

words seem to have passed, from which the former understood Mr. Leggett to say that he was aware of a fraud on the part of the Mohanas and would use that knowledge against them. Mr. Leggett thinking that it was sought to put an improper pressure upon him says he put the case as a purely hypothetical one. It is not necessary that I should dwell further on what was probably a misunderstanding. What passed could not affect Mr. Leggett's duties or rights in relation to his clients, though it might account for the course taken by Captain Crawford in complaining to this Court. That complaint was, no doubt, dictated simply by a sense of public duty, but it has been fairly, and, for the purpose in hand, completely met. No breach of duty has yet occurred; none at all is inevitable. If any should take place, the Court will be ready to take proper notice of it; its duty for the present is discharged by its declining to interfere.

[F., L.B.R. (1893-1900), 18; R., 26 B. 423 (428); D., 2 P.R. 1904=45 P.L.R. 1904.]

1887  
JUNE 13.  
—  
APPEL-  
LATE  
CIVIL.  
—  
12 B. 85.

12 B. 98.

[98] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

FULCHAND (Decree-holder), Appellant v. BAI ICHHA (Judgment-debtor)  
Respondent.\* [13th July, 1887.]

Court Fees Act, VII of 1870, s. 11—Execution of part of decree—Payment of full amount of Court fees not necessary for such part execution—Construction.

The plaintiff sued the defendant to recover possession of a house and for mesne profits. In the same suit he also claimed certain account books and documents from the defendant. In paying Court fees he estimated the mesne profits at Rs. 151, and paid in that amount. He obtained a decree, and the amount of mesne profits awarded to him was Rs. 3,349-13-3. The decree further directed that possession of the house should be given to him, and that the books and documents should be handed over to him. He now applied for execution of that part of the decree which directed the delivery of the house and of the account books and other documents. The defendant contended that, under s. 11 of the Court Fees Act VII of 1870, the plaintiff was not entitled to execution of any part of the decree until he paid the proper Court fees on the sum awarded as mesne profits, viz., Rs. 3,349-13-3.

Held, that the plaintiff might obtain execution of that part of the decree which ordered delivery of the house and books and documents without paying the fees payable on the amount awarded for mesne profits. S. 11 and s. 17 of the Court Fees Act VII of 1870 ought to be similarly construed; and the language of the latter section, which deals with multifarious suits, shows that for the purposes of the stamp revenue such suits are deemed to be a collection of distinct suits relating to the several causes of action combined in them. In applying s. 11 to such suits, in order to give a harmonious construction to the Act as a whole, the term "suit" in that section should be construed as confined to that part of the suit in question which related to mesne profits.

[F., 6 Bom. L.R. 1102.]

THIS was an appeal from an order made by Khan Bahadur E. M. Mody, First Class Subordinate Judge of Surat, in *darkhast* No. 536 of 1885.

The plaintiff (appellant) sued the defendant (respondent) to recover possession of a house and for mesne profits. In the same suit he also claimed certain account books and documents from the defendant. In paying Court fees he estimated the mesne profits at Rs. 151, and paid in that amount. He obtained a decree, and the amount of mesne profits awarded to him was Rs. 3,349-13-3. The decree also directed that possession of the [99] house should be given to him, and that the books and documents should be handed over to him.

\* Appeal No. 25 of 1886.

1887  
 JULY 13.  
 APPEL-  
 LATE  
 CIVIL.  
 12 B. 98.

He now applied for execution of that part of the decree which related to the delivery of the account books and other documents and of the house.

The respondent contended (*inter alia*) that, unless the appellant paid full Court fees on Rs. 3,349-13-3, the amount of mesne profits awarded by the decree, he could not obtain execution of any part of the decree.

The Subordinate Judge allowed the respondent's contention, and rejected the appellant's application for execution.

From this order the appellant appealed to the High Court.

*K. T. Telang (Motilal M. Munshi, with him)*, for the appellant.—The claims dealt with by the decree were distinct and separate, and execution may issue as to part without payment of Court fees on the whole amount awarded by the decree: see *In re Manohar G. Tambekar* (1). The cases contemplated by s. 11 of the Court Fees Act VII of 1870 are cases of suits which are exclusively for mesne profits. At all events, the section is not clear upon the point, and the Court Fees Act being a fiscal enactment it should be construed in favour of the subject.

*Macpherson* (Acting Advocate General) and *Manekshah Jehangirshah*, for the respondent.—The terms of s. 11 of the Court Fees Act admit of no doubt. The decree is to be regarded as a whole, and, therefore, before the appellant can seek execution, he must pay the whole Court fee due on the amount of the profits awarded by the decree. There are no distributive words in s. 11, and it cannot, therefore, be construed to contemplate fractions of a decree. There has been one suit and one decree, and that was mainly for mesne profits, although minor claims were also included.

#### JUDGMENT.

SARGENT, C. J.—This appeal raises a question as to the proper construction of s. 11 of Act VII of 1870. It has been contended that, as the plaintiff has not paid the proper fee on the [100] sum of Rs. 3,349-13-3, the amount of the mesne profits as found in his favour, he cannot execute the rest of the decree, which relates to the delivery of the documents lodged in Court and of possession of the house. It is said that the "decree," the execution of which is prohibited by the section until the proper Court fee is paid, is the whole decree, and not such part of it as relates merely to the mesne profits. The language of s. 17, which deals with multifarious suits, shows that, for the purposes of the stamp revenue, such suits are deemed to be a collection of distinct suits relating to the several causes of action combined in them. And we think that in applying s. 11 to such suits, we ought, in order to give an harmonious construction to the Act as a whole, to construe the term "suit" in that section as confined to that part of the suit in question which relates to mesne profits. Strictly speaking, a suit on several causes of action, including mesne profits, is not a suit for mesne profits, which, according to its ordinary and more obvious meaning, would be understood as one exclusively for mesne profits. Moreover, as the Act is a fiscal Act, it is to be construed in favour of the subject. And any other view of s. 11 would certainly be a harsh one, and not to be accepted in the absence of a very clear expression of such intention on the part of the Legislature.

The decision in *In re Manohar G. Tambekar* (1) on the analogous question raised by art. 5 of sch. I proceeds on the same view of the Act.

We must, therefore, discharge the order of the Subordinate Judge; and as counsel for the defendant admits that he has no objection to urge, on the merits, to the execution of the decree, order that the documents lodged in Court be delivered to the plaintiff, and that possession be given to him of the house mentioned in the *darkhast*.

1887  
JULY 13.  
—  
APPEL-  
LATE  
CIVIL.  
—  
12 B. 98.

12 B. 101.

[101] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and  
Mr. Justice Nanabhai Haridas.

KHURSHETBIBI AND OTHERS (*Original Defendants*), Appellants  
v. KESO VINAYEK (*Original Plaintiff*), Respondent.\*

[1st August, 1887.]

*Decree—Execution—Sale in execution of a decree against a deceased person represented by a minor son—How far such sale affects interest of an heir not party to decree or execution proceedings.*

K., a Mahomedan woman who was a co-sharer in a certain *khoti vatan*, died indebted, and was sued after her death as "represented by her minor son represented by his guardian." A decree having been obtained against K. thus represented, her share in the *khoti* was put up for sale in execution, and was purchased by the plaintiff, who obtained a sale certificate reciting that the right, title, and interest of K. in the said *khoti* had been purchased by him. He now sued the defendants, who were K.'s co-sharers in the *khoti*, to recover the profits of K.'s share which they had received.

K., besides her minor son, had left her surviving a daughter who had not been made a party to the suit or to the execution proceedings, and the defendants contended that her share in her mother's estate had not passed to the plaintiff.

*Held*, that the plaintiff was entitled to the whole of K.'s share. The debt due by K. was one for which the daughter was equally responsible; and having regard to the form of the suit and the execution proceedings, the plaintiff was justified in assuming that he was bidding for the entirety of K.'s share, and would acquire a title unimpeachable by the daughter.

[F., 20 B. 938 (345); R., 24 B. 135 (144)=1 Bom. L.R. 627 (634); 26 M. 794 (738); D., 2 Ind. Cas. 922=12 O.C. 146 (148); 2 S L.R. 76 (78).]

THIS was a reference by H. Batty, Acting District Judge of Thana, under s. 617 of the Civil Procedure Code (Act XIV) of 1882.

One Khatiza was a co-owner with the defendants of a certain *khoti vatan*. After K.'s death a creditor of hers sued upon a bond executed by her, and obtained a decree against "Khatiza, deceased, represented by her minor son represented by his guardian."

In execution of this decree, Khatiza's share in the *khoti* was put up for sale and purchased by the plaintiff, who obtained a sale certificate purporting to convey to him the right, title, and interest of Khatiza in the *khoti*.

The plaintiff sued the defendants, (the co-sharers of the *khoti*), to recover Khatiza's share of the profits which had been collected by them.

\* Civil Reference, No. 23 of 1887.

(1) 4 B. 26.