

1960

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

FERNANDO, Appellant, and COREA, Respondent

*S. C. 568—D. C. Chilaw, 14214**Appeal—Stamps for decree of Supreme Court—Duty payable—Stamp Ordinance, Schedule A, Part II.*

When an appeal is preferred to the Supreme Court, the value of the action for the purpose of stamp duty is not altered by the fact that the value of the relief sought in appeal is less than that of the subject-matter of the action.

**A**PPEAL from a judgment of the District Court, Chilaw.

*C. Ranganathan*, for Defendant-Appellant.

No appearance for Plaintiff-Respondent.

June 28, 1960. BASNAYAKE, C.J.—

This appeal has been listed by the Registrar for the directions of this Court as sufficient stamps have not been delivered together with the petition of appeal for its decree.

The plaintiff in this action sought to recover a sum of Rs. 2,500/- as damages suffered by her by reason of the defendant's breach of the covenants of the contract of lease with her. The defendant resisted the action and asked that it be dismissed. After trial the learned District Judge awarded the plaintiff damages in a sum of Rs. 2,000/-. This appeal is from that judgment.

In the petition of appeal the defendant asked that—

- (a) the judgment and decree of the learned District Judge be set aside ;
- (b) that the plaintiff's action be dismissed ; and
- (c) for costs of the appeal and of the trial.

It is submitted by learned counsel for the appellant that the correct amount of stamps has been tendered as the appeal petition and the decree should be stamped according to the value of the relief sought in appeal, and that in the instant case the value of relief sought is Rs. 2,000/- which is the value for the purpose of stamp duty. We are unable to uphold the submission of learned counsel. The value of an action for the purpose of stamp duty is not altered by the fact that the value of the relief sought in appeal is less than that of the subject-matter of the action. Learned counsel referred us to the case of *Mohideen v. Suppiah*<sup>1</sup>. That is a decision under the Appeals (Privy Council) Ordinance where

<sup>1</sup> (1959) 61 N. L. R. 154.

the value of matter in dispute on the appeal is the basis on which stamp duty is payable, and is consistent with the previous decisions of this Court on the matter of determining the value of the proceedings in appeals to the Privy Council for the purpose of stamp duty.

The duty prescribed in Schedule A Part II of the Stamp Ordinance *Containing the Duties on Law Proceedings in the Supreme Court in Civil Proceedings* is payable on the value of the action and is not on the value of the relief sought in appeal. The fact that the value of the relief sought in appeal is less than the value of the action makes no difference. Both my brother who wrote the judgment cited by counsel and I agree that that case does not apply to the determination of the correct stamp duty payable in respect of appeals to this Court.

The appeal is accordingly rejected.

SANSONI, J.—I agree.

*Appeal rejected.*

