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in every case whether an instrument presented to it is 'duly stamped' or not. 'Duly stamped' is defined in the Act to be " stamped in accordance with the law in force when such instrument was executed, or first executed." When this instrument was executed, Act I of 1879 was in force. That Act, in s. 16, lays down that " all instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution." If an instrument is not so stamped, clearly it is not stamped, according to the Act and cannot be held, therefore, to be 'duly stamped.' As it is the duty of the Court to ascertain whether or not the instrument was stamped before or at the time of execution, I allow the questions.

The witness was then examined on the subject; and, on the evidence, the Court, finding that the document had not been stamped at or before the time of execution, refused to admit it in evidence. The Court referred to *Sakalchand Jadhavji* v. *Gulabchand Motichand* (1).

Attorneys for plaintiff:—Messrs. *Pestanji and Rustim.*

Attorneys for defendant:—Messrs. *Macfarlane, Edgelow, and Hemming.*

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APPELLATE CIVIL.

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

BALVANTRV OZE (*Original Plaintiff*), *Appellant v.* SADRUDIN (*Original Defendant*), *Respondent* * [22nd March, 1887.]

Civil Procedure Code (Act XIV of 1882), *s.* 583—*Execution, power of Court to award restitution of benefits on reversal of decree in—Procedure—Jurisdiction—Court not limited in execution.*

The procedure provided by s. 583 of the Civil Procedure Code (Act XIV of 1882) for obtaining any benefit (by way of restitution or otherwise) under a decree passed on appeal is not confined to cases where the restitution desired is provided for by the decree itself.

[486] The plaintiff brought a suit for the recovery of certain timber, or damages for its removal, and got a decree. The defendant appealed, and was ultimately successful in getting the plaintiff's suit dismissed, but meanwhile the timber had been taken in execution of the decree and sold. The defendant applied to the original Subordinate Judge's Court in execution of the High Court decree for restitution of the timber, or Rs. 13,325 damages. The plaintiff objected that the defendant must bring a suit, and could not make this claim in execution. The Subordinate Judge overruled this objection, but held that he was limited to a grant of Rs. 5,000, the pecuniary limit to his original jurisdiction, and awarded the defendant that sum for his timber.

Held, that the matter was rightly dealt with in execution, and that the jurisdiction of the original Court in execution was neither ousted by the fact that the value of the property in dispute exceeded the pecuniary limits of the Court's jurisdiction, nor was such Court limited in its award to the sum of Rs. 5,000.

[R., 21 C. 989 (996); 17 M. 82=4 M.L.J. 1 (2).]

THIS was a second appeal from a decision of H. J. Parsons, District Judge of Thana.

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* Second Appeal, No. 205 of 1885.

(1) Printed Judgments for 1882, p. 29.

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In 1876, in the Subordinate Judge's Court at Kalyan, the plaintiff sued the defendant Sadraudin and two others, to recover possession of 17,000 teak rafters, or their value, Rs. 3,001, as damages, alleging that the rafters had been illegally cut in his forest by the defendant. On the 7th April 1877, the plaintiff caused the rafters to be attached. On the 31st July, 1879, he obtained a decree awarding him 12,925 rafters, or Rs. 3,001 as damages. On the first November, 1879, the rafters, as decreed, were handed over to the plaintiff, who sold the same for Rs. 2,700 in March 1880. On the 3rd February, 1882, the original decree was reversed by the lower appellate Court, which was confirmed, on second appeal, by the High Court on the 4th July, 1883. The decree thus reversed was transferred, on the application of the defendant, for execution to the Subordinate Judge of Panvel. On the 29th November, 1883, the defendant applied to the Subordinate Judge to have the rafters restored to him, or to be paid their value, Rs. 13,325, as estimated by him.

The Subordinate Judge, though he thought that the value of the rafters was more than Rs. 5 000, awarded that sum only, being of opinion that he could not exceed the limit of his pecuniary jurisdiction in suits which was of that amount. On cross-appeals by the parties the District Judge was of opinion that there was no necessity for a separate suit, and the question could be decided in [487] execution. He awarded Rs. 9,047-8, holding that the Subordinate Judge was not in execution so restricted. On appeal by the plaintiff to the High Court, it was contended *inter alia* for him that the District Judge was wrong in holding that the damages to the defendant could be asserted in execution of the decree without a separate suit, and that the Subordinate Judge could award more than Rs. 5,000.

Shantaram Narayan and *Shamrav Vithal*, for the appellant.

Manekshah Jehangirshah, for the respondent.

JUDGMENT.

SARGENT, C. J.—The question in this case arises out of a suit brought by the appellant to recover possession from the defendant and others of 17,000 teak rafters, or the value of the wood as damages, on the ground that they had cut them illegally in his forest. The Subordinate Judge passed a decree in his favour on 31st July 1879, and gave him the rafters, or, as damages, Rs. 3,001. In appeal this decree was reversed on 3rd February 1882, and the plaintiff's claim rejected. The decree of the appellate Court was confirmed by the High Court on 4th July 1883. In the meantime, on 1st November 1879, the rafters had been handed over to the plaintiff, who subsequently sold them for some Rs. 2,700 in March 1880. On 29th November 1883, the defendant applied to the Subordinate Judge to have the rafters restored to him, or to be paid their value, alleged by him to be Rs. 13,325. The Subordinate Judge, although thinking that the rafters were worth more than Rs. 5,000, only awarded to defendant Rs. 5,000, on the ground that that sum was the limit of value of a suit within the jurisdiction of the Court. On appeal the District Judge held that the Subordinate Judge was not so restricted, and awarded Rs. 9,047-8-0 in place of Rs. 5,000.

It has been contended before us that the District Judge was wrong in holding that a suit was not necessary, and that the claim to restitution could be asserted in execution of the decree of the High Court confirming the decree of the lower appellate Court. That this objection is untenable is shown by the language of s. 583 of the Code of Civil Procedure, which

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expressly provides for any benefit (including restitution or otherwise) to which the successful party may be entitled under the appellate decree being [488] given in execution of the decree. Had it been intended to confine the procedure to the case in which restitution was provided for by the decree itself, there would apparently have been no necessity for expressly mentioning it. As to the objection that the Subordinate Judge could not award more than Rs. 5,000 in execution, because the jurisdiction of the Court in original suits was limited to that sum, we need only refer to *Lakshman Bhatkar* v. *Babaji Bhatkar* (1) followed in *Sadashiv Vithoji* v. *Ramji Krishna* (2) as authorities that the jurisdiction continues in all matters in execution, and is not ousted by the circumstance that the value of the question in execution exceeds the limit of suits within the Court's original cognizance.

Passing to the amount of damages awarded by the District Judge, he has proceeded, and we think correctly, on the principle of ascertaining the loss sustained by the defendant by his rafters having been attached by the plaintiff on 7th April, 1877; and in ascertaining that loss he was doubtless right in holding that the sum at which the rafters were sold by the plaintiff in 1880 was only a piece of evidence, and but of small value, in determining what was the real question in the case, *viz.*, the value at which the rafters would have sold in the market in April, 1877. It is plain that the plaintiff, who sold the rafters by private contract, would care but little what they sold for, provided the price covered the loss of the trees as they stood in the forest. But little reliance could, therefore, be placed on the price at which he sold. The District Judge has taken a mean between the lowest price, Rs. 65 per hundred mentioned by the appellant's witnesses and the highest, Rs. 75 per hundred mentioned by the respondent's witnesses, and thus arrived at Rs. 70 per hundred. This, we think, is a fair way of dealing with the evidence, and gives Rs. 9,047-8-0 as the price at which the respondent could have sold the rafters in 1877. It was urged, in argument, that the District Judge had been influenced in determining the value by his assumption that it had cost the respondent, as he alleged Rs. 5,500 to cut and carry the wood; whereas the Rs. 5,500 so [489] mentioned included, it was said, the cost of other rafters besides those in question. The court alluded to this sum to show that the price at which the appellant sold could not be a reliable guide, but the price the Court ultimately arrived at as the fair one, was determined quite independently of what respondent had said as to the cost of cutting and carrying the wood. It was, lastly, urged that respondent was estopped from claiming more than what he had stated to be the value of the rafters in the appellant's suit, *viz.*, Rs. 25 per hundred. But it is plain he was then speaking of the value of the wood which was all that appellant could claim as the owner of the trees.

We have been asked by respondent to allow interest on the value of the rafters; but interest was not claimed by the *darkhast*, nor does the circumstance of its not having been awarded form one of the cross-objections.

We must, therefore, confirm the order of the Court below with costs on the appellant.

(1) 8 B. 31. (2) Printed Judgments for 1885. p. 180.