

In Re: Bhola Nath Vs.

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SooperKanoon Citation : sooperkanoon.com/471607

Court : Allahabad

Decided On : Apr-02-1910

Reported in : 6Ind.Cas.832

Judge : Tudball, J.

Appellant : In Re: Bhola Nath

Respondent : Andnbsp;

Judgement :

Tudball, J.

1. The question which has been referred to me for decision by the Taxing Officer is whether this appeal be stamped with an ad valorem fee or should bear a fixed fee of Rs. 10. The suit out of which this appeal has arisen is a suit for dissolution of partnership and for taking of accounts. For the purposes of Court-fees this suit falls under Section 7, Clause iv(f) of the Court Fees Act, and an ad valorem fee is to be paid according to the amount at which the relief is valued in the plaint. The Court of first instance has passed a preliminary decree. The appellants were impleaded as defendants, and the Court held that their share in the partnership amounted to 6/16. Their case is that they have no interest whatsoever in the partnership. It is argued on their behalf that all they seek in this appeal is a declaration that they have no interest whatever in this partnership, and that the appeal, therefore, comes under Article 17, Clause iii or Clause vi of Schedule II of

the Court Fees Act. The Taxing Officer, however, is of opinion that the appeal should bear an ad valorem fee according to the amount at which the relief sought is valued in the memorandum of appeal. It has been the practice of the Court in the past to take ad valorem fee in the cases of appeals from preliminary decrees in suits of the nature of the present one. The fact that it is now compulsory on the appellants to appeal against the preliminary decree passed in such a suit does not affect the matter of Court-fees in any way. Section 7 of the Court Fees Act distinctly lays down that the amount of fee payable shall be computed in suits for accounts according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. The language of this section seems to me quite plain. Whether the appeal be one from a preliminary decree or a final decree, it seems to me impossible to hold otherwise than that an ad valorem fee must be paid according to the amount at which the relief sought is valued in the memorandum of appeal. In the present case the appellants have valued their relief at Rs. 21,691-130. They must, therefore, pay an ad valorem fee on the above amount, or if the memorandum of appeal is amended, on the amount entered according to such amendment.