs Radhey Lal And Ors. on 5 January, 1950

Equivalent citations: AIR1953ALL240, AIR 1953 ALLAHABAD 240

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This appeal is directed against the order of the learned District Judge of Mainpuri directing the appellants to file court-fee to the extent of Rs. 150 in order to make up the deficiency on their memorandum of appeal, filed before the District Judge against the decision of the Civil Judge of Mainpuri in proceedings on an application under Section 12, Agriculturists' Relief Act. The Inspector of Stamps and Registration, on examination of this memorandum of appeal, held the view that the court-fee was payable on the principal amount secured by the original mortgage as provided in Section 7(ix), Court-fees Act. In the present case, the principal sum secured was Rs. 4,000. The learned District Judge accepted this report of the Inspector of Stamps and directed the present appellants to make up the deficiency in court-fee. The appellants in this appeal contend that the court-fee was not payable on the principal amount secured by the original mortgage but 'ad valorem' on the amount at which the appeal was valued in the memorandum of appeal.

2. There is no dispute that the court-fee on a memorandum of appeal filed under Section 23, U. P. Agriculturists' Relief Act, 1934, is payable under Article 2B of Schedule 1, Court-fees Act. The amount of proper fee under this item is laid down to be the same as would be leviable on a memorandum of appeal under Article 1. Reference has, therefore, to be made to Article 1 to determine the court-fee payable in this case. Article 1 lays down that the court-fee payable on a plaint, written statement, pleading, a set off or counter-claim or memorandum of appeal would be determined by the amount or value of the subject-matter in dispute. This would show that the court-fee on the memorandum of appeal filed before the District Judge was to be determined by the amount of the value of the subject-matter in dispute in the appeal. The Inspector of Stamps whose report was accepted by the District Judge was of the view that the amount or value of the subject-matter in dispute in the appeal in such a case was to be determined with reference to Section 7(ix), Court-fees Act which lays down :

"In suits against a mortgagee for the recovery of the property mortgaged : according to the principal money expressed to be secured by the instrument of mortgage."

There is no doubt that in a 'suit' for the recovery of the property mortgaged, the value of the subject-matter in dispute would have to be artificially fixed in accordance with the principle laid down in Section 7(ix) of the Act and may, in a number of cases, be different from the market value of the subjects-matter in dispute. In an appeal arising out of such a suit also, the valuation would have to be fixed artificially with reference to Section 7(ix), Court-fees Act, because Clause (iv) of Section 2 of Court-fees Act enlarges the definition of the word 'suit' so as to include a first or second appeal from a decree in a suit and also a Letters Patent Appeal. The word 'suit' itself is not defined in the Court-fees Act and, therefore, reference has to be made to the Code of Civil Procedure to determine its meaning. Under Section 26 of the Code every suit is to be instituted by the presentation of a plaint or in such other manner as may be prescribed. No rules have been framed under this section prescribing any other manner for the institution of a suit.

A suit must, therefore, be deemed to be a proceeding arising on the presentation of a plaint. Proceedings under Section 12, U. P. Agriculturists' Relief Act are instituted not on the presentation of a plaint but on the presentation of an application. There can, therefore, be no doubt that proceedings under Section 12, U. P. Agriculturists' Relief Act are not a 'suit'. Since the proceedings out of which this appeal before the lower Court arose were not a 'suit', the word 'suit' as used in the Court-fees Act would not include this appeal. If the appeal had arisen out of a suit, then the word 'suit' would have included the appeal also for purposes of the application of the Court-fees Act. The present is, however, a case where the appeal is not from a decree in a suit but from a decree in proceedings on an application. Consequently, Section 7(ix), which fixes an artificial value for the subject-matter in dispute in "suits" against a mortgagee for the recovery of the property mortgaged cannot apply to this appeal. The decision of the learned District Judge accenting the report of the Inspector of Stamps that the value of the subject-matter must be fixed with reference to Section 7(ix), Court-fees Act is, therefore, not correct.

3. It may, however, be mentioned that even the contention of the appellants that the court-fee is payable 'ad valorem' on the amount at which the appeal was valued by the appellants is not correct because the appellants do not possess the right to place any arbitrary value on the subject-matter in dispute in the appeal. Since the value of the subject-matter in dispute in the appeal has to be fixed without reference to any other provisions of the Court-fees Act which only apply to suits or to first or second appeals from decrees in suits, this value must be held to be the value of the relief claimed in the memorandum of appeal. In the appeal before the learned District Judge, the appellants had challenged the right of the respondents to redeem the mortgage. Redemption was allowed by the trial Court without any payment. The subject-matter in dispute in the appeal was, therefore, the right of redemption without payment. This right of redemption translated into the actual form in which it can be executed through the Court means the right to get possession over the property mortgaged. In this case, therefore, the value of the subject-matter in dispute must be held to be the value of the property mortgaged, a decree for possession of which had been granted against the appellants and was sought to be set aside in appeal by them. The value of the property has also to be determined without any reference to any of the provisions of the Court-fees Act.

It is only in suits and in appeals arising out of suits that the value of the property, for purposes of court-fee, is determined in accordance with the provisions of Section 7, Court-fees Act. In the

present case, this value will have to be the market value of the property which will have to be determined by the lower Court independently of the provisions of the Court-fees Act and without application of the artificial principles which have been laid down under Section 7 of the Act for determining the value of the property. In this case, redemption has been allowed by the trial Court without any payment. Even in a case where redemption is allowed on payment of certain sum and the right of redemption is challenged in appeal, the court-fee will have to be determined on similar principles. In such a case the value of the subject-matter in dispute in appeal would naturally be the value of the property in respect of which redemption was allowed minus the amount directed to be paid by the mortgagor in order to obtain possession of the property on redemption. This would be the subject-matter in dispute, because, if the appeal is allowed, the appellants would get the advantage of retaining possession over the mortgaged property but would lose the advantage of receiving the amount of the redemption money decreed.

4. Reference was made by the learned Junior Standing Counsel to the cases of --'Abdul Haq v. Shamshuddin', 1941 All LJ 409 and -- 'Kishen Lal v. Preduman Kishen Singh', 1946 All LJ 43 in support of the decision given by the learned District Judge. These were, however, cases in which the appeal was from a decree in a suit and not from a decree in a proceeding under the Agriculturists' Relief Act. The case of -- 'Balram Singh v. Dudh Nath', 1948 All LJ 296 was also cited but this was a case where the nature of the proceedings under Section 12 U. P. Agriculturists' Relief Act was determined with reference to the Arbitration Act and not with reference to the Court-fees Act. The views expressed in this case are also, therefore, inapplicable. On the other hand, in -- 'Basant Lal v. Lalta Prasad', ILR (1946) All 409, it was held that the value of the subject-matter in dispute in an appeal filed under Section 23, U. P. Agriculturists' Relief Act cannot be determined with reference to Section 7(ix), Court-fees Act and that the court-fee was payable on the amount or value of the subject-matter in dispute in the appeal.

A similar view was taken by a Division Bench of the erstwhile Chief Court of Oudh in --'Surjan Singh v. Mashal Singh', AIR 1941 Oudh 447. In both these cases it was held that in an appeal Under Section 23, Agriculturists Relief Act the appellant was bound to pay court-fee on the amount or value of the subject-matter in dispute in appeal and not on the principal amount secured under the mortgage. These decisions did not proceed on the interpretation of the word 'suit' as used in the Court-fees Act but on the interpretation of the words, 'the amount or value of the subject-matter in dispute' as used in Schedule I, Court-fees Act. They are, however, both in line with the view taken by us above.

5. We would, therefore, allow the appeal, set aside the order of the learned District Judge and send the case back to him with a direction to fix the court-fee on the memorandum of appeal according to the subject-matter in dispute in appeal which would be the market value of the property in respect of which the right of redemption granted by the lower Court is sought to be set aside in appeal. In the circumstances of this appeal, parties must bear their own costs of this appeal.