

THE INDIAN LAW REPORTS

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APPELLATE CIVIL

Before Teja Singh, J.

VIR SINGH,—Defendant-Appellant.

versus

HARNAM SINGH AND OTHERS,—Plaintiffs-Respondents.

Regular Second Appeal No. 150 of 1948

Court Fees Act (VII of 1870)—Schedule I article 1 and Schedule II article 17—Cross objections—Court fee payable thereon—Article 17 of Schedule II, whether applies to cross-objections.

1948

August, 30th

Held, that applicability of article 1 of Schedule 1 to all kinds of cross-objections, whether the subject-matter in dispute therein is capable of money value or not, results in a sort of anomaly, but since the legislature refused to add the word "cross-objection" to Article 17 it cannot be held that the intention was to include it in the term "appeal". Moreover, the word "cross-objection" did not occur in Article 1 of Schedule I but was inserted therein for the first time when the Act was amended in 1908 and so it is not permissible to assume that the omission to add the word "cross-objection" to Article 17 was not intentional. It may also be mentioned that the amendment of Article 1 of Schedule I became necessary because section 16 of the Act, which dealt specifically with cross-objections was deleted from the Act. Both the amendments, one deleting section 16 and the other inserting the word "cross-objection" in Article 1 were made by the same amending Act of 1908. Accordingly Article 17 cannot apply to a cross-objection and court-fee on a memorandum of cross-objection must be paid *ad valorem* on the

subject-matter of dispute in the cross-objection, according to Article 1 of Schedule I.

Balak Ram High School, Panipat, v. Nanun Mal (1), not followed.

Kesavarapu Ramakrishna Reddi v. Kotta Kota Reddi (2), and *Kishun Dutt v. Kasi Pandey* (3), referred to. *Surendra Singh v. Gambir Singh and another* (4), not followed, *Raja Harnam Singh v. Rani Bahu Rani* (5), referred to, *Abdul Subhan Khan alias Khalilul-Rahman Khan v. Nusrat Ali Khan and others* (6), *Lakhan Singh v. Ram Kishan Dass* (7), *Kartar Singh v. Joginder Singh, etc.*, (8), and *Sri Rajeo Lochan Maharaj v. Mahant Ram Manohar Prasad* (9), relied upon.

Regular Second appeal from the Decree of Shri Yash Pal Gandhi, Additional District Judge, Amritsar, dated the 18th November, 1947, affirming that of Salah-ud-Din, Sub-Judge Ist Class, Amritsar, dated the 8th June, 1946, decreeing the plaintiffs' suit for a declaration to the effect that the sale in favour of defendant No. 4 shall not be binding on the reversionary rights of the plaintiffs beyond the extent of Rs. 560 and they shall be entitled to get possession of the field No. 327 on payment of Rs. 560 after the death of executor and for a declaration to the effect that the sale of field No. 751 and 723 in favour of defendant No. 8 being without consideration and legal necessity shall not be binding on the reversionary rights of the plaintiffs and they shall be entitled to get possession of the land after the death of the vendor without any payment and for a declaration that the sale of fields No. 247, 236, 955, 956, 1126 and 1133 in favour of defendant No. 9 shall only be binding on the reversionary rights of the plaintiffs to the extent of Rs. 3882. The plaintiffs shall be entitled to get possession of the land on the death of the vendor on payment of this sum, leaving the parties to bear their own costs, the District Judge allowing costs of his Court.

HARNAM SINGH, ADVOCATE-GENERAL, for Appellant.

C. L. AGGARWAL, for Respondents.

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- (1) I.L.R. 11 Lah. 503.
 - (2) I.L.R. 30 Mad. 96. (F.B.),
 - (3) 57 I.C. 481
 - (4) I.L.R. 57 All. 151
 - (5) I.L.R. 9 Luck. 406
 - (6) I.L.R. 11 Luck. 79
 - (7) I.L.R. 40 All. 93
 - (8) 1937 P.L.R. 586
 - (9) A.I.R. 1923 Oudh. 44(1).

JUDGMENT

TEJA SINGH, J.—The only question that arises Teja Singh, J. for determination in this reference is what court-fee is payable on the cross-objections filed by the respondent.

The facts giving rise to the reference briefly stated are as follows. Chainchal Singh made six separate alienations of his landed property. The plaintiffs, who claimed to be Chainchal Singh's reversioners brought the usual suit for declaration in respect of all the alienations alleging that the alienations were without consideration and necessity and consequently they did not affect the plaintiffs' reversionary interests. The trial Sub-Judge granted the plaintiffs a decree for possession in respect of the land that was the subject matter of four alienations. As regards the remaining two alienations, he decreed the plaintiffs' suit against defendant No. 2 subject to certain conditions but granted an unconditional decree for declaration against defendant No. 8. On appeal to the District Judge the decree of the trial Sub-Judge was upheld. Vir Singh who is one of the defendants against whom the Courts below have decreed the plaintiffs' suit has now preferred a second appeal to this Court while defendant No. 8 has put in cross-objections. Both have paid court-fee of Rs. 20 each. The learned Advocate-General's contention is that court-fee on cross-objections of defendant No. 8 should be *ad-valorem* on the subject-matter of dispute. Mr. C. L. Aggarwal, the respondents' counsel contends that the case is governed by Article 17 of Schedule II and that the cross-objections are liable only to a fixed fee of Rs. 20.

It may here be mentioned that the alienation in favour of the respondents is quite distinct from

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that in favour of the appellant and neither any relief has been granted by the Courts below to the appellant against the respondent nor was such a relief claimed. All that is prayed by the respondent in his cross-objections is that the plaintiff, who is also a respondent in the appeal, should not have been granted an un-conditional decree against him and the suit should have been dismissed qua his (the respondent's) alienation. It may, therefore, be well argued that the cross-objections are not competent and the only remedy open to defendant No. 8 was by way of an appeal. Mr. C.L. Aggarwal, urges that he had a right to put in cross-objections and since the question referred to me only relates to court-fee on those objections, the learned Advocate-General does not join issue with Mr. C. L. Aggarwal on this point. I, therefore, refrain to give any opinion thereon.

Taking into consideration the wordings of Article 17 of Schedule II, I am of the opinion that the operation of it is confined only to plaint and memorandum of appeal and a cross-objection does not come within its ambit. Mr. C. L. Aggarwal argued that the appeal should be taken to include a cross-objection, but since the legislature has made definite mention of cross-objection in various other Articles including Article 1 of Schedule I. I cannot but hold that a memorandum of appeal cannot be taken to include a cross-objection. I also do not accept the learned counsel's contention that the intention of the legislature was to apply Article 17 even to cross-objections, because the case of a cross-objection the subject-matter of dispute in which is not capable of being valued in money is not provided anywhere else. Probably, there is a

lacuna in the Act, but I cannot for this reason extend the operation of Article 17 because that would amount to reading in the Article the word 'cross-objection' that does not occur therein. Learned counsel cited two cases in support of his contention. The first is *Balak Ram High School, Panipat Vs. Nanun Mal* (1). In that case a direction had been embodied in the decree of the trial Subordinate Judge that if the defendants were unable to realise Rs. 50,000 or any portion thereof from the Firm Nihal Chand-Chhajju Mal, they would be entitled to realise the same from the property of Balak Ram in the hands of Nanun Mal plaintiff. The defendants were the appellants in the High Court while Nanun Mal plaintiff put in cross-objections with respect to the above-mentioned direction contained in the decree and paid a court-fee of Rs. 10. A preliminary objection was raised by the appellants that the court-fee paid on the memorandum of cross-objections was not sufficient and an *ad-valorem* fee on the charge of Rs. 50,000 should have been paid. It was held that since the burden created was uncertain and depended upon the contingency of the sum of Rs. 50,000 or any portion thereof not being realised, the case fell under clause (6) of Article 17 of the Second Schedule of the Court-fees Act and the court-fee of Rs. 10 was sufficient. There was no discussion on the subject beyond the observation that the two authorities cited by the appellants, namely *Kesavarapu Ramakrishna Reddi vs. Kotta Kota Reddi* (2), and *Kishan Dutt Vs. Kasi Pandey* (3), did not appear to be applicable to the facts of the case and no definite charge in respect of Rs. 50,000 had been created by the decree. With all deference, I am of opinion

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(1) I.L.R. 11 Lah. 503

(2) I.L.R. 30 Mad. 96 (F.B.)

(3) 57 I.C. 481

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that the view taken by the learned Judges is not correct and the consensus of authority is against it. The second case is *Surendra Singh Vs. Gambhir Singh and another* (1), where it was held by Bennet J. that although Article 17 of Schedule II does not specifically mention a cross-objection while it mentions plaint or memorandum of appeal, on general principles the words "plaint or memorandum of appeal" in that Article should be construed to include a cross-objection. In dealing with the point the learned Judge made the following observations:—

"A cross-objection and an appeal are very intimately connected and there is no essential difference from the point of view of court-fees between the one and the other, and there is no reason whatever why a person who files a cross-objection should have to pay *ad-valorem* court-fee, whereas if he filed an appeal instead of cross-objection he would not have to pay *ad-valorem* court-fee. It cannot possibly have been the intention of the legislature that such a strange result should accrue between the two kinds of procedure."

I respectfully agree that the applicability of Article 1 of Schedule I to all kinds of cross-objections, whether the subject-matter in dispute therein is capable of money value or not, results in a sort of anomaly, but since the legislature refused to add the word "cross-objection" to Article 17 it cannot be held that the intention was to include it in the term "appeal". Moreover, when we remember that the word "cross-objection" did not occur even in Article I of Schedule I and it was inserted therein for the first time when the Act was

amended in 1908, it is not permissible to assume that the omission to add the word "cross-objection" to Article 17 was not intentional. It may also be mentioned that the amendment of Article 1 of Schedule I became necessary because section 16 of the Act, which dealt specifically with cross-objections was deleted from the Act. Both the amendments, one deleting section 16 and the other inserting the word "cross-objection" in Article 1, were made by the same amending Act of 1908. Accordingly, my view is that Article 17 cannot apply to a cross-objection and court-fee on a memorandum of cross-objection must be paid *ad valorem* on the subject-matter of dispute in the cross-objection, according to article 1 of Schedule I. This view is supported by a large number of cases decided by the various High Courts in India the most important of which are mentioned below.

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Raja Harnam Singh vs. Rani Bahu Rani (1), decided by a Division Bench. It was held in this case that the court-fee on cross-objection should be paid *ad valorem* according to the value of the subject-matter in dispute as laid down in the case of appeals in Article 1 of Schedule I and under Article 17 of Schedule II of the Court-fees Act. The learned Judges took the view that the omission to add the word "cross-objection" to Article 17 of Schedule II, when the Act was amended in 1908 was due to an oversight but they observed that it was not their function to legislate and they must take the law as it stands. This case was followed by another Bench of the same Court in *Abdul Subhan Khan alias Khalil-ul-Rahman Khan vs. Nusrat Ali Khan and others* (2). The appeal arose out of a suit for declaration that a mortgage executed by the plaintiff in favour of

(1) I.L.R. 9 Luck. 406

(2) I.L.R. 11 Luck. 79

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the defendants was void and not binding upon him. The trial Court decreed that the mortgage deed was void and not binding on the plaintiff and declared that the defendants could recover Rs. 11,500 as principal sum from the plaintiff's property. The plaintiff appealed in respect of his liability to pay Rs 11,500 and one of the defendants filed cross-objections against the decree of the Court below declaring that the mortgage was not binding upon the plaintiff. It was contended on behalf of the cross-objector that as the court-fee paid on the plaint and upon the memorandum of appeal in the suit was governed by Article 17 of the Second Schedule, as the suit was for a mere declaration where no consequential relief was prayed, the court-fee payable on the cross-objection should be governed by the same provision of the Court-fees Act. The Bench while spurning this contention and holding that court-fee should be paid *ad valorem* according to the value of the subject-matter in dispute under Article 1 of Schedule 1 remarked as follows:—

“It certainly does seem anomalous that the cross-objector could have filed an appeal claiming precisely the same reliefs as he claims in his cross-objection upon a court-fee of Rs. 15 under Article 17, Schedule II, whereas if he files a cross-objection he should pay an *ad valorem* court-fee on the value of the subject-matter in dispute. The anomaly has frequently been noticed in judicial decisions. Unfortunately for the cross-objector there is no special provision in the Court-fees Act, governing the court-fee payable upon cross-objection excepting only Arti-

cle 1 of Schedule I. There is no reference to cross-objections in Article 17 of the Second Schedule. This certainly does give rise to anomalies as pointed out in previous judicial decisions but we think that we are bound to follow a very clear ruling of a Bench of this Court in *Raja Harnam Singh vs. Rani Bahu Rani* (1),

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The decision of the Allahabad High Court in *Surendra Singh vs. Gambhir Singh* (2), was cited but the learned judges refused to follow it on the ground that it was contrary to the general trend of judicial authority.

Lakhan Singh Vs. Ram Kishan Dass (3). In this case the plaintiff had brought a suit for declaration which was decreed in part. The plaintiff appealed asking for that portion of the declaration which had been denied to him and paid a court-fee of Rs. 10. The defendant filed cross-objections on a stamp of Rs. 2 praying that the decree in the plaintiff's favour be set aside. It was held that court-fee must be paid *ad valorem* according to the value or amount of the subject-matter in dispute.

Kartar Singh vs. Joginder Singh etc. (4). In this case also the appeal and cross-objections arose out of a suit for declaration that an alienation made by a male proprietor governed by customary law did not affect the reversionary rights of the plaintiffs. It was held that even though the suit was governed by Article 17, Schedule II of the Court-fees Act, the court-fee payable on cross-objections was *ad valorem* under Article

(1) I.L.R. 9 Luck. 406

(2) I.L.R. 57 All. 151

(3) I.L.R. 40 All. 93

(4) 1937 P.L.R. 586

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1 of Schedule I. The learned Judge referred to a number of cases including an unreported decision of the Lahore High Court in which it has been held that the omission of the word "cross-objec-
tion" from Article 17 was not accidental.

Sri Rajeo Lochan Maharaj vs. Mahant Ram Manohar Prasad (1). The original suit was for declaration. One side preferred an appeal and the other filed cross-objections on a stamp of Rs. 2. It was held that Article 17 of Schedule II does not apply to cross-objections even though the value of the subject-matter of dispute could not be estimated. As regards the question what was the proper fee payable in a case of this kind, the learned Judges held they must accept the valuation placed by the respondent, if that valuation is not unreasonable.

In the present case, the consideration for the alienation in favour of defendant No. 8 which consists of a sale was for Rs. 1,700. The property is in the possession of the defendant. The declaration that has been granted to the plaintiffs is to the effect that the sale would not affect their reversionary rights. This means that the defendant is entitled to continue in possession till the alienor dies. Accordingly, the value of the subject-matter of dispute in cross-objections cannot be Rs. 1,700. I allow the plaintiffs' counsel to fix it at Rs. 500 and pay *ad valorem* court-fee on this amount. The deficiency to be made up within a month. There will be no order as to the costs of this reference.

(1) A.I.R. 1923 Oudh. 44(1)