

requires a stamp of the value specified in Art. 4 of that schedule, the highest rate of which being one rupee, the agreement is properly stamped. The decree of the District Judge is, therefore, reversed, and the case remanded for re-trial on the merits.

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SULTAN
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v.
RA'AJI
BHUKA'
et al.

Decree reversed and suit remanded.

Special Appeal No. 309 of 1868.

Oct. 7.

NANDRAM SUNDARJI NAIK *Appellant.*
BALAJI VITHAL et al. *Respondents.*

Stamp—Redemption Suit—Valuation of Claim—Act X. of 1862, Sch. B, Art. 11, note (c)—Act XXVI. of 1867, Sch. B, Art. 11, note (a), Special Rule (1) for the Bombay Presidency.

The stamp duty payable, under Sch. B of Act X. of 1862, on a suit to redeem mortgaged land paying revenue to Government, should be calculated on the sum for which the land is mortgaged, and not on the market value of such land.

Semble that an error in the valuation of the plaintiff's claim, on account of which error the defendant is compelled to pay more costs than he would otherwise have to pay, is not in general a ground of special appeal.

THIS was a Special Appeal from the decision of N. Daniell, Assistant Judge of the District of Puná, in Appeal Suit No. 333 of 1865, confirming the decree of A'rdesir Kharsetji, Munsif of Puná.

The plaintiff, in 1864, sued to redeem a piece of land paying revenue to Government, mortgaged by him to the defendant in 1861 for Rs. 1,100. He calculated the value of the institution fee at the amount of the mortgage money, which, according to the scale given in Art. 11, Sch. B, Act X. of 1862, the Act in force at the time of suit brought, amounted to Rs. 50.

The defendant admitted the mortgage, stated that the period fixed for redemption in the instrument of mortgage had expired, and objected to the valuation of the suit, which he urged should have been valued under note (c), Art. 11, Sch. B, Act X. of 1862, at the amount of the annual assessment of the land sought to be redeemed.

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The Munsif decreed redemption, with costs calculated on the sum for which the land had been mortgaged.

On appeal, the Assistant Judge delivered the following judgment:—

“Under Act X. of 1862, Sch. B, Sec. 11, note (c), the value of the property should be calculated at the amount of the annual assessment; but I do not think this sufficient ground for disturbing the award of costs. The respondent (Dhere) argues that proprietary right has never passed from him; and it appears to me that as he seeks to recover by satisfying the mortgage on the land, he is at liberty to lay his claim at the amount of the mortgage. He seeks to recover whatever element in the property has passed from him by reason of the mortgage: the actual land, he says, has never gone from him, although it is in the appellant's hands. I do not think that the abovenamed rule of the Stamp Law is of necessity applicable.” The Assistant Judge upheld the Munsif's decree.

The Special Appeal was heard this day, before a Full Bench consisting of COUCH, C. J., NEWTON, TUCKER, WARDEN, GIBBS, and SARGENT, JJ.

Bhairavanáth Mangesh, for the appellant:—This suit was filed in 1864, so that its valuation is governed by Act X. of 1862. Art. 11 of Sch. B appended to that Act prescribes the stamp duty on a suit to obtain possession of any interest &c. if the same is not otherwise provided for; but note (c) to the same article contains a special provision for the valuation of claims to lands paying assessment to Government, and according to it the annual assessment in such cases is the amount at which the claim ought to be valued. [SARGENT, J.:—The property claimed here is the mortgagee's interest.] [COUCH, C.J.:—Yes. The claim is that the property should be freed from the charge: so the right of the mortgagee is in dispute; but the words in note (c) are “suits for land.” This does not include a mortgage, but provides for cases where the title to land is disputed.]

Nánabhái Haridás, for the respondent:—It was the practice in the times of the late Sadr Court to value redemp-

tion suits at the amount of the mortgage money. Reg. XII. of 1830 provided that suits for lands paying revenue to Government should be valued at the amount of the annual assessment. [GIBBS, J. :— Sec. 3 of Reg. IV. of 1827 also provided that when the property in dispute consisted of a periodical income, the suit for it should be valued at the rate of ten years' purchase.] The law under the Regulations was, therefore, similar to that which prevailed when Art. 11, Sch. B, and note (c) were in force. When the first Stamp Act, XXXVI. of 1860, was passed, the provisions of Reg. XII. of 1830 were embodied in it: see note (c) to Art. 6 of Sch. B appended to the Act; and in the present Stamp Act, X. of 1862, the same provision is preserved.

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COUCH, C. J. :—This question was expressly decided by the High Court in Special Appeal No. 127 of 1863, decided on the 14th of September 1863 by Erskine, Newton, and Westropp, JJ., and that decision was followed in 1866 by all the Judges in a reference from the Judge of Cánará: *vide* High Court's letter No. 2510 dated 3rd October 1866.

We consider that this settles the point, as we all agree that the decision of the three Judges in the special appeal referred to was a correct decision, and we are, therefore, of opinion that the ground of appeal fails.

I must say for myself that, considering the importance of having this question settled, I was unwilling to allow it to be discussed whether a special appeal could lie on the point raised. I must, however, not be supposed to assent to the proposition that where a party, by an error in the valuation of a claim, is made to pay more costs than he otherwise would have to pay, that alone can generally be made a ground for a special appeal.

We must confirm the decree of the lower Court with costs.

Decree confirmed.