

APPELLATE CIVIL

Before Khosla and Falshaw, JJ.

UDAY CHAND,—Plaintiff-Appellant

v.

MOHAN LAL AND OTHERS,—Defendants-Respondents

R.F.A. No. 73-D of 1953.

1956
Dec. 28th

*Court Fees Act (VII of 1870)—Schedule I Article I—
Appeal from an order rejecting a plaint for non-payment
of the Court fee—Proper court fee payable on the memo of
appeal.*

Held, that the proper court fee payable on an appeal from the order rejecting a plaint for non-payment of court fee is an *ad valorem* Court fee on the difference between court fee as paid by the plaintiff in the lower court and the court fee held to be the proper court fee by the lower court.

Atma Singh v. Mohanlal and others (1) followed.

Regular First Appeal from the order of Shri Basant Lal Aggarwal, Sub-Judge, 1st Class, Delhi, dated the 15th April, 1953, rejecting the plaint of the plaintiff under Order 7 R 11, C.P.C. with costs.

A. N. GROVER, for Appellant.

BISHAMBAR DAYAL, for Respondents.

JUDGMENT

Falshaw, J.

Falshaw, J.—The suit from which this appeal has arisen was instituted by a minor Ude Chand challenging in various ways a partition of family property which took place in 1941 and was settled after a dispute by a compromise decree in a suit

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between the plaintiff's father Tara Chand Goela defendant No. 7 and Mohan Lal defendant No. 1, father of defendants Nos. 2 to 6. The basic facts of the case are that Bhana Mal, the father of Tara Chand defendant No. 7, had adopted Mohan Lal defendant No. 1 as his son some time before Tara Chand was born. Soon after Bhana Mal died the family property was partitioned between the natural son and the adopted son and in a suit the property was finally partitioned on what was supposed to be more or less a half and half basis. The plaintiff challenges the partition on the grounds that his father was deceived and subjected to undue influence by Mohan Lal and thereby was induced to accept considerably less than the half share which he was supposed to be given, and that in any case his father as natural son was entitled to three-fourths of the property on partition as against the adopted son. It was also alleged in the plaint that the plaintiff and his father were even denied the property normally assigned to Tara Chand as Mohan Lal controlled and enjoyed the use of the whole of the property and merely gave Tara Chand and his family a small maintenance allowance. In these circumstances the plaintiff claimed three reliefs, a declaration that the partition embodied in the compromise decree was null and void together with a decree for joint possession of all the family property, a partition of the property on the basis of three-fourths to the plaintiff and his father and one-fourth to Mohan Lal and the other defendants, and rendition of accounts.

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The first of these reliefs was valued by the plaintiff at Rs. 5,250 for purposes of jurisdiction and court-fee, the second at Rs. 43,25,000 for jurisdiction, but only a fixed court-fee of Rs. 15 was paid, and the third relief for both purposes at

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Rs. 130. The objection was raised by Mohan Lal that the plaint had not been properly stamped and that for the reliefs claimed by the plaintiff an *ad valorem* court-fee on the value of the property was payable. The lower Court held that the first and third of the reliefs had properly been valued, but that an *ad valorem* court-fee was payable on the claim for partition of the property of which according to the allegations in the plaint the plaintiff was not in possession of any part. The plaintiff was accordingly allowed time to make good the deficiency in court-fee and when this was not done the plaint was rejected under Order 7 rule 11, Civil Procedure Code. The present appeal is against this order, and on behalf of the respondents the objection has been raised that the proper court-fee on the appeal has not been paid.

There has undoubtedly been a divergence of opinion among the Courts as to what is the proper Court-fee payable on an appeal against an order rejecting a plaint for non-payment of the court-fee held by the Court to be due. This matter came up for consideration by my Lord the Chief Justice and myself in the case of *Atma Singh v. Mohan Lal and others* (1), decided on the 3rd of November, 1954, and after considering the various authorities on the point we adopted the view expressed by the Madras, Patna and Nagpur High Courts that the proper court-fee payable on such an appeal was an *ad valorem* court-fee on the difference between the court-fee as paid by the plaintiff in the lower Court and the court-fee held to be the proper court-fee by the lower Court. The difference between the court-fee paid by the plaintiff in the present case and

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the *ad valorem* court-fee on the value of the property which the plaintiff himself has valued at Rs. 43,00,000 amounts to about Rs. 1,700, and the question which now arises in view of the decision mentioned above, which must be taken as representing the view of this Court on the matter, is whether the plaintiff-appellant should now be allowed time to make good the deficiency in the court-fee on the appeal. On the whole I am of the opinion that time should be allowed in this case in spite of the fact that a similar matter was decided two years ago in this Court, since it seems that through an oversight no order was passed that the decision should be reported with the result that it has not been printed in any of the law reports, and apparently neither the learned counsel for the appellant nor even the learned counsel for the respondents who raised the objection was aware of its existence. In the circumstances I would allow the appellant one month to make good the deficiency in court-fee to be paid on appeal.

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Khosla, J.—I agree.

Khosla, J.

