

1878
 MAHOMED
 SHUPELI
 v.
 LALDIN
 ABULULA.

anything which can lead the Court to infer that his residence in British India has been anything but of the most temporary character. He says, indeed, that he intends to reside here permanently; but since his arrival he has been living at the shop where his business is carried on, and there are no circumstances which make it probable that his stay in Bombay is intended to be otherwise than temporary. The summons must be made absolute with costs.

Summons made absolute.

Attorneys for the plaintiff.—Messrs. Crawford & Boeyer
 Attorney for the defendant.—Mr. Khanderao Moroji.

APPELLATE CIVIL.

(57)

Before Mr. Justice West and Mr. Justice Pinhey.

1879
 January 6.

GANPATGIR GURU BHOLA GIR (ORIGINAL PLAINTIFF), APPELLANT, v.
 GANPATGIR (ORIGINAL DEFENDANT), RESPONDENT.*

Declaratory decrees—Specific Relief Act (I of 1877), Section 42.

The defendant was in possession of the estate of a deceased *gosavi* as his *shishya* (spiritual son.) The plaintiff sued upon a stamp of Rs. 10 for a declaration that he was the true *shishya* of the *gosavi* by a previous adoption, his real object being to establish a title to the estate in the hands of the defendant.—*Held* that under the circumstances the Court would not exercise, in the plaintiff's favour, the discretionary power to grant a declaratory decree vested in it by section 42 of the Specific Relief Act (I of 1877), inasmuch as to do so would enable the plaintiff to obtain a relief on a stamp of Rs. 10 which the Legislature intended should be chargeable with a higher fee, and thus would have the effect of giving countenance to an evasion of the stamp law.

This was an appeal from the decision of Chintaman Sakharam Chitniss, First Class Subordinate Judge at Poona, who rejected the plaintiff's claim on the ground, among others, that it was not proper to allow the suit, as it asked for a simple declaratory decree.

The principal question argued in the case was whether the Subordinate Judge was right in throwing out the plaintiff's suit for a declaratory decree.

* Appeal No. 33 of 1878.

Gokuldas for the appellant.—A plaintiff is entitled to sue for a mere declaratory decree of his right, independently of any claim to property: *Kalova v. Padapa*.(1)

Shantaram Narayan.—A declaratory decree should not be made where the object of the plaintiff is to evade the stamp law, or to eject under colour of a mere declaration of title, as is the case in the present suit: *Chokalingapeshana v. Achiyas*.(2)

West, J.—We are of opinion that the Subordinate Judge was right in deciding that the plaintiff's suit, asking for a simple declaratory decree, was inadmissible in this case. The judgment of Holloway, J., in the case of *Chokalingapeshana v. Achiyas*(3) has been approved by this Court in the case of *Ganpatram Babaji v. Bai Suraj*,(4) and involves a principle distinctly recognized by the Legislature in section 42 of Act I of 1877. It is plain that what the plaintiff in this case really seeks, is the valuable estate of the deceased Bholagir. This is now held by the defendant as Bholagir's *shishya* or spiritual son. The plaintiff seeks to have himself declared the true *shishya* by previous adoption. The result of his succeeding in such a suit would be that the estate would be held to have vested in him from the moment of Bholagir's death. This would, in fact, be the main, if not the only question, should the present defendant resist a subsequent suit by the plaintiff to obtain actual possession of the property. He would not, of course, resist it as a reasonable man, and thus the plaintiff would have obtained a relief of Rs. 10 which the Legislature intended to be subject to a duty of Rs. 1,450 or thereabouts. It would not be a proper exercise of the discretionary power of the Courts in granting declaratory decrees to give one in the circumstances with which we have here to deal, and with the effect of giving countenance to an evasion of the stamp law. We, therefore, confirm the decree with costs.

(1) I. L. R. 1 Bom. 248.

(2) I. L. R. 1 Mad. 40.

(3) I. L. R. 1 Mad. 40.

(4) Special Appeal No. 175 of 1877. See Printed Judgments for 1877 p. 345.

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