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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'BHA'I 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.

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THIS was an appeal against the order made by G. M. Macpherson, Judge of Surat, rejecting the plaintiffs' plaint.

With the consent of the Advocate General of Bombay under section 539 of the Code of Civil Procedure, Act XIV of 1882, the plaintiff presented a plaint in the District Court of Surat to the following effect:—

One Dámodar Ambálál, a Vania of Visanágar caste, executed a will on the 14th of June, 1852, and died in Surat in the latter part of the same year. Among other things the deceased directed Surajrám and Bhaváníd&s, the trustees appointed thereunder, to appropriate a part of the estate left by him to the repairing of the Mirberi ghát of the river Tápi and the construction of the temples of Shiv and Vishnu. Bhaváníd&s was removed from the trusteeship by order of Court and Surajrám dying appointed the defendant Dáyábhái and Tápid&s, (subsequently deceased,) trustees in his place. The defendant was thus the sole trustee now left, and the plaintiff alleged that he neglected to carry out the provisions of the will and was otherwise guilty of fraud, dishonesty and carelessness. The plaintiff therefore prayed for the removal of the defendant and the appointment of a new trustee, for the formation of a proper scheme to give effect to the intentions of the testator, and for an account.

The above plaint was stamped with a stamp of Rs. 10, which the Judge deemed insufficient. He said the true value of the subject-matter should be shown in the plaint. The suit was for an account, and he could not take the property to be less than Rs. 10,000. He therefore rejected the plaint on the 23rd of April, 1883.

The plaintiff appealed to the High Court.

Gokaldás Káhándás for the appellant.—The plaintiff has stated that the property left by the deceased was worth from Rs. 8,000 to Rs. 10,000. It is no doubt compulsory on the plaintiff to state the amount at which he values the relief sought; but his discretion to fix that amount is not fettered. The Legislature has provided an effective safeguard against ultimate loss to Government of stamp revenue by providing in section 11 that

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no decree shall be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Mánekshâh Jehángirshâh Táleyárkhán for the respondent.—The suit is not one which cannot properly be valued; and it is apparent that the subject-matter is worth more than Rs. 10,000. In *Omráv Mirza* v. *M. Jones*[1] the value of the *waqf* which the plaintiff sought could not be ascertained by any money value, and the suit was valued at Rs. 7,000 for the purpose of jurisdiction. It was there held that a stamp of Rs. 10 to the plaint was insufficient and that the court-fee should be estimated upon Rs. 7,000.

SARGENT, C. J.—The District Judge was wrong in directing that the value of the relief sought should not be fixed by plaintiffs at less than Rs. 10,000, the alleged value in the plaint of the property left by the testator. By section 7, clause *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 provision of section 11, which precludes the execution of the decree in case it exceeds such value until the execution fee has been paid. We must, therefore, reverse the order of rejection of 23rd April, 1883, and direct that the plaintiffs do within a month amend their plaint by stating the amount at which they value the relief sought and stamp their plaint accordingly, and that in default of their doing so, their plaint do stand rejected. Appellants to have their costs of this appeal unless they commit such default as above mentioned.

Order accordingly.

(1) I. L. R., 10 Cal., 599.