

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Nánábhái Haridás
and Mr. Justice Birdwood.

MULJI BECHAR, PLAINTIFF, v. JETHA' JESHANKAR AND OTHERS,
DEFENDANTS.*

1885.
December

Stamp—Regulation XVIII of 1827, Sec. 12, Cl. 2—Suit to recover possession of
immoveable property—Practice.

In a suit by plaintiff to recover possession of certain immoveable property under a deed of sale executed to him by the defendants' father while Regulation XVIII of 1827 was in force upon one-anna stamp paper, a question having arisen as to what stamp duty the deed should bear for the purposes of the suit, it was referred to the High Court.

Held, that the deed was sufficiently stamped under clause 2, section 12 of Regulation XVIII of 1827, but the plaintiff could not obtain on it a judgment for a sum or value beyond what was covered by that stamp, unless he paid an additional stamp duty and penalty, which the Court might allow him to do.

THIS was a reference by Ráv Sáheb Ranchorlal Kapurchand Desái, Subordinate Judge of Umreth, under section 49 of the Stamp Act I of 1879.

The plaintiff in the original suit sought to recover from the defendants possession of a piece of ground, and to obtain an injunction, restraining defendant No. 1 from obstructing him in erecting a wall on the foundation, as well as in his erecting a building on the said ground towards the west of the foundation. The following document, which bore a stamp of the value of one anna, and under which the plaintiff sought to recover possession of the ground and to obtain an injunction, was executed while Regulation XVIII of 1827 was in force:—

“To Bhat Mulji Bechar, by caste Tárwádi Mewádá, executed by an inhabitant of the same village, Gor Jeshankar Lakhmirám—to wit:—You have purchased an *orda* adjoining my house, and one-half of the *khidki* from Gor Ganpat Bechar. The ground towards the east of the *khidki* and towards the west of the pillar or pillars of my *raveshi* (the front part of a building) was given to you by a writing; but now you and I, by an amicable settlement, have jointly laid a foundation between our grounds. Each of us is to place his pillar in the respective

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halves of the side wall on the said foundation. I am to close my roadway by fixing a piece of wood from north to south, and not to remove the same. And if I remove the piece of wood, you, Mulji, may build up the side wall, and I shall not obstruct you in doing so. And the right of way of my house for my cattle, &c., is by way of my *chouk* (i. e. court-yard) to the *khidki*. And the water of the roof of the *khidki*, both of us are to hold up, by fixing rafters on the foundation, within our respective limits. The water of the *motia* (plank of wood placed in front of a roof for the support of the tiles) should fall on the *chouk* in the northern direction. And the foundation should be made of 11 inches in breadth as far as the level of the ground of my *raveshi*. And I shall have no right (to the ground) towards the west of the foundation, and you shall have no right (to the ground) towards the east of it. This document is passed by the free will and consent of both parties. It is agreed to (dated) *Samvat* 1913, *Jeth Vudi* 3rd (day of the week) Wednesday."

The question referred for decision was:—What stamp should the document bear, in order to be valid for the purposes of the suit?

The Subordinate Judge of Umreth was of opinion that it should, under Regulation XVIII of 1827, bear a stamp of the value of Rs. 8.

There was no appearance for the parties.

SARGENT, C. J.—The document is written on a stamp of one anna. It is perfectly good, as it stands, under clause 2, section 12, Regulation XVIII of 1827; but the plaintiff cannot obtain on it a judgment for a sum or value beyond what is covered by that sum. If he wishes to pay an additional stamp duty and penalty to be able to obtain a judgment for a larger sum or value, there is nothing to prevent the Court from allowing him to do so. The Subordinate Judge should follow *Adamji Samsudin Bohari v. Sarafalli Isabji* ⁽¹⁾.

(1) Printed Judgments for 1882, p. 129.