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Sarkar, J.

that the High Court passed a higher sentence on him because it was under the impression that he had caused the only grievous injury that was found on the body of Mani Ram. The learned Advocate pointed out that there was no evidence to show that the grievous injury had been caused by Narain. It seems to us that this contention is justified. There is, however, evidence to show that Narain merited the higher sentence. It was he who directed the attack against Mani Ram. He called the other members of the attacking party to desist from pursuing Moola Ram as Mani Ram was the real enemy and should be dealt with. It is upon that, that the serious injuries on Mani Ram came to be infliited. We, therefore, think that the higher sentence imposed on the appellant Narain was justified.

No other question arises in this appeal.

The result is that the appeal fails and is dismissed.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw and I. D. Dua, JJ.

DHARI LAL,—*Plaintiff-Appellant*

versus

AMOLAK RAM,—*Defendant-Respondent*

Regular First Appeal No. 276 of 1951.

1958

Dec., 4th

Court-Fees Act (VII of 1870)— Section 7 (iv)(f) and Schedule I Article I—Suit for accounts—Decree for a certain sum passed—Appellant asking for increase in the amount decreed—Court-fee payable on appeal.

Held, that where a plaintiff has obtained a decree for a certain sum in a suit for rendition of accounts and claims that the sum decreed should be increased by certain specific amounts set out in the grounds of appeal, he must pay an *ad valorem* court-fee on the increased amount claimed.

First Appeal from the decree of the Court of Shri Pritam Singh, Sub-Judge, Ist Class, Tarn Taran; dated the 31st day of July, 1951, granting the plaintiff a decree for Rs. 6171/14/- with costs against the defendant.

C. L. AGGARWAL and MOHINDERJIT SETHI, for Appellant.

N. N. GOSWAMI and AMRIT LAL BAHRI, for Respondent.

JUDGMENT

FALSHAW, J.—Both the plaintiff Dhari Lal and the defendant Amolak Ram have filed appeals against a final decree in a suit for rendition of accounts passed in the plaintiff's favour for Rs. 6,171-14-0. It is not in dispute that the plaintiff and the defendant were partners in a firm which started in 1943 and carried on business as commission agents, dealers in foodgrains and other commodities at Lahore Cantonment under the name of Messrs Dhari Lal-Amolak Ram and that all the capital of this firm was furnished by Dhari Lal, who is a resident of Patti and who is interested in a number of firms, on the condition that Amolak Ram was to run the business at Lahore Cantonment and that profits or losses were to be shared between the parties half and half, Dhari Lal being entitled to interest at 6 per cent per annum on the capital invested by him. This business was still being carried on when it was rudely interrupted by the partition in August, 1947. Falshaw, J.

Before the Commisioner who was appointed to go into the accounts after the preliminary decree had been passed by the consent of the parties only the accounts of the firm up to the 31st of March, 1947, were available. These were in possession of the plaintiff Dhari Lal and were produced by him before the Commissioner. The accounts for the unfinished year commencing from the 1st of April,

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1947, were alleged by Dhari Lal to be in possession of the defendant Amolak Ram but the latter alleged that they were no longer in his possession as he had been unable to bring them with him when he fled to India in a cosvoy a short time after the partition.

A preliminary objection has been raised on behalf of the defendant against the appeal filed by the plaintiff which has been valued for purposes of court-fee at Rs. 2,600 although it is clear from grounds 4, 5 and 6 in the memorandum of appeal that the appellant is claiming a sum of about Rs. 10,600. Three specific items are mentioned in the grounds of appeal—Rs. 16,026, Rs. 2,916-8-6 and Rs. 2,296-1-0 and even on the basis of crediting the plaintiff with the half of these amounts the above figure would be arrived at. It is contended that since the court-fee has only been paid at Rs. 2,600 the plaintiff-appellant is confined to claiming that additional amount in the appeal, which of course, would debar him from raising the major item of Rs. 16,026 which has been found to be the value of the goods of the firm lost in Lahore Contonment on account of the partition.

As a matter of fact it would appear that some such objection was anticipated by the plaintiff-appellant, since the last paragraph of the grounds of appeal reads—

> "The plaintiff tentatively fixes the value of relief sought in appeal at Rs. 2,600 under section 7(iv)(f), of Indian Court Fees Act, which applies to appeals filed by plaintiff. He will make up the court-fee on such amount as is finally found due and awarded by this Hon'ble Court. In case this Hon'ble Court holds that the value fixed by appellant is not

correct he will limit his claim to his share of two items of Rs. 2,904 and Rs. 2,296 only."

In support of his contention that in a case like the present the plaintiff who is an appellant is entitled to fix an arbitrary value on the appeal under section 7(iv)(f) on the understanding that the court-fee would be made up on any amount found due to him over and above this valuation the learned counsel for the plaintiff has relied on the decision in *Faizullah Khan and another* v. *Mauladad Khan and others* (1), a decision of the Privy Council.

The facts in that case were that in a suit for rendition of accounts relating to a partnership the final decree passed by the trial Court was for Rs. 19,991 in favour of one of the defendants against the plaintiffs, who had originally valued their suit at Rs. 3,000. The plaintiffs filed an appeal in the High Court on which they simply paid Court fee on Rs. 19,991, i.e., the amount actually decreed against them. The High Court found it necessary to remand the matter for retrial but directed that the plaintiffs should not have a decree for any sum which might be found due to them since the court-fee paid did not cover that relief, and to that extent the appeal was directed to be barred by limitation. It was held by their Lordships of the Privy Council that the memorandum of appeal correctly stated the amount at which the relief was sought within the Court-Fees Act, 1870, section 7(iv)(f) and the fees paid entitled the plaintiffs to claim a decree if any sum should be found due to them, but that even if that was not so, the appellate Court should have exercised its power under the Code of Civil Procedure

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1908, section 149, to allow a further payment and should not have precluded the plaintiffs from the full relief which they sought.

It seems to me, however, that this case in which a decree had been passed against the plaintiffs, is distinguishable from the present case, in which the plaintiff has already got a decree for Rs. 6,171-14-0 and has claimed an increase on this amount which relates to certain specific items which have already been gone into by the Commissioner in his report and by the lower Court. The learned counsel for the plaintiff-appellant has not been able to cite any case in his favour in which the situation was the same as this and in my opinion where a plaintiff has obtained a decree for a certain sum in a suit for rendition of accounts and claims that the sum decreed should be increased by certain specific amounts set out in the grounds of appeal he must pay an *ad valorem* court-fee on the increased amount claimed. The plaintiff is entitled to filing a suit to place an arbitrary valuation under scetion 7(iv)(f), but once accounts have been gone into by the Commissioner and objections of the parties to the Commissioner's report have been adjudicated upon by the Court in arriving at a final decree and the decree is for a sum in excess of the plaintiff's original valuation of his suit, which in the present case was Rs. 140, he cannot when filing an appeal claiming certain increase in the sum relating to specific items again treat the matter as if he was starting from the beginning. I, therefore, hold that the plaintiff's claim in his appeal is limited to his half share in the two items of Rs. 2,904 and Rs. 2,296, referred to in the concluding paragraph of the grounds of appeal.

On merits there does not appear any substance either in the appeal of the plaintiff or that of the

defendant. The two items referred to in the plaintiff's appeal relate to sums which were shown in the firm's accounts as being due to Messrs. Dhari Lal-Dina Nath of Patti and Messrs. Dhari Lal-Babu Ram of Patti. In his evidence before the Commissioner the plaintiff had alleged that he was the sole proprietor of the first of these firms and a partner in the second. I cannot, however, see anything wrong in the manner in which the lower Court has dealt with these matters in finding that it was not proved who were the partners of these firms and that the firms should be left to bring suits for the recovery of these amounts rather than that they should be credited to the plaintiff as was recommended by the local Commissioner.

In the defendant's appeal the only three matters agitated were that a sum of Rs. 500, which was claimed, was due to the defendant as the wages of his son Joginder Pal who was admittedly employed in the firm at Lahore, that Rs. 4,000 claimed was wrongly shown in the accounts as the price of a quantity of oil, and that Rs. 4,500 was claimed as an additional loss sustained at Lahore on account of the partition.

Quite obviously only the accounts for the year commencing with 1st of April, 1947, could show what sum, if any, was due to Jogindar Pal on account of his wages and these accounts are not available. In their absence it must be presumed that the defendant, who was in charge of the business at Lahore, must have paid his son's wages from month to month as they fell due.

The item of Rs. 4,000 relating to the consignment of oil appears both in the firm's accounts and in the account books of the firm which is

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alleged to have supplied the oil, and I cannot see any reason for supposing that these entries are not genuine. The other item refers to a claim put in by both the parties and signed by them relating to their losses at Lahore for compensation. The claim was submitted to the Registrar, Refugee Claim East Punjab at Jullundur and there is a vague item of Rs. 4,500 as outstandings. There is no means of knowing to what extent this item is genuine and in my opinion it was rightly left out of account both by the local Commissioner and the lower Court. In these circumstances there is no alternative but to dismiss the appeals and leave the parties to bear their own costs.

DUA, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw and Inder Dev Dua, JJ.

MADAN GOPAL.—*Appellant.*

versus

B. MUKAND LAL AND ANOTHER.—*Respondents.*

Regular First Appeal No. 143 of 1950 with Cross-objections.

1958

Dec., 9th

Hindu Law—Adoption of sister's son in the Punjab—Whether valid—Family arrangements—Whether binding—Pleadings—Construction and object of—Statements in replication—Whether supplement those in the plaint.

(1) *Held.* that the adoption of a sister's son is valid under Hindu Law as applicable to the Punjab and the areas round about Delhi. The strict rule of Hindu Law that no one can be adopted whose mother, in her maiden state, the adoptor could not have legally married, has been greatly varied and relaxed in the Punjab by family customs and is no more sacro—sanct and in view of that the doctrine of *factum valet* can also legitimately be held applicable.