

Mansa Ram
and others
v.
Nathu
and others
Kapur, J.

appeal it is difficult for me to go into the question because we do not know what the consideration for entering into the agreement was. It might have been the settlement of claims between members of a family. These were questions which could have been determined by the District Judge and his finding is that no fraud has been proved. I would therefore dismiss this appeal but leave the parties to bear their own costs in this Court and in the Courts below.

APPELLATE CIVIL

Before Harnam Singh and Kapur, JJ.

SHRI SHAM LAL,—Plaintiff-Appellant

versus

SHRI OM PARKASH AND OTHERS,—Respondents

Regular First Appeal No. 139 of 1953

1954

Nov., 19th

Court Fees Act (VII of 1870) as amended by Court Fees (Amendment) Act (Punjab Act XXXI of 1953)—Suit filed before amendment—Appeal filed after amendment—Court Fee payable—Whether under the Act as amended—Sections 7(iv), 7(iv)(c) and proviso to section 7(iv)(c)—Whether applicable to appeals.

Held, that when there is a change in the law as to court-fee between the date of the suit and the date on which an appeal arising from that suit is filed the law in force at the latter date would govern the court-fee payable on the appeal.

Held, that court-fee payable on appeal in cases falling under section 7(iv)(c) does not depend upon the court-fee leviable on the plaint. The proviso to section 7(iv)(c), added by Punjab Act XXXI of 1953, is applicable to appeals.

Held, that section 7(iv) of the Court Fees Act implies the applicability of the provisions of the Act to appeals. When the subject-matter in dispute in an appeal is not different from the subject-matter in dispute in the suit in the trial court the appeal will be governed for purposes of court-fee by the same provisions as the suit. In case there is no difference in the nature of the relief in dispute the subject-matter need not be considered to be different and the appeal will be governed for purposes of court-fee by the same provision as if applicable to the suit though the amount of court-fee leviable in appeal may be different.

First appeal from the decree of Shri Jasmer Singh, Subordinate Judge, 1st Class, District Jullundur, dated the 30th March, 1953, dismissing the suit with costs.

S. D. BAHRI, for Appellants.

S. M. SIKRI, Advocate-General, for Respondents.

JUDGMENT

HARNAM SINGH, J. In Regular First Appeal ^{Harnam Singh,}
No. 139 of 1953 the facts are these : On the 17th _{J.}
of July, 1948, Om Parkash instituted suit for the
recovery of rupees 16,859-6-0 by the sale of the
mortgaged property against Khem Chand, Piare
Lal and Sham Lal. In that suit on the basis of
a compromise final decree for sale of the mortgaged
property was passed against Khem Chand, Piare
Lal and Sham Lal. In execution of that decree the
mortgaged property was sold by public auction
and purchased by Wazir Chand.

On the 15th of December, 1951, Sham Lal in-
stituted Civil Suit No. 80 of 1952, for declaration
that the decree passed on the basis of the compro-
mise was inoperative and that defendants Nos. 1
to 3 be restrained from taking out execution pro-
ceedings against him. In the Court of first ins-
tance the value of the suit for purposes of juris-
diction was stated to be rupees 16,859-6-0. On the
plaint court-fee worth rupees 10-8-0 was paid. On
the 30th of March 1953, the suit was dismissed
with costs.

By Punjab Act No. XXXI of 1953 the legisla-
ture amended section 7 of Act VII of 1870 by the
addition of the following proviso to clause (iv) of
section (7) of the Act—

“Provided further that in suits com-
ing under sub-clause (c), in cases
where the relief sought is with refe-
rence to any property such valuation
shall not be less than the value of the
property calculated in the manner pro-
vided for by clause (v) of this section.”

Shri Sham Lal Punjab Act No. XXXI of 1953 was published
 v. in the Punjab Gazette, Extraordinary, dated the
 Shri Om 13th of May, 1953.
 Parkash
 and others

From the decree passed in Civil Suit No. 80
 of 1952 Sham Lal plaintiff appealed under Section
 Harnam Singh, 96 of the Code of Civil Procedure. That appeal
 J. was filed in this Court on the 30th of June, 1953.

On the 6th of August, 1953, Regular First Ap-
 peal No. 139 of 1953, was put up before Kapur, J.,
 for admission. In considering the matter Kapur,
 J., ordered:

“Let this matter be sent to the Taxing
 Judge to see whether the suit has been
 properly valued for purposes of court-
 fee and jurisdiction in view of section
 8 of the Suits Valuation Act and Arti-
 cle I, Schedule I of the Court-fees Act.
 See also R.F.A. 173 of 1951.”

From what I have said above, it is plain that
 the case has not been put up before me on refe-
 rence by the Taxing Officer under section 5 of the
 Court Fees Act, 1870.

Mr. Som Datta Bahri urges that where the
 court-fee for an appeal is made to depend upon
 the value of the plaint in the case and there is a
 change in the law of court-fee subsequent to the
 institution of the suit and before the appeal is
 filed the value of the subject-matter of the appeal
 must be fixed with reference to the law in force
 at the time of the institution of the suit and not
 at the time of filing of the appeal.

On examination of the case law I find that
 there is divergence of opinion on the question that
 arises for decision in these proceedings.

Finding that the question is one of general importance and there is divergence of opinion in the decided cases, I would refer the case to my Lord the Chief Justice for the constitution of a Division Bench for an authoritative decision of the question that arises for decision in these proceedings.

Shri Sham Lal
v.
Shri Om
Parkash
and others
—
Harnam Singh
J.

JUDGMENT OF THE DIVISION BENCH

HARNAM SINGH, J. In Regular First Appeal No. 139 of 1953 the question that has been referred for decision to this Bench is what amount of court-fee should be charged on the memorandum of appeal.

Harnam Singh,
J.

Briefly summarised the facts of the case are these: On the 17th July, 1943, Om Parkash instituted suit for the recovery of rupees 16,859-6-0 by the sale of the mortgaged property against Khem Chand, Piare Lal and Sham Lal. In that suit on the basis of compromise final decree for the sale of the mortgaged property was passed against Khem Chand, Piare Lal and Sham Lal. In the execution of that decree the mortgaged property was sold by public auction and purchased by Wazir Chand. On the 15th of December, 1951, Sham Lal instituted civil suit No. 80 of 1952 for declaration that the decree passed on the basis of the compromise was inoperative and that defendants Nos. 1 to 3 be restrained from taking out execution proceedings against him. In the Court of first instance the value of the suit for purposes of jurisdiction was stated to be rupees 16,859-6-0. On the plaint court-fee worth rupees 10-8-0 was paid. On the 30th of March, 1953, the suit was dismissed with costs.

By Punjab Act XXXI of 1953 the legislature amended section 7 of Act No. VII of 1870 by the addition of the following proviso to clause (iv) (c)

Shri Sham Lal of section 7 of the Court Fees Act, 1870, hereinafter referred to as the Act:—

v.
Shri Om
Parkash
and others

Harnam Singh,
J.

“Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section.”

Punjab Act XXXI of 1953 was published in the Punjab Gazette, Extraordinary, dated the 13th May, 1953.

From the decree passed in Civil suit No. 80 of 1952 Sham Lal appealed under section 96 of the Code of Civil Procedure. That appeal was filed in this Court on the 30th of June, 1953. On the memorandum of appeal court-fee worth rupees 10-8-0 was paid.

As regards the general principles applicable to the case there is controversy. The proposition that the law of court-fee is procedural law is indeed one which speaks for itself apart from judicial authority. In *Mst. Mahri Kunwar v. B. Keshri Chandra* (1) Dar, J. (Ganga Nath, J., concurring) said—

“No suitor has a vested right to insist that during the pendency of a litigation which a suitor has started the enactment relating to court-fee shall not be changed and the fee leviable shall not be increased or reduced either with regard to future applications or with regard to future appeals and he would be entitled to carry on proceedings on the basis of law as it stood when the plaint was filed even though the law is different when he comes to file an appeal or to make an application.”

Plainly, when there is a change in the law as to court-fee between the date of the suit and the date on which an appeal arising from that suit is filed the law in force at the latter date would govern the court-fee payable on the appeal. On this point 5 Madras High Court Reports page 44 (Appendix) and *Mussummat Bhugobutty Keser and others v. Mussummat Kustooree Keser* (1), may be seen.

Shri Sham Lal
v.
Shri Om
Parkash
and others
Harnam Singh,
J.

In 5 Madras High Court Reports page 44 (Appendix) the original suit from which the appeal arose was instituted when Act XXVI of 1867 was in force. On the 11th of March 1870, Act VII of 1870 (Court Fees Act) came into force. In these circumstances the acting Civil Judge of Coimbatore sought an authoritative ruling on the subject of valuing the appeal preferred since the introduction of Act VII of 1870, the original suit from which the appeal arose having been instituted under Act XXVI of 1867. In deciding that point the High Court ordered on the 15th of November 1870 :—

“The High Court are of opinion that the valuation of an appeal must be according to the Act in force at the time of its presentation, and that the original valuation under a law obsolete at the period of appeal can have no influence on the decision.”

In *Mussummat Bhugobutty Keser and others v. Mussummat Kustooree Keser* (1), Norman, officiating Chief Justice, held that stamp duty upon an appeal filed after the Court Fees Act, 1870, had come into force can only be levied according to the provisions of that Act, even though the original suit was valued on the principles laid down in Act XXVI of 1867.

(1) 16 Sutherlands Weekly Reporter 272

Shri Sham Lal v. Shri Om Parkash and others
 Harnam Singh, J.

But it is said that where the court-fee for an appeal is made to depend on the value of the plaint in the case, and there is a change in the law of court-fee subsequent to the institution of the suit and before the appeal is filed, the value of the plaint for purposes of determining court-fee on such appeal must be fixed with reference to law in force at the time of the institution of the suit and not at the time of filing the appeal. In support of this proposition *Parmeshar Kurmi and another v. Bakhtawar Pande and others* (1), and *Nandi Ram alias Nandi Lal Agrani v. Jogendra Chandra Dutta and others* (2), are cited.

In *Parmeshar Kurmi and another v. Bakhtawar Pande and others* (1), the question that arose for decision was the fee payable on the application for review under Schedule 1 Article 5 of the Act. In deciding that point King, J., found—

“The memorandum of appeal, which determines the fee leviable on the application for review was filed before the amending Act came into force. The question is what fee was leviable on the memorandum of appeal at the time when it was filed. This question is not affected by the subsequent commencement of the amending Act. Precisely the same question arose in *Nandi Ram v. Jogendra Chandra* (2).

(1) A.I.R. 1933 All. 20

(2) A.I.R. 1924 Cal. 881

In my opinion *Parmeshar Kurmi and another v. Shri Sham Lal Bhakhtawar Pande and others* (1), and *Nandi Ram v. Jogendra Chandra* (2), do not govern the point that arises for decision in the present appeal, for court-fee payable on appeal in cases falling under section 7 (iv) (c) does not depend upon the court-fee leviable on the plaint. On this point the Madras High Court has ruled in 7 Madras High Court Reports page 1 (Appendix) and *Punya Nahake and others v. King Emperor* (3), that the words "*The fee leviable on the plaint or memorandum of appeal*" occurring in the last column of Articles 4 and 5 of Schedule I of the Act "must be taken to mean the fee which would be leviable on the plaint or memorandum of appeal if there were a fresh plaint or memorandum of appeal seeking the additional relief which the petition of review seeks." Finding as I do, that the fee payable on the memorandum of appeal does not depend on the fee leviable on the plaint I do not deem it necessary to examine the conflict between the High Courts at Allahabad and Calcutta on the one side and the High Court at Madras on the other side as regards the court-fee leviable on a petition for the review of judgment.

v.
Shri Om
Parkash
and others

Harnam Singh,
J.

Mr. Som Datta Bahri urges that proviso to section 7 (iv) (c) of the Act has no applicability to appeals.

Section 7 (iv) of the Act which begins with the words 'in suits' provides the court-fee is to be computed according to the amount at which the relief sought is valued in the 'plaint or memorandum of appeal.' Plainly, section 7 (iv) of the Act implies the applicability of the provisions to appeals.

(1) A.I.R. 1933 All. 20
(2) A.I.R. 1924 Cal. 881
(3) A.I.R. 1927 Madras 360

Shri Sham Lal v. Shri Om Parkash and others
 Harnam Singh, J.

Again, in numerous cases reported in books it has been said that when the subject-matter in dispute in an appeal is not different from the subject-matter in dispute in the suit in the trial court the appeal will be governed for purposes of court-fee by the same provisions as the suit. In case there is no difference in the nature of the relief in dispute the subject-matter need not be considered to be different and the appeal will be governed for purposes of court-fee by the same provision as is applicable to the suit though the amount of court-fee leviable in appeal may be different. In my judgment, there is no substance in the argument that the proviso to section 7 (iv) (c) of the Act added by Punjab Act XXXI of 1953 has no application to appeals.

For the foregoing reasons, I find that in Regular First Appeal No. 139 of 1953 court-fee leviable is under the proviso to clause (iv) of section 7 read with Schedule 1 of Article 1 of the Act.

Kapur, J.

KAPUR, J. I agree.

APPELLATE CIVIL

Before Kapur, J.

THE UNION OF INDIA,—Appellants

versus

SETH MUNNA LAL,—Plaintiff-Respondent.

Regular Second Appeal No. 860 of 1951

1954

Nov., 23rd

Accounts—Suit for—Goods sold under the clause “as is and where is”—Purchaser refusing to take delivery as goods unsaleable—Purchaser’s suit for rendition of accounts whether maintainable on the plea that the goods could be resold at his risk if not taken delivery of—Sale of Goods Act (III of 1930)—Section 54(2).

Held, that no suit for rendition of accounts lies between a seller and a buyer of goods and thus it was rightly dismissed by the trial Court.

Second appeal from the preliminary decree of the Court of Shri S. L. Madhok, 1st Additional District Judge, Delhi, dated the 4th day of August, 1951, reversing that of Shri A. N. Bhanot, Subordinate Judge, 1st Class, Delhi, dated the