

1879

SEP. 4.

APPEL-
LATE
CIVIL.4 B. 25 =
4 Ind. Jur.
460.

orders of the Courts below are reversed, and it is ordered that the application of the plaintiff for the sale of the house be granted. The defendants to bear the costs in the Court of first instance. The parties to bear their own costs in appeal and in the application to this Court.

Order accordingly.

4 B. 26.

APPELLATE CIVIL.

Before Mr. Justice M. Melvill.

In re MANOHAR G. TAMBEKAR.
[11th September, 1879.]

Petition of Review—Court Fees Act (VII of 1870), s. 7, and sch. I, arts. 4 and 5—Stamp.

When a plaint or memorandum of appeal comprises a number of claims, and a portion only of such claims has been allowed by the judgment, the party seeking a review should be required to stamp his application with a fee sufficient to cover the amount of the claims in regard to which he wishes the Court to review its judgment: Act VII of 1870, sch. I, arts. 4 and 5.

[N.F., 31 A. 294 = 6 A.L.J. 215 = 1 Ind. Cas. 209; R., 12 B. 98; D., 2 C.W.N. 292.]

THIS was a reference by A.O. Watt, Taxing Officer, High Court, appellate side, to the Honourable the Chief Justice under s. 5 of the Court Fees Act, 1870. He stated the case thus:—

"The point for decision was whether the petition of review should be stamped with reference to the amount of relief prayed for in [27] the review, or should it be stamped with reference to the original and whole amount of the appeal * * *. The amount of relief prayed for in the review is Rs. 40,000, whereas the amount of the appeal is over 2 lakhs * * *. The words in sch. I of the Court Fees Act, under the column headed 'Proper fee' in arts. 4 and 5, are 'the fee leviable on the plaint or memorandum of appeal,' and it has always been the practice in the Registrar's office to demand a stamp on review petitions calculated on the amount of the appeal as it originally was, and not with reference to the relief sought for in review. This practice may, perhaps, be in strict accordance with the words quoted, but it operates harshly, and in this particular case may prohibit the review. As the matter is of general importance, it is referred for the final decision of the Honourable the Chief Justice under s. 5 of the Court Fees Act (VII of 1870)."

The Chief Justice, under the provisions of the same section, referred the question for disposal to the Hon. Mr. Justice Maxwell Melvill.

Shantaram Narayan, for the petitioner.—The words "on the plaint or memorandum" should be liberally construed. They mean that such a fee should be taken as would be leviable on the plaint or memorandum of appeal which would be requisite if there were a fresh plaint or memorandum seeking the additional relief which the review asks for.

JUDGMENT.

M. MELVILL, J.—Article 5, sch. I, of the Court Fees Act, 1870, provides that an application for review of judgment, if presented before the ninetieth day from the date of the decree, shall bear a fee equal to one-half of the fee leviable on the plaint or memorandum of appeal.

At first sight it would appear that the proper fee under this article must be one-half of the whole fee leviable on the plaint or memorandum of appeal, whatever may be the number and nature of the different claims comprised in the said plaint or memorandum.

But it would be manifestly unjust that when a plaint or memorandum of appeal comprises a number of claims, and a portion only of such claims has been allowed by the judgment, [28] the party seeking a review in regard to those claims which have been allowed should be required to stamp his application with a fee sufficient to cover the amount of the claims which have been disallowed in his favour, as well as the amount of the claims in regard to which he wishes the Court to review its judgment.

Having regard to the provisions of s. 17 of the Act, I have come to the conclusion (though not without hesitation) that such a harsh construction of art. 5, as that above indicated, may be avoided. Section 17 provides that when a suit embraces two or more subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects, would be liable under the Act. A plaint, therefore, or memorandum of appeal, which embraces two or more distinct subjects, is treated, for the purposes of the stamp revenue, as a collection of distinct plaints or memoranda of appeal; and treating it in this manner I think that the words "the plaint or memorandum of appeal" in art. 5 may be construed as meaning not necessarily the plaint or memorandum of appeal, formed by the combination of the several subjects comprised in it, but the plaint or memorandum of appeal which would have been presented in respect to the particular subject, in regard to which the review is sought, if the suit had embraced that subject and no other. In the present case the plaint and the memorandum of appeal embraced several distinct subjects; but the only claim which was awarded was one in respect of which the plaintiffs claimed the sum of Rs. 40,000, and which was valued at that sum in the plaint and memoranda of appeal. In case of doubt a fiscal regulation should be construed in favour of the subject: and being of opinion that the construction which I now put upon art. 5 is in harmony with the intention of s. 17, and not necessarily inconsistent with the words of art. 5, I direct that the application for review of judgment be received, if it bear a stamp of one-half the fee leviable on plaint for Rs. 40,000.

Order accordingly.

4 B. 29.

[29] APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Pinhey.

RAVJI JANARDAN SARANGPANI (*Original Plaintiff*), Appellant
v. GANGADHARBHAT AND OTHERS (*Original Defendants*),
*Respondents.** [17th February, 1879.]

Fraudulent contract—Rights of a person defrauded—Transactions of the manager of a family liable to be questioned by the other members interested.

Every member of a family of proprietors who has an interest in the estate has a right to question any transactions entered into by the elder member as manager whereby the former would be defrauded.

* Appeal No. 39 of 1878.