

bound, to ask for a declaration of their rights, if only to prevent a purchaser at the sale, made under the defendant's decree against Damodar, from afterwards alleging that he had bought without notice of the plaintiff's claim.

We would, therefore, reverse the District Judge's decree, and remand the case for a decision on the merits. Costs to follow final result.

Decree reversed.

NOTE—See *Kalova v. Palapa* (1 B. 248) and the cases cited in argument, as to declaratory suits, at p. 250.

4 B. 535 N.

SADASHIV YESHVANT v. ATMARAM SAKHARAM.

Court Fees Act (VII of 1870), sch. II, art. 17—Stamp—Valuation of suit—Summary decision.

The plaintiff had attached certain immoveable property in execution of a decree against a third party. The attachment was removed on application by the defendant, under s. 246 of Act VIII of 1859, whereupon the plaintiff sued for a declaration that the property in dispute belonged to his judgment-debtor, and was liable to be attached and sold under his decree. The plaint, which did not state any amount as the value of the claim, bore a Rs. 10 stamp. The suit was dismissed on the ground that the plaint ought to have been stamped according to the value of the plaintiff's claim.

Held by the High Court, on appeal that the plaint was properly stamped, under sch. II, art. 17, cl. I of Act VII of 1870, as the suit [536] was a suit to set aside a summary decision of a Civil Court not established by Letters Patent.

In this case the plaintiff Sadashiv had attached certain immoveable property in execution of his decree against a third party. But the attachment was raised, on the application of the defendant Atmaram, under s. 246 of Act VIII of 1859. The plaintiff, therefore, sued for a declaration that the property in dispute belonged to his judgment-debtor, and that it was liable to be attached and sold in satisfaction of his decree. The plaint was drawn on a stamp of Rs. 10. The plaintiff, however, did not fix any amount in the plaint as the value of his claim. The Subordinate Judge of Rahimatpur, in whose Court the suit was filed, rejected it on the ground that the value of the plaintiff's claim was not set forth in the plaint. His decision was upheld, in appeal, by the District Judge of Satara, Mr. R. F. Mactier, who held that the plaint ought to have been stamped according to the value of the plaintiff's claim, and not with a stamp of Rs. 10. He, accordingly, dismissed the plaintiff's appeal. The plaintiff thereupon appealed to the High Court. It was contended for him in special appeal that a stamp of Rs. 10 was proper for the plaint under the provisions of the Court Fees Act, as the suit was one, under s. 246 of Act VIII of 1859, for a declaration that the property in dispute was liable for attachment and sale in satisfaction of the plaintiff's decree; that the District Judge misunderstood the nature of the suit, and erred in holding that the stamp should cover the value of the property in dispute. The appeal was heard by M. Melvill and Kembal, J.J., on the 1st August, 1876. The following is the Court's judgment (M. Melvill and Kembal, J.J.):—

JUDGMENT.

M. MELVILL, J.—We think that the plaint was sufficiently stamped with a stamp of 10 rupees, as the suit appears to be nothing more than a suit to set aside a summary decision of a Civil Court not established by Letters Patent (Court Fees Act, sch. II, art. 17, cl. (i)). That the Legislature describes such a suit as a suit to set aside a decision, appears from Act IX of 1871, sch. II, art. 15, which substituted for the last twelve words of s. 246 of Act VIII of 1859; and that such decision is to be regarded as a "summary decision," appears from more than one judgment of the High Courts at Bombay and Calcutta (see 6 B. H. C. R. (A.C.J.) 39; 2 B.L.R. (A.C.J.) 236; 14 W.R. 95.)

The decrees of the Courts below, are, therefore, reversed, and the suit remanded for a decision on the merits. Costs to follow final result.

Decrees reversed.

[This case is also followed in 10 B. 610 (F.B.),]