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defendant, the plaintiff was under an obligation to displace that order by suit instituted within a year.

We must, therefore, confirm the decree, with costs on appellant.

Decree confirmed.

FULL BENCH.

Before Mr. Justice West, Mr. Justice Nánábhái Haridás, and Mr. Justice Birdwood.

1886. *June* 24.

VITHAL KRISHNA, (ORIGINAL PLAINTIFF), APPLICANT, *v.* BA'LKRISHNA JANA'RDAN AND OTHERS, (ORIGINAL DEFENDANTS), OPPONENTS.*

Stamp—Court Fees Act VII of 1870, *Secs.* 6 *and* 12, *and Schedule II, Art.* 171—*Valuation by Subordinate Court—Power of High Court to revise it under extraordinary jurisdiction—Practice—Civil Procedure Code (Act XIV of* 1882*), Sec.* 622, *and Reg. II of* 1827, *Sec.* 5—*Suit to re-establish judgment-debtor's right to property on removal of attachment.*

A decision by a Subordinate Court on a question of valuation, determining the amount of a Court fee, is, notwithstanding its declared finality, subject to revision by the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882) and section 5 of Regulation II of 1827.

Where, on the removal of an attachment at the instance of a third party, the judgment-creditor brought a suit to establish the right of his judgment-debtor to the property from which the attachment had been removed, and to get the summary order to remove the attachment set aside,

Held, that the proper stamp on a plaint of that kind was Rs. 10 under section 6 and Schedule II, article 171 of the Court Fees Act VII of 1870.

THIS was a reference to a Full Bench by the Division Bench consisting of Mr. Justice Nánábhái Haridás and Sir W. Wedderburn, Justice.

The reference was as follows:—

"Regard being had to section 12 of Act VII of 1870, if a District Judge determines what stamp duty ought to be paid on an appeal presented to him, can the High Court, as a Court of appeal or revision, in a case where his decision is not to the detriment of the revenue, alter such decision, on the ground that he misconceived the nature of the suit, or on any other ground?"

Ghanashám Nilkanth Nádkarni for the applicant:—An erroneous decision by a Subordinate Court on a question of Court

* Extraordinary Application, No. 211 of 1884.

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fees is liable to be set aside by the High Court. Section 12 of the Court Fees Act VII of 1870 no doubt gives finality to such decision, but such a finality is only in respect of proper valuation determined by the lower Court. Where the nature of the suit is in question, an erroneous decision by the lower Court is appealable. An order of a Court rejecting a suit under section 54, clause (*b*), of the Civil Procedure Code (Act XIV of 1882) having the force of a decree, as defined by section 2 of that Code, is appealable under section 540. As a final order under the Court Fees Act the decision may not be appealable, but when it forms part of other matters it becomes a decree, and, as such, appealable—*Ajoodhya Pershád* v. *Gungá Pershád*(. All the High Courts are of opinion that an erroneous decision by a lower Court as to the nature of the suit is liable to revision by the High Court: see *Annamali Chetti* v. *Cloete* ; *Chunia* v. *Rámdial*[3]. The Bombay cases against me are *Náráyan Mádhavráv Náik* v. *The Collector of Thána* ; *Manohar Ganesh* v. *Báwá Rámdás* . Of these the first two were before the Civil Procedure Code of 1877 came into force, and had to be reconciled with section 36 of the Code of 1859, the Court Fees Act being a later enactment. An order passed under section 54 rejecting a plaint for insufficiency of stamp having the force of a decree as defined in section 2, has been held appealable. Section 540 of the Civil Procedure Code (Act XIV of 1882) gives an appeal from such orders. As to the last case, the question was not considered. Even supposing that there is no appeal from the order of the lower Court dismissing a suit on the point of Court Fees, this is a fit case for the exercise of the extraordinary jurisdiction of the High Court under section 622 of the Civil Procedure Code. Under similar circumstances this Court has exercised that jurisdiction—*Yeshvant Pándurang* v. *Anant Pándurang*[6]. The Madras High Court has done so in the case of *Annamali Chetti* v. *Cloete*[7]. The object of the applicant's suit was to obtain a declaration that the property of the judgment-debtor was liable to be attached, and, as such, was properly stamped with a ten-rupee stamp—*Dhondo Sakhárám* v. *Govind Bábáji*[8];

(1) I. L. R., 6 Calc., 249.
(2) I. L. R., 4 Mad., 204.
(3) I. L. R., 1 All., 360.
(4) I. L. R., 2 Bom., 145.
(5) I. L. R., 2 Bom., 219.
(6) Printed Judgments for 1884, p.80.
(7) I. L. R., 4 Mad., 204.
(8) I. L. R., 9 Bom., 20.

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Sadáshiv Yeshvant v. *Atmárám*[1]; *Gulzári Mal* v. *Jadam Rái*[2]; *Ostoche* v. *Haridas*[3]; *Amarnáth* v. *Lachmi Náráin*[4].

Ganesh Rámchandra Kirloskar, contra:—A general law does not affect a specific earlier law—Maxwell on Statutes, p. 212. Though the new Civil Procedure Code may give an appeal from an order by a lower Court on the insufficiency of a stamp, section 12 of the Court Fees Act VII of 1870 expressly bars an appeal. It does not make any distinction between the nature of a suit for the purposes of valuation and valuation otherwise, but without exception makes all decisions in reference to valuation final. The question, whether a suit requires a fixed duty or *ad valorem*, is all the same relating to valuation. The case of *Náráyán Mádhavráo Náik* v. *The Collector of Thána*[5] has been followed throughout in the later decisions of this Court, and should also be followed in this case.

The judgment of the Full Bench was delivered by

WEST, J.:—In the present case, Vithal Krishna sued to establish the right of his judgment-debtor to certain property and the liability of that property to attachment in execution of Vithal's decree. A third party had got the attachment placed by Vithal on the property removed, and the object of the suit was to re-establish the right thus provisionally contradicted.

It has on several occasions been held by this Court, as well as by the other High Courts, that the proper stamp on a plaint of this kind, seeking to establish a title prejudiced by the proceedings in an execution, by getting the summary order for or against the attachment set aside, is of the fixed amount of Rs 10, under section 6 and Schedule II, article 171 of the Court Fees Act, VII of 1870. In the case of *Sadáshiv Yeshvant* v. *Atmárám Sakhárám*[6] the Court of first instance and of first appeal had rejected such a plaint, on the ground that, instead of the stamp of Rs. 10, which it actually bore, it ought to have borne one proportionate to the valuation of the plaintiff's claim;

(1) I. L.R., 4 Bom., note, p. 535.
(2) I. L. R., 2 All., 62.
(3) I. L. R., 2 All., 869.
(4) I. L. R., 3 All., 131.
(5) I. L. R., 2 Bom., 145.
(6) I. L. R, 4 Bom., 535.

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but this Court reversed the decisions of the Courts below, and remanded the cause for decision on the merits. In *Párvati* v. *Kisansing*[1] it was held that, although the person complaining of a wrongful attachment of his property should add to his complaint a prayer for an award of possession, still the Court fee to be exacted from him would not thus be increased in amount. It would be Rs. 10, and no more. This decision was approved and followed in *Dhondo Sakhárám* v. *Govind Bábáji*[2]. Attachment, we may observe, does not of itself constitute dispossession of immoveable property; it is effected by a prohibition against disposal on an assumption of a right, which being disproved, the attachment ought at once to fall as unfounded. On the other hand, should an attachment be refused or removed, on the ground of the absence of an interest of the judgment-debtor, it should forthwith be allowed and restored when that interest is established by a suit. In neither case, however, is the possession directly affected, nor consequently can the fiscal rules applicable to suits for possession bear on the suit to establish a title supporting or repelling the attachment.

In the cases just referred to, this Court, on second appeal, reversed the decisions of the lower Courts as to the proper Court fee, notwithstanding the provision in section 12 of the Court Fees Act, VII of 1870, which says that "every question relating to valuation for the purpose of determining the amount of any fee...... shall be decided by the Court in which such plaint or memorandum (of appeal)... is filed, and such decision shall be final between the parties to the suit," though as clause II continues, not final as against the fisc, where a too small fee has been accepted. In *Govindás* v. *Dáyábhai*[3] the District Judge had rejected a plaint falling under section 7, article (*f*) of the Act, because the plaintiff had not valued his suit at more than Rs. 10,000, which, the Judge thought, was the minimum valuation that could properly be assigned to it. His decision was reversed by this Court on the ground that the plaintiff was at liberty to fix the amount at which he valued the relief sought as he would,

(1) Printed Judgments for 1881, p. 121.
(2) I. L. R., 9 Bom., 20.
(3) I. L. R., 9 Bom., 22.

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subject to the provision of section 11 of the Act, which would prevent execution for a larger sum without the payment of a supplemental fee. Here there was undoubtedly "a question relating to valuation for the purpose of determining the amount of the fee," and the Judge had decided that the valuation must be more than Rs. 10,000. But, then, he had implicity decided two other questions, and had decided them wrongly—(1) that it was his duty to undertake a valuation, and (2) that, finding the stamp insufficient according to the valuation he arrived at, he was bound to reject the plaint. Section 54 of the Code of Civil Procedure requires a certain time to be given to a plaintiff to supplement the Court fee. An appeal against the wrong rejection of the plaint lay under sections 2 and 540 of the Code, and the plaintiff was necessarily allowed the exercise of a discretion of which the order of the District Court had deprived him.

Whether, in any case in which a Court of first instance has exacted too large or too small a fee by bringing the suit within a wrong category under the Court Fees Act, any redress can be had by way of appeal or application for revision, is a much more doubtful point than the one we have just considered. There are undoubtedly several decisions of the other High Courts which support the affirmative. The case of *Annamali Chetti* v. *Cloete* [1] was much dwelt on in argument, and that seems to show that, in the opinion of the High Court of Madras, a determination of value, through assigning a suit to one or another class, is open to appeal, at least as to the correctness of the assignment. Yet where there really is a valuation to be made by a Judge in order to determine a variable proportional fee, it seems impossible to say that his reasoned choice amongst the several categories of suits is not as essential an element of his valuation as the subsequent arithmetical computation by which it is completed. Where the Judge can enter on a valuation at all, the determination of the one factor as much as of the other must, it seems, be a "question relating to valuation;" and, as such a question, closed as between the parties by the Judge's

(1) I. L. R., 4 Mad., 204.

decision. It is plainly quite different from a question of valuation, or an element of such a question, quite gratuitously entered on, either because the fee is fixed, or because it rests in the discretion of the plaintiff.

The cases of *Sadáshiv Yeshvant* v. *A'tmárám* and the others, in which this Court has exercised its appellate powers to correct an undue exaction of a valuation fee (or the attempt at such an exaction) where there was no valuation for the Judge to make, may properly be referred, we think, to the broad principle we have just indicated. In the case of *Náráyan Mádhavráv Náik* v. *The Collector of Thána* (1) this Court was not of opinion that though the suit was subject to a fixed fee, yet the imposition of a valuation fee by the District Judge was conclusive. It thought only that where a valuation had to be made, and the Judge made it, his decision was final. There was not in the plaint any valuation of the relief, according to section 6 of the Court Fees Act, covered by a stamp of proportional value. The High Court went into the appeal so far as to ascertain that more than a declaratory decree was sought, and, having arrived at that point, accepted the District Court's decision of the question of valuation as final, and rejected the appeal.

In the case of *Manohar Ganesh* v. *Báwá Rámcharandás* (2) which followed very soon after the one we have just discussed, it is evident that the Court thought that more than a declaratory decree was sought, or ought to be sought, in the suit. This may account for a slightly incautious treatment of the provisions of section 12 of the Court Fees Act. The learned Chief Justice strongly inclined, it is plain, to the view that, had the plaintiff relied on the principle of optional valuation, he would, at any rate, have had right on his side; but it is equally plain that he thought the plaintiff wrong in contending that his sole and sufficient aim was a declaration of right. If we add this to the express words of the judgment, the case becomes one in which the Court holding that there was a question relating to valuation finally decided, dismissed an appeal grounded only on

(1) I. L. R., 2 Bom. 145. (2) I. L. R., 2 Bom., 219.

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an assertion that the suit was one for a declaration merely, and subject only to a fixed fee of Rs. 10.

In the recent case of *Bái Anope* v. *Mulchand Girdhar*[1] the Subordinate Judge thought that the suit, as one for a mere declaration, was inadmissible under section 42 of the Specific Relief Act. The plaint bore a stamp of Rs. 10, and the Subordinate Judge rejected it without calling on the plaintiff to pay a supplemental fee. In appeal, this Court held that the Subordinate Judge had been right as to the character of the suit, but it allowed the plaintiff to amend her plaint, and present it again. As the rejection of the plaint was thus upheld on a ground independent of the question of the Court fee, the observations on that subject referring to the cases of *Náráyan Mádhavráv Náik* v. *The Collector of Thána*[2] and *Manohar Ganesh* v. *Báwá Rámcharandás*[3] may be regarded as not necessary to the decision, and as having been introduced merely or chiefly in order to point out to the Subordinate Judge, that, before rejecting a plaint for a defective stamp, he should have given an opportunity of supplementing it.

It seems most consistent with the general practice of this Court, and not inconsistent with any of its decisions, when analysed, that on the question of whether or not any particular suit was one admitting of valuation by the Judge an appeal lies against his decision; but that once it is found that a valuation made by him was within his proper functions, his decision and the several essential elements of it are conclusive as between the parties, and not subject to examination in appeal. A decision by a Subordinate Court on a question of valuation for determining the amount of a Court fee is, notwithstanding its declared finality, subject to revision by this Court under section 622 of the Civil Procedure Code and Regulation II, section 5, of 1827, in the particular cases pointed out in *Shivá Náthájí* v. *Jomá Káshináth*[4].

(1) I. L. R., 9 Bom., 355.
(2) I. L. R., 2 Bom., 145.
(3) I. L. R., 2 Bom., 219.
(4) I. L. R., 7 Bom., 341.