

Mahant Anant Gir Vs Ram Nazar Choube and Others

Court: Allahabad High Court

Date of Decision: Aug. 9, 1937

Acts Referred: Uttar Pradesh Agriculturists Relief Act, 1934 " Section 23, 27

Citation: AIR 1938 All 14 : 173 Ind. Cas. 50

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

1. This is a reference made by the learned District Judge of Ghazipur. The question at issue is whether court-fees should be paid ad valorem on an

appeal under the provisions of Section 23, U.P. Agriculturists' Relief Act. A mortgagor made an application under the provisions of Section 12 of

the Act for the redemption of his mortgage on the payment of a sum of Rs. 375. An inquiry was made under the provisions of the Act by an

Assistant Collector who decided that the amount payable was Rs. 1,101-9-7. He directed the deposit of the balance within a period of fifteen

days. The mortgagor filed an appeal in the Court of the District Judge in which he urged that he was entitled to redeem on payment of a sum of Rs.

375 only. He paid on his memorandum of appeal a court-fee of twelve annas, regarding it presumably as an appeal from an order. The learned

District Judge is doubtful whether the Court-fee is sufficient or whether the amount payable should be calculated ad valorem on the difference

between the sum of Rs. 375 and the sum of Rs. 1,101-9-7.

2. We have no doubt, if the court-fee is to be calculated ad valorem, that the value of the subject matter of the appeal is the difference between Rs.

375 and Rupees 1,101-9-7. The only question which re-mains is whether the amount of court-fee is to be calculated ad valorem or is to be a fixed

fee under the provisions of Article 11 of Schedule 2, Court-fees Act. Article 1 of Schedule 1 says that the court-fee on a memorandum of appeal

(not otherwise provided for in the Act) to any Civil or Revenue Court shall be stamped with an ad valorem fee. The question is whether the present

memorandum of appeal is otherwise provided for in the Act. If it is so provided for at all, it must be under Article 11 of Schedule 2. This speaks of

a memorandum of appeal when the appeal is not from a decree or from an order having the force of a decree. It remains to decide whether the

order of the Assistant Collector directing that property should be redeemed on the payment of a sum of Rs. 1,101-9-7 was a decree or an order

having the force of a decree. We do not think that there can be any room for doubt upon this question. Even if the order does not strictly come

within the meaning of the word "decree", it certainly has the force of a decree, because it has the same effect as a decree for redemption of the

mortgage and finally decides the issue between the parties. It is also specifically said in Section 27, Agriculturists' Relief Act, that:

The provisions in the CPC in regard to suits shall be followed, so far as they can be made applicable, to all proceedings under this chapter, and all

orders passed under this chapter shall be executed in the manner prescribed for execution of Civil Court's decrees.

3. The order passed by the learned Assistant Collector was passed under a section which is in the same chapter of the Agriculturists' Relief Act as

Section 27.

4. In these circumstances the memorandum of appeal cannot come within the meaning of Article 11 of Schedule 2, Court-fees Act, and therefore it

must come within the provisions of Article 1 of Schedule 1. The result is that an ad valorem court-fee must be paid on the amount of the subject

matter in dispute which we have already said is the difference between the sum of Rs. 375 and Rs. 1,101-9-6. This is our reply to the reference

which has been made.