

(1866) 08 CAL CK 0005

Calcutta High Court

Case No: Special Appeal No. 2110 of 1865

In Re: Doorga Dass
Dutt

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 24, 1866

Judgement

Macpherson, J.

The question is whether in this particular case, the order passed being something more than a mere order of remand, being an order which to a certain extent affirmed the decree of the lower Court, "while to a certain extent it remanded the case, there should be a refund of the full stamp duty, or of any stamp duty at all. For the appellant it is contended that the words of the section are express, and that inasmuch as there has been a remand, there ought to be a refund of the full amount. But it appears to me that that is not the proper construction to put upon the note F, and that the word "full" is used in that note merely as in contrast to certain provisions of Act VIII of 1859 by which parties may become entitled to a refund of a portion only of the stamp duty paid by them. In my opinion note F, so far as it authorizes a refund of the full stamp, applies to cases in which there is only an order of remand; and an appellant is not entitled to a refund of the full amount when the decree of the lower Court is affirmed to a certain extent, although there may be a refund as to some of the points involved in the suit. I think the appellant is entitled to a refund of duty only in respect of so much of the case as is remanded. He is not entitled to a refund of the full amount, but putting a liberal interpretation on note F he may be allowed a refund proportionate to the value of that part of the case which is remanded. I would order a refund of duty proportionate to the value of so much of the suit as has been remanded.

Campbell, J.

I entertain some doubts on the subject.

Jackson, J.

2. In respect to the claim advanced by the appellant (petitioner) it appears to me that there are three decisions to which the Court might come, either that he is entitled to a refund of the full amount of stamp duty, or that he is entitled to no refund, or that he is entitled to an amount proportionate to the value of that part of the claim in respect of which, on his appeal, a remand has taken place. It will be well to consider in the first place the principle upon which refund of stamp duty on remand proceeds. It appears to me manifestly to proceed on the principle that when an order of remand is general, and the first decision passed has become ineffectual, so that a new decision must be passed in the Court below which will probably give rise to a fresh appeal, it will be unjust to oblige the appellant to pay the full amount of stamp duty twice over. That being so, can the petitioner in this case be entitled to a refund of the full amount of stamp duty? Manifestly, I think, he cannot. He preferred an appeal to this Court in which he impugned the whole decision of the Court below, and he advanced seriatim several grounds of objection which assailed that decision in its entirety. As to the portion of the appeal in which the appellant was unsuccessful, as he submitted it to the Court and obtained a final judgment, he cannot be entitled to a refund of the stamp duty. Then can we say that he is entitled to no refund? It appears to me that this would not be just either. The defendant advanced a plea in bar of the entire case which, though it was not found to be tenable as to the whole, was yet found valid as to a part of the case; and as it became necessary to remand the suit on that part of the case, it would not be just to require stamp duty twice over as to that part of the case, and it would be inequitable to say that he should get no refund at all. There remains the third alternative, that is to say, proportionate refund. This course, it appears to me, can be reconciled with the Act in this manner. The plaintiff sued for the entire of a particular claim. The defendant set up a plea as to the whole of that claim. Upon enquiry it was found that that plea, not being good as to the whole claim, was good as to a part of it. In that way the subject-matter of the suit became, as it were, split into two portions. As to one, the Court was debarred from coming to a decision, because limitation or other similar cause prevented a decision. As to the other part, the plea of limitation, or whatever the plea was, not being valid, it became necessary to remand the case. It seems to me that that portion of the case might be very easily separated from the other, and that the full stamp duty, calculated on the remanded portion of the suit, may be allowed to the petitioner. I therefore think that, in this case, it would be fair and equitable to say that the petitioner is entitled to a proportionate refund of stamp duty.

Loch, J.

3. It appears to me that the words in note F, art. II, sch. B of Act X of 1862, bear a very limited construction. After the passing of Act VIII of 1859, appeals were made to this Court from orders passed under ss. 29 to 36, and the question was raised on what stamp those appeals were to be preferred,--whether on full stamp, or on the stamp prescribed for miscellaneous petitions. The Court then ruled that they were to be on the full stamp, and that they were to be looked upon as regular appeals. After that the new Stamp Law, Act XXXVI of 1860, was passed, in which, to prevent hardship to suitors, this provision

was introduced:-- "If an appeal or plaint which shall have been rejected by the lower Court on any of the grounds mentioned in Act VIII of 1859 shall be ordered to be received," then the appellant should get back the full amount of stamp duty. It went on further to say, "or if a suit shall be remanded in appeal for a second decision by the lower Court," the appellant was equally entitled to get back the full amount of stamp duty. This provision is almost the same, except as to a few words, as note F in Act X of 1862. It appears to me that the word "remanded" must be confined to remands made under s. 351, Act VIII of 1859, where the first Court has decided the case upon some preliminary point, and has excluded evidence of fact, so that the Appellate Court being unable to come to any judgment on the merits, finds it necessary to remand. If the present case comes within that rule, the appellant, in my opinion, is entitled to a refund of the full stamp duty paid upon his petition of appeal. If it does not, he is not entitled to any refund. It appears to me that this case does not fall under that rule, and therefore I think that the appellant is not entitled to any refund of stamp duty.

Peacock, J.

4. It appears to me that the appellant is entitled to a refund of the stamp duty paid upon the petition of appeal in proportion to the value of that part of the claim which has been remanded for further trial. It appears to me to have been the object of the Legislature that where there has been no final decision given in appeal, and the stamp duty paid on the petition of appeal has consequently become ineffectual, the party should be entitled to a refund of the stamp duty. We are pressed with the words "the full amount of stamp duty paid on the petition of appeal." But if the words of the section are to be read literally, that the appellant is to be entitled to the full amount of Stamp duty, it can only be in a case in which the suit is remanded, and not where the suit is remanded in part. I apprehend it was the meaning of the Legislature that, where a suit was altogether remanded, the party should be entitled to a refund of the full amount, but that where a suit was remanded only as to a particular part of the claim, the party should be entitled to a refund of the full amount of stamp duty on the value of that part of the suit to which the remand should relate. The words "full amount" appear to me to have been used with reference to certain other Acts in which parties were entitled to a refund of a certain portion of the stamp duty, as in some cases of one-half only. For example s. 98 of the CPC enacted:-- "If a suit shall be adjusted by mutual agreement or compromise, or if the defendant satisfy the plaintiff in respect to the matter of the suit, such agreement, compromise, or satisfaction shall be recorded, and the suit shall be disposed of in accordance therewith. On the application of the plaintiff reciting the substance of such agreement, compromise, or satisfaction, the Court, if satisfied that such agreement, compromise, or satisfaction has been actually entered into or made, shall grant a certificate to the plaintiff authorizing him to receive back from the Collector the full amount of stamp duty paid on the plaint if the application shall have been presented before the settlement of issues, or half the amount if presented at any time after the settlement of issues and before any witness has been examined" ⁽²⁾. That Act was in force at the time when Act X of 1862 was passed, and it

appears to me that the words "full amount" were used in contradistinction to the "one-half" or other portion less than the full amount to which a party was in other cases entitled. It is not unreasonable to suppose that, when the Legislature authorized a return of the full amount of stamp duty paid upon appeal when the whole case should be remanded, they intended that the appellant should be entitled to the return of a proportionate amount of stamp duty when a suit should be remanded only as to part. I now come to consider whether a suit can be remanded in part. Suppose a suit should be brought for 10,000 bighas of land, and the defendant should deny the petitioner's title, and also plead limitation as to the whole 10,000 bighas. Suppose the Court below should hold that limitation was a bar to the whole claim, and determine the case without trying the issue as to title. Now if the plaintiff should appeal on the ground that limitation did not apply to any part of his claim, and the Appellate Court should hold that, except as to 100 bighas limitation did bar the suit, it would be necessary that the issue as to title should be determined with reference to the 100 bighas to which limitation did not apply; but the lower Court having dismissed the case upon a preliminary point of limitation, it would be necessary to remand the case according to the provisions of s. 351, Act VIII of 1859, to be retried upon the merits as to the 100 bighas. It would be clearly unnecessary to remand the case for a trial as to the title to the 9,900 bighas to which limitation applied; and as to that part of the case, the decision of the lower Court would be affirmed. In that case it would be very unreasonable when the suit was remanded only as to the 100 bighas that the appellant should be entitled to a refund of the whole stamp duty paid upon his petition of appeal which related to the 9,900 bighas as well as to the 100.

5. It appears to me that in determining whether a suit has been remanded or not, we cannot enter into the question of degree, and hold that a suit has been substantially remanded if it has been remanded as to a great part of the demand, but not remanded as to the remainder. If we were to attempt to do so we should be involved in great difficulties. Suppose a suit were remanded as to one-half or three-fourths of the demand, could we say that the suit had been remanded? I think not. We must, in my opinion, hold either that the plaintiff is entitled to a return of a proportionate part of the stamp duty where the suit has been remanded as to part of the claim, or that he is not entitled to a return of any part of the stamp duty unless the suit is entirely remanded. I think that it is a reasonable construction to hold that when a suit is remanded in part, the appellant is entitled to a return of a proportionate part of the stamp duty. The appellant is therefore entitled to a refund of the full stamp duty in proportion to the value of that part of the case which has been remanded, and he is not entitled to a refund as to that portion of the case which has been finally determined by the Court of Appeal. The judgment of the majority of the Court is, that the appellant is entitled to a refund of stamp duty in proportion to the value of that part of the claim only which has been remanded, and the Registrar will grant a certificate accordingly.

(1) Act X of 1862, Sch. B., Art. 11, Note (f).-- "If an appeal or plaint, which shall have been rejected by the lower Court on any of the grounds mentioned in the Code of Civil

Procedure, shall be ordered to be received, or if a suit shall be remanded in appeal for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of stamp duty paid on the petition of appeal."

Act VII of 1870, s. 13.-- "If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section three hundred and fifty-one of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

"Provided that, if in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the pare or parts of such subject-matter in respect whereof the suit has been remanded."

(2) This section, from the words "on the application to the end of the section, has been repealed by Act VII of 1870.