

1960 *Present :* Basnayake, C.J., and Sansoni, J.

BABONA FERNANDO and 2 others, Appellants, *and* SIMON SINGHO,
Respondent

S. C. 234—D. C. Gampaha, 4003/L

*Stamp duty on actions—Computation of the value of a legal proceeding—Appeal—
Sufficiency of stamps for decree of Supreme Court—Stamp Ordinance, Schedule
A, Part II;*

In computing, for the purpose of stamp duty, the value of a legal proceeding, the value of all the matters on which the plaintiff seeks the decision of the Court must be aggregated. Where the defendant also makes claims the aggregate value of which is higher than those of the plaintiff, the higher amount is the one on which duty is payable.

Where sufficient stamps for the decree of the Supreme Court have not been delivered, together with the petition of appeal, as required by Schedule A (Part II—F) to the Stamp Ordinance, the appeal would be rejected.

APPEAL from a judgment of the Supreme Court, Gampaha.

Walter Wimalachandra, with M. T. M. Sivardeen, for Plaintiffs-Appellants.

No appearance for Defendant-Respondent.

June 29, 1960. BASNAYAKE, C.J.—

This case has been listed by the Registrar for the directions of this Court as sufficient stamps for the decree of this Court have not been delivered, together with the petition of appeal, as required by Schedule A (Part II-F) to the Stamp Ordinance (Vol. IV p. 749).

The appellant has delivered stamps to the value of Rs. 12/-. The Registrar submits that the correct amount of stamp duty is Rs. 15/-. The action is in respect of an undivided share of a land. The share is valued at Rs. 2,000/-. The plaintiffs ask that they be declared entitled to the share they claim, that the defendant be ejected therefrom and for damages in a sum of Rs. 360/- up to the date of action and thereafter at Rs. 120/- per annum.

The question is how is the value of the proceeding to be computed for the purpose of stamp duty? Having regard to the language of Schedule A Part II which reads "Containing the Duties on Law Proceedings", and "In the Supreme Court", "In the District Courts", "In the Courts of Requests", and "In the Magistrates' Courts" respectively, I am of opinion that the value of all the matters on which the plaintiff seeks the decision of the Court must be aggregated in order to determine the value of the proceeding. Where the defendant also makes claims the aggregate value of which is higher than those of the plaintiff the higher amount is the one on which duty is payable.

Learned Counsel for the appellant who, when this matter first came up for hearing, obtained time to study the previous decisions of this Court quite properly submits that the Registrar's claim that the duty is Rs. 15/- and not Rs. 12/- is in accordance with those decisions. He has quite correctly drawn our attention to them.

The first is *Silva v. Fernando*¹. In that case Wendt J. observed—

"The Stamp Ordinance, No. 3 of 1890, Schedule B, Part II., prescribes stamp duty on actions according to their value, but what it is that is to be appraised in order to fix this value it does not specify. In the absence of such statement, I think we ought to appraise the "subject-matter", meaning thereby the thing (whether land, chattel, money, or interest in one of these, or right or status) which the Court in deciding the action has to determine the ownership of, not merely "relief" in the sense of that which the plaintiff expressly asks for and the decree expressly grants. If, therefore, plaintiff says defendant trespassed on his land, and removed part of that land, to wit, plumbago worth Rs. 10, and prays for judgment for the Rs. 10, and defendant says the land is his own, but the Court finds plaintiff is the owner, and gives him judgment for Rs. 10, in that case the subject-matter dealt with by the Court is not the Rs. 10 only, but the land in addition; and if plaintiff had reason to suppose that defendant's act was done in assertion of a claim to the land, he ought to have stamped his plaint according to the aggregate of the values of the land and of the plumbago."

¹ (1908) 11 N. L. R. 375.

In the case of *Sinapoo v. Theivanai and another*¹ Poyser S. P. J. stated—

“ I am of opinion that, in the absence of any explanatory words in the Stamp ordinance, the words ‘ up to and including Rs. 500 ’ must mean the aggregate value of the claim, and if that is so, the contention of the Attorney-General and respondent must succeed.”

The case of *Maitripala v. Koys*² followed *Sinapoo v. Theivanai* and held that the value for the purpose of Schedule A Part II containing Duties on Law Proceedings in the Supreme Court in Civil Proceedings is the aggregate value of the claim. In a recent case which is still unreported (S. C. No. 687/D. C. Jaffna No. L/423—S. C. Civil Minutes of September 2, 1959)³ my brother de Silva and I expressed the same view.

As the correct amount of stamp duty has not been delivered together with the petition of appeal we reject the appeal.

SANSONI, J.—I agree.

Appeal rejected.

