

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

1884
August 19.

DHONDO SAKHARAM KULKARNI (ORIGINAL PLAINTIFF), APPELLANT,
v. GOVIND BABAJI KULKARNI (ORIGINAL DEFENDANT), RESPONDENT.*

*The Code of Civil Procedure, Act XIV of 1882, Secs. 280, 281, 282 and 283—
Stamp—Attachment—Possession—Court Fees Act VII of 1870, Sched. 2, Art. 17,
Cl. 1.*

When a party prefers a claim or makes any objection to the attachment of any property in execution of a decree, but fails to establish it and brings a suit under section 283 of the Code of Civil Procedure, (Act XIV of 1882,) to establish his right to the property attached, his plaint is to be treated as falling under art. 17, cl. 1, of schedule 2 of the Court Fees Act VII of 1870 and is chargeable with only a ten-rupee stamp, notwithstanding that the plaintiff may pray in such a suit to be awarded possession.

Párvati v. Kisansing(1) followed.

Ganpatgir Guru Bholágir v. Ganpatgir(2) distinguished.

THIS was a second appeal from the decision of R. F. Mactier, Judge of Sátára, reversing the decree of Ráv Sáheb Krishnaráv Mádhav, Subordinate Judge of Vita.

The plaintiff sued the defendants Hanmant, Govind, and Apáji under the following circumstances:—

The plaintiff alleged that he owned a house at Lingre in the Khánápur Táluka of the Sátára District; that Hanmant caused it to be attached as belonging to Apáji in execution of a decree obtained against him; that the plaintiff objected to the attachment claiming the house as his property, and applied to have the attachment removed, but his application was rejected; and he therefore prayed for a declaration of his right to the house and to obtain its possession. He stamped his plaint with a stamp of Rs. 10. Defendant Hanmant did not appear. Defendant Govind answered that the house belonged to defendant Apáji who had been adopted by the plaintiff's father and that he bought it as his property; that the plaint was inadequately stamped; and that there was no cause of action against him. Defendant Apáji contended that he had been adopted by the plaintiff's father

* Second Appeal, No, 313 of 1883.

(1) Printed Judgments for 1881, page 121.

(2) I. L. R., 3 Bom., 230.

before the plaintiff's birth ; that as such adopted son he owned the house and was in possession ; and that the house was worth Rs. 500 and the plaint should be stamped at an *ad valorem* fee calculated upon that sum.

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The first issue framed by the Subordinate Judge was whether the plaint was adequately stamped and he decided that it was. He said "This suit is really brought for setting aside a summary order of the Court passed under section 281 of the Code of Civil Procedure. The house in dispute has been attached and sold as the property of Apáji, the plaintiff's objection to the attachment having been disallowed. This suit may also be viewed as one brought for obtaining a declaratory decree or order where consequential relief is prayed, and may thus fall within section 7, clause iv (c) of the Court Fees Act, which provides that the amount of fee payable in such cases shall be computed "according to the amount at which the relief sought is valued in the plaint or memorandum of appeal." Thus that provision as well as art. 17, clause 1, schedule 2, equally apply. It has been remarked in *Dayachand Hemchand v. Hemchand Dharamchand*⁽¹⁾ that when such is the case it is the duty of Courts, inasmuch as the Court Fees Act is a fiscal enactment, to adopt that provision which would press least heavily on the subject. The Subordinate Judge then proceeded to dispose of the case on the merits and awarded the claim against defendant Govind, striking out the names of the two others. The District Judge on the authority of *Ganpatgir Guru Bholágir v. Ganpatgir*⁽²⁾ came to a different conclusion and reversed the decree of the Subordinate Judge.

The plaintiff appealed to the High Court.

Ganesh Rámchandra Kirloskar for the appellant.—The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for assessing stamp duty, a merely fiscal purpose—*Dayachand Hemchand v. Hemchand Dharamchand*⁽¹⁾. In the case of *Párvati v. Kisansing*⁽³⁾ the above case

(1) I. L. R., 4 Bom., 515.

(2) I. L. R., 3 Bom., 230.

(3) Printed Judgments for 1881, page 121.

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was approvingly mentioned, and it was held that a plaint or appeal in a suit brought under the permission given by the last clause of section 335 of Act X of 1877 (as amended by Act XII of 1879) was properly chargeable with a court-fee under art. 17, cl. 1, of section 11 of Act VII of 1870, *viz.*, Rs. 10.

Vishnu K. Bhátvadekar for the respondent.—This is a case to which the ruling in *Ganpatgir Guru Bholágir v. Ganpatgir*⁽¹⁾ does not apply. The stamp of Rs. 10 is insufficient.

SARGENT, C. J.—The principle laid down in the case referred to by the District Judge—*Ganpatgir Guru Bholágir v. Ganpatgir*⁽¹⁾—is not applicable to a suit under section 283, Act XIV of 1882. The ruling in *Párvati v. Kisansing*⁽²⁾, which we understand has always been followed in this Court, shows that although the plaintiff may pray in such a suit to be awarded possession, the plaint is still to be treated as falling under art. 17, cl. 1 of Sched. 2 of Act VII of 1870, and chargeable with only a 10 rupee stamp. We must, therefore, reverse the decree of the Court below and remand the case for a decision on the merits. Costs of this appeal and in the Court below to abide the result.

Decree reversed.

(1) I. L. R., 3 Bom., 230.

(2) Printed Judgments for 1881, p. 121.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

August 18.

GOVANDA'S KASANDA'S AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* DA'YA'BHAI SAVAICHAND (ORIGINAL DEFENDANT), RESPONDENT.*

Court Fees Act VII of 1870, Sec. 7, Cl. f, and Sec. 11—Suit for accounts—Valuation of suit.

By section 7, cl. *f*, of the Court Fees Act VII of 1870, the plaintiff in a suit for accounts must state the amount at which he values the relief sought, but he is free to fix it as he thinks proper, subject to the provisions of section 11 which precludes the execution of the decree in case it exceeds such value until the execution fee has been paid.

* Regular Appeal, No. 51 of 1883.