

[APPELLATE CIVIL JURISDICTION.]

1874.
September 16.*Regular Appeal No. 44 of 1873.*MOTICHAND JAICHAND.....*Plaintiff and Appellant.*DA'DA'BHA'I PESTANJI.....*Defendant and Respondent.*

Subject-matter of a suit—Bombay Courts Act XIV. of 1869—Suit for a declaration of right to property under attachment—Estoppel—Court Fees Act VII. of 1870, Sch. II., Art. 17, Cl. 3 ; Sec. 10, Cl. 2, and Sec. 12, Cl. 2—Procedure—Appeal to the High Court.

In a suit for a declaration that the plaintiff had a right of property and possession in a certain house under attachment, being in effect a suit for the removal of the attachment :

Held that the judgment-debt, in respect of which the house was attached, being less than Rs. 5,000, no appeal lay to the High Court.

Quere.—Whether the plaintiff, having successfully contended before the Assistant Judge that his plaint was for a declaration of right merely without consequential relief, and therefore properly stamped, could be permitted to say in appeal that the house was the subject-matter of the suit within the meaning of Section 16 of the Bombay Courts Act XIV. of 1869.

The plaint in such a suit as the above, having for its object the relief of the house from attachment, does seek consequential relief.

THIS was an appeal from the decision of A. D. Pollen, Acting Assistant Judge at Surat, in original Suit No. 30 of 1871.

The facts of the case are briefly these. The defendant Dádábháí Pestanji held a decree against two brothers, Sivchand and Saváichand, and applied for the attachment and sale of a house in execution of that decree, as the property of his judgment-debtors. The plaintiff, Motichand, thereon sought, under Section 246 of the Code of the Civil Procedure, to raise the attachment. But his application was rejected, and he was referred to a regular suit. The plaintiff, therefore, brought the present suit to obtain a declaration of his right to the house and its possession, and filed his plaint on a stamp of ten rupees. The defendant, among other things, objected that the plaint was not sufficiently stamped. The suit was heard by the Assistant Judge at Surat, who held the plaint sufficiently stamped, and rejected the plaintiff's claim on the merits. The issues, as raised by the Assistant Judge, and his findings on them, were as follows :—

“ 1. Is the stamp sufficient? 2. Has the plaintiff established his right of property in the house, and can it be recognised?”

“ My finding on the first issue is that the stamp is sufficient; and on the second, the plaintiff has not established his right of property in the house.

“ As to the first point, I hold that according to the Court Fees Act, Schedule II., Section 17, a stamp of ten rupees is sufficient, whether in a suit to set aside a summary decision of a Civil Court (p. i.), or in a suit to obtain a declaratory decree, where no consequential relief is prayed (p. iii.) It is argued that in this case a decree for the plaintiff would be the same thing as giving him consequential relief; and that, therefore, the decision of the Calcutta High Court in the case of *Mokhoda Dossee v. Nobin Chunder Mitter (a)*, should be followed; but I think the cases differ in that, though a declaratory decree might be sufficient authority to a Government official to pay over interest on promissory notes to the person named therein; still in the present case a declaratory decree would not bind a hostile party to hand over the house in dispute, and thus the relief would not be necessarily consequential.”

From this decision, the plaintiff preferred an appeal to the High Court, also on a stamp of ten rupees. He, however, fixed the valuation of his claim at Rs. 5,005.

The appeal coming on for argument and disposal before WESTROPP, C.J., and KEMBALL, J., on the 16th September 1874—

Inverarity (with him *Dhirajlal Mathuradas*, Government Pleader,) took a preliminary objection on behalf of the respondent that the appeal did not lie to the High Court. He contended that the plaintiff's suit was in effect one for the removal of the attachment placed upon the house by the defendant, and that, therefore, its value must be fixed by the amount of the judgment-debt, due under the defendant's

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decree, in execution of which the house was attached, and that, as the judgment-debt was less than 3,000 rupees, the value of the suit must be taken to be less than the amount which would allow an appeal to lie to the High Court from the decree of an Assistant Judge under Section 16 of the Bombay Courts Act XIV. of 1869.

Branson (with him *Nagindás Tulsidás*), for the appellant contended that the subject-matter of the suit was the house to which the plaintiff sought to have his right declared, and that, therefore, the value of the subject-matter in dispute in the present suit was the market value of the house for the purpose of determining the Court's jurisdiction: *Jeebraj Singh v. Inderjeet Mahton (b)*, *Nāruhoon Singh v. Toofanee Singh (c)*. As the market value of the house exceeded Rs. 5,000, the appeal lay to the High Court.

WESTROPP, C.J. :—We think that this Regular Appeal does not lie. The appellant contended that it does, because he says that the value of the house exceeds Rs. 5,000, a point as to which there is some doubt. Assuming, however, that the value of the house does exceed Rs. 5,000, we think that there would be great difficulty in permitting the plaintiff to say now that the house was the subject-matter of the suit within the meaning of Section 16 of the Bombay Courts Act XIV. of 1869. He contended, and succeeded in his contention before the Assistant Judge, that the suit was not for the house, but merely for a declaration of his right to it, and that he did not seek any consequential relief, and, therefore, that a ten rupees stamp was sufficient for his plaint under the Court Fees Act VII. of 1870, Schedule II., Article 17 Clause III.

Irrespectively, however, of that Act, and of the plaintiff's contention under it in the court below, it appears to us that the real subject-matter of the suit was the attachment placed upon the house by the defendant, whose object it was to get rid of the attachment. It is not pretended that the amount of the judgment-debt, for which the attachment was

(b) 18 Calc. W. R. 109 Civ. Rul. (c) 20 *Idem* 33. Civ. Rul.

laid on, even reached Rs. 5,000, and we are, in fact, informed that it was for a sum below Rs. 3,000. If the plaintiff failed in this suit as against the defendant, and the house were sold for what the plaintiff alleges its value to be, there would not be any objection, so far as the defendant is concerned, to the plaintiff receiving the surplus proceeds of sale left after satisfaction of the defendant's decree.

Even if we were of opinion that this Regular Appeal lay we would have felt it our duty to stay the hearing of it under the Court Fees Act VII. of 1870, Section 12, Clause 2 (taken in connection with Section 10, Clause 2), until the plaintiff paid court fees upon the amount of the attachment both on the plaint and the appeal, as we think the court below "wrongly decided to the detriment of the revenue" in holding that the plaintiff sought by his plaint no consequential relief. We are quite clearly of opinion that the object of the suit was to relieve the house from the attachment.

We decide this case quite irrespectively of the Court Fees Act, and do not desire to give any opinion on the cases reported in 18 Calc. W. R. 109, and 20 *Idem.* 33.

The appeal is dismissed with costs.

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