APPELLATE CIVIL.

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

BÁI ANOPE, WIDOW OF NARSI GOKALDA'S (ORIGINAL PLAINTIFF), APPELLANT, *v.* MULCHAND GIRDHAR (ORIGINAL DEFENDANT), RESPONDENT.* 1885 *February* 17.

Civil Procedure Code, Act XIV of 1882, *Sec.* 54—*Court Fees Act VII of* 1870, *Sec.* 12—*Plaint—Stamp—Undervaluation—Rejection—Finality of decision—Declaratory decree—Specific Relief Act I of* 1877, *Sec.* 42—*Practice—Amendment of plaint.*

The decision of the Court of first instance, that a plaint is undervalued, is binding upon the Court of appeal, reference or revision; but the Court of first instance is not justified in rejecting the plaint without giving to the plaintiff an opportunity of affixing the proper stamp.

Where it is open to the plaintiff to ask for an account, against the defendant, of moneys received by him under a certificate of heirship, and for payment of moneys not properly accounted for, he is precluded by section 2 of the Specific Relief Act, I of 1877, from asking for a mere declaratory decree.

Plaint allowed by the High Court to be amended by insertion of a prayer for account.

THIS was an appeal from the decision of Ráv Bahádur Mukundrái Manirái, Subordinate Judge (First Class) of Ahmedabad.

The plaintiff Bái Anope sued for a declaration that she was the heir of her deceased husband Nársi Gokal, who died, leaving a house in possession of the plaintiff, some property of very immaterial value in the possession of the defendant, and some outstandings and debts. A certificate of heirship was ordered to be granted to the defendant under Regulation 8 of 1827, who, under its authority, filed some suits, as heir to the deceased Narsi Gokal, to recover moneys due to him. The plaintiff's plaint was stamped with a stamp of Rs. 10.

The Subordinate Judge was of opinion that, as the plaintiff admitted that some, at least, of the property was in the possession of the defendant, the suit brought could not be regarded as one merely for a declaratory decree; and regarding it as such, it was barred by section 42 of the Specific Relief Act I of 1877, inasmuch as it was open to the plaintiff to ask for an account of moneys

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received by the defendant under the certificate of heirship. The plaint being stamped with a stamp of Rs. 10 as for a declaratory suit, the Subordinate Judge rejected it without requiring the plaintiff to give an additional stamp, holding that it was impossible to recover the process fee which would have been paid had the claim been properly valued from the first.

The plaintiff appealed to the High Court.

Pándurang Balibhadra, Acting Government Pleader, for the appellant.

Ráv Sáheb *Vásudev Jagannáth Kirtikar*, for the respondent, took a preliminary objection.—I submit the decision of the Court below on the question of the valuation of the plaint is binding upon this Court, to which no appeal lies on that point —*Náráyan Mádhavráv Náik* v. *The Collector of Thána* (1); *Manohar Ganesh* v. *Báwa Rámcharandás* (2); and *Ganpat Gir Guru Bholágir* v. *Ganpat Gir* (3). The Calcutta Court has ruled differently—*Ganga Monee Chowdhrain* v. *Gopál Chunder Roy* (4); *Ajoodhya Pershad* v. *Gunga Pershad* (5). The Bombay decisions are conclusively in my favour. The High Court at Madras also is in my favour—*Anna Malai Chetti* v. *Lieut.-Colonel J. G. Cloete* (6).

Pándurang Balibhadra.—Assuming the Bombay decisions to be binding, I submit this case is distinguishable, as there is no property in the defendant's possession. It is described as property of very "immaterial value". If the view of the Court is adverse on the point, I ask the plaint to be amended—*Vásudev Shripat* v. *Jooma* (7).

SARGENT, C.J.—The Subordinate Judge has rejected the plaint on two somewhat inconsistent grounds. First, that it was improperly stamped, because it was not a simple declaratory suit, but prayed for other relief; and, secondly, because, regarded as a declaratory suit, it was precluded by section 42 of the Specific Relief Act (I of 1877). As to the first of these grounds, the Subordinate Judge's decision as to the stamp is, on the decisions of this

(1) I. L. R., 2 Bom., 145.
(2) I. L. R., 2 Bom., 219.
(3) I. L. R., 3 Bom., 230.
(4) 19 Calc. W. R., 214, Civ. Rul.
(5) I. L. R, 6 Calc., 249.
(6) I. L. R., 4 Mad., 204.
(7) Printed Judgments for 1883, p. 98.

High Court, binding on us—*Nárávan Mádhavráo Náik* v. *The Collector of Thána*[1] and *Manohar Ganesh* v. *Báwa Rámcharandás*[2]; but reading section 54 of the Civil Procedure Code (XIV of 1882) with section 12 of the Court Fees Act, 1870, he was not, we think, justified in rejecting the plaint without giving the plaintiff an opportunity of affixing the proper stamp, which appears not to have been done.

As to the second ground, the Subordinate Judge was right in holding that the plaint (which, in our opinion, was clearly only a declaratory suit) was inadmissible under section 42 of the Specific Relief Act, as the plaintiff could have prayed for an account, against the defendant, of all moneys received by him under the certificate, and for payment to her of all moneys not properly accounted for.

We have, however, been asked to allow the plaint to be amended by adding a prayer for the above relief, and we think we shall be acting in conformity with the principle laid down in the cases referred to in *Vásudev Shripat* v. *Jooma Abáji*[3] in complying with that request. We must, therefore, reverse the decree of the Court below, and remand the case, with liberty to the plaintiff to amend her plaint within one month from to-day, by praying for an account as against defendant. In default of her so doing, the plaint to stand dismissed. In the event of her amending the plaint as aforesaid, the Subordinate Judge will, as regards the question of stamp, deal with the plaint in its amended form, and try the case *de novo*. Costs to follow the result.

(1) I. L. R., 2 Bom., 145. (2) I. L. R., 2 Bom., 219.
(3) Printed Judgments for 1883, p. 98.