Bhagwan Singh v. Amar Kaur and another

this appeal and grant a decree for separation of marriage to the petitioner. In the circumstances of the case, I would make no order as to costs.

Shamsher Bahadur, J.

B.R.T.

CIVIL MISCELLANEOUS

Before Tek Chand and P. C. Pandit, JJ

MANSHA RAM AND OTHERS,—*Appellants*

versus

TEJ BHAN,—*Respondent*

Civil Miscellaneous No. 894-C of 1956
in
Regular First Appeal No. 60 of 1958

Court-fees Act (VII of 1870)—Section 7(IV) (f) and Article 1 of Schedule 1—Suit for accounts—Final decree passed for a specific amount—Judgment-debtor filing appeal from that decree—Decree-holder filing cross-objections alleging that more amount is due to him than decreed and paying court-fee on notional value of Rs. 200—Court-fee—Whether sufficient—Courtfee payable on cross-objections—Whether ad valorem *on the subject-matter in dispute—Interpretation of Statutes—*Casus omissus*—Whether can be supplied by a court of law—clerical error, judicial error and* Casus omissus*—Difference between.*

1960

Oct., 19th

Held, that Article 1 of Schedule 1 ofthe Court fees Act is the only place in the Act where cross-objections are mentioned. Consequently cross-objections must bear an *ad valorem* court-fee calculated on the amount or value of the subject-matter in dispute. Where in a suit for accounts a final decree is passed for a specific amount and the judgment-debtor files an appeal against that decree and the decree-holder files cross-objections claiming that if accounts are properly taken, more amount than what has been decreed in his favour will be found due to him, he must stamp the cross-objections with *ad valorem* court-fee calculated on the amount or value of the subject-matter in dispute according to Article 1 of Schedule 1 of the Court-

fees Act. He must state, according to his calculations, as to how much more than the amount decreed in his favour by the Court below, is due to him from the plaintiff and he should then pay *ad valorem* court-fee on the difference between the amount awarded to him and the amount which, according to him, ought to have been awarded to him. He cannot put any notional value on the relief sought in accordance with the provisions of section 7(iv) (f) of the Act and pay court-fee thereon.

Held, per Tek Chand, J.—

That literally an error is said to be "clerical" where it is made by a clerk or some subordinate agent, but actually, it means an error committed in the performance of clerical work, whether by the Court, the draftsman of the Act or by the clerk. It is an error which cannot reasonably be attributed to the exercise of judicial consideration or discretion. A "clerical error" is one made in transcribing or otherwise, and it must be apparent on the face of the record; and, therefore, capable of being corrected. It is, in the nature of, an inadvertent omission or mistake. The term "clerical error" which is amendable, *nunc pro tunc*, is distinguishable from, a "judicial error" which can be corrected only on review or an appeal. "Clerical errors" are errors of form and not of substance, being errors committed in the performance of work, which, in its nature, is only clerical as opposed to judicial. "Clerical errors" include mistakes or omissions which are not the result of the exercise of a judicial or legislative function, or the outcome, of a deliberate result of reasoning and determination. When a statute contains an omission, which in logic ought not to be there, it cannot be called a clerical error. Such omissions in statutes are not correctable by the Courts on the plea that the Court should supply a *casus omissus*. Where a *casus omissus* really occurs in a statute through the inadvertence of the Legislature, the particular case, thus left unprovided for, must be disposed of on the assumption, that it has been deliberately omitted. If the Courts were to supply the *casus omissus*, it will not be tantamount to construction of the Act, but to its amendment or alteration. A defect, which is curable by the Legislature, when making the law, cannot be removed by the Court, when interpreting it. The language of the statute, cannot be stretched, in order to meet a case, for which

it has made no provision. The Courts cannot assume that the omission in the statute was due to oversight on the part of the Legislature, and, therefore, was not deliberate. There is no warrant for such a supposition. It is not logical to assume a lacuna and then proceed to fill in the blank.

Case referred by Hon'ble Mr. Justice K. L. Gosain, on 1st April, 1960 to a large Bench for determination of the amount of Court-fee to be paid on the memorandum of cross-objections filed by the defendant. The issue was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice P. C. Pandit, on 19th October, 1960.

Cross-objection of Shri Tej Bhan, respondent under Order 41 Rule 22 Code of Civil Procedure to the decree of the Court below.

Original suit No. 38/161 of 1957/53 decided by Shri R. S. Bindra, Senior Sub-Judge, Simla, at Ambala, on 13th January, 1958.

N. L. SALOOJA, ADVOCATE, for the Appellant.

D. R. MANCHANDA, ADVOCATE, for the Respondent.

JUDGMENT

Pandit, J.

PANDIT, J.—This case has been referred to a larger Bench by the learned Taxing Judge of this Court in the following circumstances :—

Mansha Ram plaintiff filed a suit against Tej Bhan defendant for dissolution of partnership and for recovery of amount that may be found due to him after rendition of accounts. The trial Court passed a preliminary decree for dissolution of partnership and rendition of accounts and the plaintiff was held liable to account. This preliminary decree was confirmed up to the High Court. Later on, the trial Court passed a final decree for Rs. 26,628-1-9 with further interest at the rate of

four per cent per annum from the date of the decree till realisation and costs in favour of the defendant against the plaintiff. Upon this, the plaintiff filed a regular first appeal in this Court against the decree of the trial Court and valued the appeal for purposes of jurisdiction at Rs. 26,628-1-9 and paid an *ad valorem* court-fee of Rs. 2.047-8-0 because the relief that he claims in this appeal is that the decree of the lower Court be set aside except to the extent of Rs. 3,000 which amount is admitted by him.

Tej Bhan defendant, on the other hand, filed cross-objections. He valued these cross-objections for the purposes of court-fee and jurisdiction at a tentative figure of Rs. 200 and paid a court-fee of Rs. 20 on the same.

The Stamp Reporter raised an objection that the cross-objections had not been properly valued for purposes of court-fee and jurisdiction, his contention being that the court-fee should have been paid *ad valorem* on the money value of the relief claimed in the cross-objections. According to him, the court-fee on the memorandum of cross-objections must be paid *ad valorem* on the value of the subject-matter in dispute according to Article 1, Schedule 1 of the Court-fees Act. On the other hand, the contention of the learned counsel for Tej Bhan defendant was that he could put any notional value on the relief sought in accordance with the previsions of section 7 sub-clause (iv) (f) of the Court-fees Act. The matter was placed before the Taxing Officer who, by his order dated the 19th January, 1959, submitted this case to the learned Taxing Judge for a final decision, since neither of the parties before him had been able to cite any direct authority on the point and the question involved was of general

Mansha Ram and others v. Teji Bhan

Pandit, J.

importance. When the matter came before the learned Taxing Judge, he after hearing the counsel for the defendant and the Additional Advocate-General for the State, referred this case to a larger Bench because, according to him, there was a good deal of conflict of authority on the point involved which was of general importance and was likely to arise in a large number of cases.

The only point for decision is as to what court-fee has to be paid on the memorandum of cross-objections filed by the defendant in this case.

The court-fee to be paid on cross-objections is prescribed in Article 1 of Schedule 1 of the Court-Fees Act, hereinafter called the Act, the relevant portion of which runs as under:—

This is the only place in the Act where cross-objections are mentioned. Censequently, in my opinion, cross-objections must bear a court-fee calculate on the amount or value of the subject-matter indispute. The cross-objector must pay an *ad valerem* fee on the amount or value of the subject-matter in dispute as provided for in Article 1, Schedule I of the Act. I am not prepared to accept the contention of the learned counsel for the defendant that he is not in a position to mention a specific amount which he is claiming over and above the amount that was decreed in his favour, on the ground that the accounts had not been properly taken or gone into by the Court below. The accounts had been gone through and the objections of the parties had been adjudicated upon by the Court below and then a final decree had been passed for a specific amount in favour of the defendant .

The grievance of the defendant is that the trial Court had adopted an erroneous method of accounting, had wrongly taken into consideration an imaginary figure of Rs. 3,045 and had not found out the correct proportion in the investments made by the parties in the firm Mansha Ram and Sons.

Surely, when all the accounts had been produced before the Court, the defendant could make his own calculations and could find out if not the exact, at least the approximate amount, which, according to him, was due from the plaintiff. He ought to have paid *ad valorem* court-fee on the difference between the amount awarded to him and the amount that, he says, ought to have been awarded to him, and that would be the value of the subject-matter indispute so far as these cross-objections are concerned. Under the law, he cannot put any notional value on the relief sought in the cross-objections and pay court-fee thereon, after the passing of the final decree in the case.

Learned counsel for the defendant place reliance on the provisions of section 7(iv)(f) of the Act for his submission that in these cross-objections the defendant could state the amount at which he valued the relief sought by him. Section 7(iv)(f) runs thus:—

> "The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows—
>
> (i) * *
> (ii) * *
> (iii) * *
> (iv) In suits—
> (a) * *
> (b) * *

Mansha Ram and others
v.
Tej Bhan

Pandit, J.

(c) * *

(d) * *

(e) * *

(f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought:

Provided that the minimum court-fee in each case shall be thirteen rupees.

* * * * * * *"

In the first place, from the plain wording of the statute itself, it is clear that this clause does not apply to the case of cross-objections, and secondly, it is doubtful if this clause would apply even in a case where a defendant were to file an appeal, much less cross-objections, against a final decree in a suit for dissolution of partnership and rendition of accounts.

I may also mention that the learned counsel for the defendant did not argue that his case was covered by Article 17(vi) of Schedule II of the Act. On the contrary, his submission was that a suit of the present nature was specifically provided for in section 7(iv)(f) and was, therefore, not covered by Article 17(vi) of Schedule II of the Act.

Coming to the authorities on the subject, I may at once mention that our attention was not drawn to any authority which was on all fours with the facts of the present case.

The authorities which support the contention of the learned counsel for the State are—

1. *Dharilal etc.* v. *Amolak Ram etc.* (1), where in a Division Bench of this Court consisting of Falshaw and Dua, JJ., held—

> "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 in filing a suit to place an arbitrary valuation under section 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, 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:"

2. *Vir Singh* v. *Harnam Singh* (2), in which Teja Singh J. held—

> "Article 17 of the Schedule II of the Court-Fees Act applies to plaint and memorandum of appeal. It does not apply to cross-objections and court-fee on a memorandum of cross-objections must

(1) A.I.R. 1959 Punj. 466.
(1) 1956 P.L.R. 7.

Mansha Ram and others
v.
Tej Bhan

Pandit, J.

be paid *ad valorem* on the subject-matter of dispute in the cross-objection according to Article 1 of Schedule I."

3. In *Kartar Singh* v. *Joginder Singh* (1) Skemp J. observed that in a cross-objection arising out of a suit for declaration challenging an alienation on the ground of consideration and necessity, when the question involved is the amount which is for necessity, the court-fee payable is on the amount in dispute under Article 1 of Schedule 1, and not under Article 17 of Schedule II of the Act.

4. In *Sheokisandas Agarchand Daga Maheshri* v. *Daudas Ramgopal* (2), it was held—

> "In an appeal against a final decree in a suit for dissolution of partnership and accounts, court-fee has to be paid on the amount mentioned in the final decree and not on the provisional valuation put in the plaint."

5. In *re Dhanukedi Nayakkar* (3), it was observed:—

> "Section 7 gives great freedom to plaintiff-appellants, but it does not give the same freedom to defendant appellants. When a defendant-appellant appeals against a final decree he knows exactly the value of his relief, and he should pay a court-fee on the amount of the decree passed against him except in cases where he appealed only against a portion of the decree. Similarly a

(1) 1937 P.L.R. 586.
(2) A.I.R. 918 Nag. 527.
(3) A.I.R. 918 Mad. 435 (F.B.).

defendant appealing from a preliminary decree for an account has ordinarily to stamp his memorandum according to the plaintiff's valuation. It cannot be said that in compelling a defendant to follow a plaintiff's valuation hardship is likely to result as a plaintiff is never anxious to pay more than is necessary in court-fees."

6. In *Shri Rajee Lechan Maharaj* v. *Mahant Ram Manohar Prasad* (1), it was observed by the Division Bench—

"The fee to be paid on cross-objection is prescribed in Article 1 of Schedule 1 of the Court-Fees Act. There is no other place in the Court-Fees Act where cross-objections are mentioned and cross-objections must therefore bear a court-fee calculated on the amount or value of the subject-matter in dispute. In the present case the value of the subject-matter in dispute cannot be estimated but Article 17 of the Second Schedule is not applicable to cross-objections. The words 'or of cross-objection' were inserted in Article 1 of Schedule I by Act V of 1908 but it appears that from an over-sight similar words were not at the same time inserted in Article 11 or 17 of Schedule II. In order therefore to find out the proper fee payable we must accept the valuation placed on the cross-objection by the respondent if that valuation is not unreasonable."

2) A.I.R. 1923 Oudh 44.

Mansha Ram and others v. Tej Bhan

Pandit, J.

7. In *Lakhan Singh* v. *Ram Kishan Das* (1), it was observed by Tudball J. at page 95—

> "He (Taxing Officer) has pointed out that the only place in the Court-Fees Act in which cross-objections are mentioned is in Article 1, Schedule I, of the Act. Under that Article the cross-objection must pay an *ad valorem* fee according to the value of the subject matter in dispute. Article 17, Schedule II, though it relates to a plaint or memorandum of appeal in the classes of suits mentioned therein, does not relate to cross-objections filed in similar suits. This Act was amended when Act V of 1908 was passed and the words 'or cross-objection' were added to Article 1 of Schedule I, but not to Article 17 of Schedule II. Under the former article the cross-objector must pay an *ad valorem* fee according to the value or amount of the subject-matter in dispute."

8. In *Sharfuddin* v. *M. Khadim Ali Khan* (2), Bennet J. observed—

> "It is not open to an appellant-defendant in a suit for accounts, against whom a final decree for a definite amount has been passed, to value his appeal under section 7, Clause (iv)(f) arbitrarily for an amount less than the amount decreed against him."

9. In *Harihar Bakhsh Singh* v. *Lachhman Singh* (3), the Division Bench held—

> "Cross-objections in appeals arising out of redemption suits must be stamped *ad*

(1) I.L.R. 40 All. 93.
(2) A.I.R. 1934 All. 807.
(3) A.I.R: 1934 Oudh. 246.

valorem on the amount by which the decretal amount is sought to be reduced."

10. In *Ishdat Tiwari* v. *Tameswar Tiwari* (1), Piggot, J., held—

"The cross-objections are admittedly liable to an *ad valorem* fee on the subject-matter in dispute."

11. (*Raja*) *Harnam Singh* v. (*Rani*) *Bahu Rani* (2), where the Division Bench observed—

"Court-fee on memo. of cross-objections shouldd be paid *ad valorem* under Article 1, Schedule I, and not as as under Schedule 2, Article 17, as the word 'cross-objection' is to be found only in Article 1, Schedule I, and not in Schedule 2, Article 17."

I may now notice the authorities quoted by the learned counsel for the defendant.

(i) *Surendra Singh* v. *Gambhir Singh* (3), wherein it was held by Bennet J.—

"A cross-objection and an appeal are very intimately connected and there is no essential difference from the point of view in court-fee 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 fild an appeal instead of a cross-objection he will not have to pay court-fee. Hence a cross-objection in a declaratery suit where no

(1) A.I.R. 1924 All. 175.
(2) A.I.R. 1933 Oudh. 528—147 I.C. 186.
(3) A.I.R. 1934 All. 728.

Mansha Ram and others
v.
Tej Bhan

Pandit, J.

other consequential relief is asked for does not require *ad valorem* court-fee, but is sufficiently stamped with a ten rupee court-fee. And the omission of the word 'cross-objection'from Schedule 2, Article 17(iii) is a mere clerical error and it is no doubt intended that by a memorandum of appeal, a cross-objection should also be included."

In the first place, this does not seem to be a clerical error as observed by Bennet J., because the word 'cross-objection' at first did not find a place even in Article I of Schedule I, and it was inserted therein when the Court-fees Act was amended in 1908. But the legislature did not add this word in Article 17 of Schedule II. In the second place, even if it be a clerical error, the Courts have to enforce the law as it stands and it is for the legislature alone to correct any error if the same has crept in any statute.

(ii) In *Krishnan Padanayar* v. *Parameswaran Nair* (1), it was held as under:—

"When in a suit for accounts the plaintiff complains that the trial Court has not made the defendant liable for all the amounts he is truly liable for, it is open to the plaintiff to have the whole case re-opened in appeal from the final decree on court-fee paid on a notional valuation.

In appeal the suit does not loose its character of being an account suit so as to entitle the Court or the parties to treat it as an appeal from a money decree.

(1) A.I.R. 1952 Trav.—Cochin 43.

> In a suit for partition every party is in the position of a plaintiff."

In the first place,, this is not a case in point, because no cross-objections had been filed in that case and the question of court-fee to be paid thereon did not arise. Secondly, that case seems to have been decided on the provisions of the Travancore Cochin Court Fees Act, the relevant provisions of which were somewhat different from those applicable to the Punjab. Thirdly, the proposition of law enunciated therein runs counter to a number of authorities, e.g., *Sheokisandas Agarchand Daga Maheshri* v. *Daudas Ramgopal* (1), and *Sharfuddin* v. *Khadim Ali Khan* (2).

(iii) In *Jagannath* v. *Kundan Mal* (3), it was held: —

> "A defendant- appellant in an appeal from a preliminary decree in a suit for accounts is entitled to fix his own valuation of the relief he claims in the memorandum of appeal and is not bound by the valuation put by the plaintiff on the suit."

This authority also does not deal with the point in issue, namely, payment of court-fee on cross-objections in a suit for dissolution of partnership and rendition of accounts. Secondly, in this authority the question arose in an appeal by the defendant from a preliminary decree which is not the position in the instant case. Thirdly, this authority, has taken a contrary view to what was held by a Full Bench of five Judges in *Megh Raj* v. *Rupchand Uttamchand* (4),

(1) A.I.R. 1938 Nag. 527.
(2) A.I.R. 1934 All. 807,
(3) A.I.R. 1958 Raj. 144.
(4) A.I.R. 1946 Lah. 280.

Mansha Ram and others
v.
Tej Bhan

Pandit, J.

(iv) In *Kanwar Jagat Bahadur Singh* v. The *Punjab State* (1), a Division Bench consisting of Kapur and Bishan Narain JJ. held as under:—

> "The Court-Fees Act is an enactment dealing with revenue and therefore no amount is leviable unless it clearly falls under the provisions of the Court-Fees Act: * * * * * * * * the charging provisions are Schedules I and II. No doubt section 11 and sections 7 and 8 are similarly worded but section 7 is only a computing section and what has to be paid in cases which fall under section 7 has to be looked for in Schedules I and II. If there were no Schedule, section 7 and 8 themselves would be of no assistance to the State. It is under the previsions of the various Articles of the Schedule that the amount is to be determined."

Section 4 of the Act specifically provides that no document of any kind specified in the first or second schedule to this Act, as chargeable with Fees, shall be filed in, or received by, any High Court in any case coming before it in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules, as the proper fee for such document. Article I of Schedule I of the Act definitely prescribes that the memorandum of cross-objections shall be stamped with an *ad valorem* fee on the amount or value of the subject-matter in dispute. Consequently, if the memorandum of cross-objections in the present case is not stamped with a proper court-fee, in accordance with the

(5) A.I.R. 1957 Punj. 32.

provisions of Article I of Schedule I of the Act, then such cross-objections will not be received by or entertained in this Court.

(v) *Balak Ram High School* v. *Nanu Mal* (1), whrein it was held by Addison and Bhide JJ.—

> "In the circumstances, the case would seem to fall under clause (vi), Article 17 Schedule 2, Court-fees Act. The court-fee of Rs. 10 paid on the cross-objection was thefefore sufficient."

This decision was considered by Teja Singh, J. in *Vir Singh* v. *Harnam Singh* (2), and I may say with respect that the learned Judge had given very good reasons for not agreeing with the view of law taken by the learned Judges in this authority.

A few other authorities (e.g., *Lakshmi Narain* v. *Bharat Singh*, (3), *and Sham Lal, etc.*, v. *Om Parkash, etc.*, (4), were also cited but they are not relevant to the point in issue.

In view of the above discussion, I am of the opinion that the court-fee on the memerandum of cross-objections filed by the defendant in this case must be paid *ad valorem* on the amount or value of the subject-matter in dispute according to Article I of Schedule I of the Act. He must state, according to his own calculations, as to how much more than the amount decreed in his favour by the Court below, is due to him from the plaintiff and he should then pay *ad valorem* court-fee on the difference between the amount awarded to him and the amount which, according to him, ought to have been awarded to him. He cannot put any notional value on the relief sought in accordance

(1) A.I.R. 1930 Lah. 579.
(2) 1956 P.L.R. 7.
(3) A.I.R. 1952 Punj. 200.
(4) A.I.R. 1955 Punj. 223.

Mansha Ram and others
v.
Tej Bhan

Tek Chand, J.

with the provisions of esection 7(iv)(f) of the Act and pay court-fee thereon.

TEK CHAND, J.—I agree with my learned brother that the court-fee on the memorandum of cross-objections, filed by the defendant in this case, should be paid on *ad valorem* basis, on the amount of the subject-matter in dispute, in accordance with Article I of Schedule I of the Court-Fees Act. I also agree, that the defendant must state, as to what amount, in excess of the amount decreed in his favour, should have been allowed to him; and on the difference of the sum claimed, and the sum decreed, he should pay the court-fee. In this case he cannot draw upon the provisions of section 7 (iv)(f) of the Court-Fees Act by paying court-fee on a nominal or discretional figure. I do not wish to reiterate the reasons which have led my learned brother to arrive at his conclusions beyond saying that I entirely concur with him.

I, however, wish to examine the question raised in this case from one particular aspect only. Under this clause it is competent in suits for accounts to put in court-fee according to the amount at which the relief sought is valued "in the plaint or memorandum of appeal." The learned counsel for the defendant desires to read this provision as if the words "cross-objections" were also inserted in section 7(iv)(f), on the ground, that a memorandum of cross-objections, stands on the same footing, as a memorandum of appeal, and therefore, it must also be valued in the same manner. The Court-Fees Act, in so far as it is applicable to this State, does not contain any reference to cross-objections, except in Article I of Schedule I. In Bihar, Orissa and Madras, Article 17 of Schedule II, also refers to cross-objection, though in other States this provision is confined, in its application, to plaints and

memoranda of appeal. In this case both parties are agreed, and I think, rightly, that Article 17 of Schedule II has no applicability. The learned counsel for he defendant wants us to assume that cross-objections are referred to in section 7(iv)(f) of the Act by necessary implication. The question which is being raised, therefore, is, whether a *cause amissus* can be supplied by a court of law where the Legislature has chosen to remain silent.

Our attention has been drawn to a judgment of a learned Single Judge of the Allahabad High Court in *Surendra Singh* v. *Gambhir Singh* (1), The learned Judge has stated therein, that a cross-objection and an appeal are very intimately connected, and there is no essential difference from the point of view of court-fee between the one and the other and in the learned Judge's view, there is no reason whatever, why a person, who files a cross-objection, should have to pay *ad valorem* court-fee, whereas if he files an appeal instead of a cross-objection he will not have to pay court-fee. That was a case arising under Schedule II, Article 17(iii) and the learned Judge thought that the omission of the words "cross-objections" was "a mere *clerical error* and it was no doubt intended that by a memorandum of appeal a cross-objection should also be included. When the framers of the Act prepared Schedule I Article I, this point was not noticed and the word 'cross-objection' appears separately in that Article, although it does not appear in Article 17". The learned Judge then went on to say, that "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 a cross-objection he will not have to pay court-fee. It cannot possibly have been the intention of the

(1) A.I.R. 1934 All. 728.

Mansha Ram and others
v.
Tej Bhan

Tek Chand J

Legislature that such a strange result should accrue between the two kinds of procedure."

I regret, that the above reason does not commend itself to me, and I cannot attribute the omission in a statute, to what has been styled by Bennet J., as a "clerical error." Literally an error is said to be "clerical" where it is made by a clerk or some subordinate agent, but actually, it means an error committed in the performance of clerical work, whether by the Court, the draftsman of the Act or by the clerk. It is an error which cannot reasonably be attributed to the exercise of judicial consideration or discretion. A "clerical error" is one made in transcribing or otherwise, and it must be apparent on the face of the record; and, therefore, capable of being corrected. It is, in the nature of an inadvertent omission or mistake. The term "clerical error" which is amendable, *nunc pro tunc*, is distinguishable from, a "judicial error" which can be corrected only on review or an appeal. "Clerical errors" are errors of form, and not of substance, being errors committed in the performance of work, which, in its nature, is only clerical as opposed to judicial, "Clerical errors" include mistake or omissions which are not the result of the exercise of a judicial or legislative function, or the outcome, of a deliberate result of reasoning and determination. When a statute contains an omission, which in logic ought not to be there, it cannot be called a clerical error. Such omissions in statutes are not correctable by the Courts on the plea that the Court should supply a *casus omissus*.

Where a *casus omissus* really occurs in a statute through the inadvertence of the Legislature, the particular case, thus left unprovided for, must be disposed of on the assumption, that it has been deliberately omitted. In the words of Buller

J. in *Jones* v. *Smart* (1), cited in Broom's Legal Maxims, at page 361, " a *casus omissus* can in no case be supplied by a Court of law, for that would be to make laws." In this case there appears to be no compelling necessity for creating a *casus omissus* by interpretation. In *Kumar Kamalaranjan Roy* v. *Secretary of State* (2), Lord Wright said:

> "It may be that there is here a *casus omissus*, but if so, that omission can only be supplied by statute or statutory action. The Court cannot put into the Act words which are not expressed, and which cannot reasonably be implied on any recognized principles of construction. That would be a work of legislation, not of construction, and outside the province of the Court." In *Crawford* v. *Spooner* (3), Lord Brougham said: "The construction of the Act must be taken from the bare words of the Act. We cannot fish out what possibly may have been the intention of the Legislature; we cannot aid the Legislature's defective phrasing of the Statute we cannot add, and mend, and, by construction, make up deficiencies which are left there."

Such a course will not be tantamount to construction of the Act, but to its amendment or alteration. A defect, which is curable by the Legislature when making the law, cannot be removed by the Court, when interpreting it. The language of the statute, cannot be stretched, in order to meet a case, for which, it has made no provision. The Courts cannot assume that the omission in the

(1) I.T.R. 52.
(2) L.R. 66 Indian Appeal 1 at page 10.
(3) Moore's Indian Appeal 179, 187.

Mansha Ram and others
v.
Tej Bhan

Tek Chand, J.

statute was due to oversight on the part of the Legislature, and therefore, was not deliberate. There is no warrant for such a supposition. It is not logical to assume a lacuna and then proceed to fill in the blank.

The observations of Lord Watson in *Salomon* v. *Salomon and Co.* (1), support the same principle. He said:

> " 'Intention of the Legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

Lord Justice Cohen in *Lord Howard De Walden* v. *Inland Revenue Commissioner* (2) cited the above remarks with approval. Devlin J. in *Donovan* v. *Cammel Laird & Co. and others* (3)

> "When an assumption essential to the operation of a statutory provision breaks down, the court, which is charged merely with the duty of interpretation, has no power to fill the void."

If cross-objections have been omitted from the provisions of section 7(iv)(f), by reason of a mistake on the part of the Legislature, then it is for the Legislature alone to correct its errors. The

(1) 1897 A.C. 22, 38.
(2) (1948) 2 All. E.R. 825, 830.
(3) (1949) 2 All. E.R. 82, 87.

Courts may draw the attention of the Legislature to a lacuna, but they cannot supererogate the legislative function. *Jus dare,* is the province of the Courts and *Jus facere,* of the Legislature. I, therefore, feel satisfied that it is no part of the function of the Court to supply a *casus omissus;* and in my view, the defendant can succeed only if we deviate from our duty as interpreters of law, and arrogate to ourselves the right to make or mend laws which obviously we cannot do. We cannot place a gloss on section 7(iv)(f) in order to make the provisions more logical; any interpolation of *verba legis* on grounds of hardship or iniquity, will be equally indefensible.

Reference may be made to (*Raja*) *Harnam Singh* v. (*Rani*) *Bahu Rani* (1), where it was held that court-fee on memorandum of cross-objections should be paid *ad valorem* under Article I, Schedule I, and not under Schedule II, Article 17, as the word "cross-objection" was not found there. The learned Judges constituting the Bench thought that the omission was due to an oversight but declined to act on that assumption, as that would amount to legislation. As pointed out already, the State of Bihar, Orissa and Madras, have made certain amendments by placing cross-objections on equal footing with plaints and memoranda of appeal, in certain matters. It is for the Legislature of the State of Punjab to legislate on similar lines. Till the law is emended, this Court cannot relieve the cross-objector, from bearing the invidious burden of *ad valorem* court-fee in cases in which the plaintiff and the appellant are excused by section 7(iv)(f) of the Act.

In such cases I feel, that it is iniquit-ous to demand an *ad valorem* court-fee from the cross-objector when in like circumstances it is not so

(1) I.L.R. 9 Luck. 406.—A.I.R. 1933 Oudh. 528:;

Mansha Ram and others
v.
Tej Bhan

Tek Chand, J.

payable by the appellant, but as Lord Coleridge said, "the matter is one of positive and specific enactment, and a Court has no right to strain the law because it causes hardship". *vide Body* v. *Halse* (1)

I cannot do better, than to borrow the language of Romer J., in *Davies* v. *Parry* (2) what I desire to point out is that I wish the law was not so; but that being the law, I must follow it".

To similar effect are the observations of Lord Esher, M.R., "I agree that is the law, though I think it is hard law; but we have nothing to do with the question of hardship". vide *Re Perkings ex parte Mexican Santa Barbara Mining Company* (3).

It is axiomatic that judicial power is not meant to be exercised to give effect to the will of the Judge, but to that of the Legislature, which in the ultimate analysis, is the will of the law.

I am, therefore, of the view that the provisions of section 7(iv)(f) of the Court-Fees Act cannot be stretched so as to apply to cross-objections. Moreover, in the case of an appeal or cross-objections filed from a final decree in a suit for dissolution of partnership and rendition of accounts the party aggrieved should be in a position to state the exact amount which should have been decreed in his favour; and he can calculate the court-fee payable *ad valorem* on the difference between the sum decreed and the sum which, according to him, should have been decreed.

(1) (1892) L.R. 1 Q. B. 203 at page 207.
(2) (1899) L.R. 1 Ch. D. 602(605).
(3) (1890) L.R. 24 Q.B.D. 613(618).

For the reasons stated above and also for those discussed in the judgement of my brother, P.C. Pandit, J., I feel satisfied, that the contention of the defendant, does not deserve to prevail and *ad valorem* court-fee has to be paid by him, in accordance with the provisions of Article I of Schedule I of the Court-Fees Act.

B.R.T.

APPELLATE CIVIL.

Before I. D. Dua and P. C. Pandit, JJ

GULZARA SINGH,—*Appellant*

versus

TEJ KAUR,—*Respondent.*

Regular First Appeal No. 238 of 1959

Hindu Adoption and Maintenance Act (LXXVIII of 1956)—Sections 22, 23 and 28—Duty to maintain the dependants of the deceased—On whom devolves—Heir—Meaning of—Whether includes a person, who gets the estate of a deceased under a will—Interpretation of statutes—Harmonious construction rule—Applicability of—Practice—Oral testimony—Appreciation of, by trial court—When can be interfered with by appellate court—Burden to show judgment appealed from wrong—On whom lies when discharged.

1960

Oct., 26th

Held, that during the lifetime of her husband, the Hindu wife is entitled to be maintained by him and after his death the law has imposed a positive obligation on her husband's heirs to maintain the widow of the deceased out of his estate inherited by them. Indeed, this obligation extends to the maintenance of all dependants of the deceased, which, as is clear, include his parents, sons, unmarried daughters and widowed daughters, etc.; and the liability of the estate to maintain the dependants is not negatived and the estate is not relieved of this liability merely because it has devolved by means of a Will. The dominent idea which clearly manifests itself in sections 22 and 23 of the Hindu Adoption and Maintenance Act 1956,