

17 B. 41.

[41] APPELLATE CIVIL.

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

VITHAL HARI ATHAVLE (*Original Plaintiff*), *Appellant v. GOVIND VASUDEO THOSAR (Original Defendant), Respondent.**
[21st January, 1892.]

Claim for interest from institution of suit until payment—Stamp—Future mesne profits—Court Fees Act (VII of 1870), s. 7.

No additional stamp is required on account of the claim for interest from the date of the institution of the suit until payment. It stands on the same footing as future mesne profits, which do not fall under s. 7 of the Court Fees Act (VII of 1870).

THIS was a reference made by C. E. G. Crawford, District Judge of Thana, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

The facts of the case were as follows :—

The plaintiff, Vithal Hari Athavle, constituted attorney of one Hari Mahadeo Athavle, sought to recover from the defendant Rs. 457-8-0 due on a mortgage, and claimed interest on the mortgage amount from the date of the institution of the suit till payment.

The defendant, Govind Vasudeo Thosar, admitted the mortgage and pleaded payment of Rs. 67-8-0, which, he alleged, was not given credit for by the plaintiff.

The Subordinate Judge found the payment of Rs. 67-8-0 proved, and awarded the plaintiff's claim for the rest of the amount with interest up to date of the plaint.

The plaintiff appealed to the District Court on certain grounds, one of which was that he was entitled to interest up to date of payment.

The respondent's pleader objected to the raising of the above point, unless a Court-fee was paid for the amount claimed under it.

The District Judge, thereupon, submitted the following question for the opinion of the High Court :—

"Is a Court-fee leviable, in this appeal, in respect of appellant's claim for interest after date of plaint?"

[42] The District Judge's opinion was that the precise amount of interest claimable not being ascertainable until the date of payment is known, special provision would have been made for the case, as has been done for mesne profits in s. 11 of the Court Fees Act (VII of 1870) had it been the intention of the Legislature that a Court-fee should be levied in such a case. On the other hand he considered that it might fairly be argued that the interest is part of the subject-matter of the appeal, at least in cases like the present, where the principal and some interest up to date of plaint has been awarded, the case then ceasing to be similar to that of the original claim for interest under s. 209 of the Civil Procedure Code, inasmuch as the claim becomes one for interest separately from that for the principal.

There was no appearance for the parties in the High Court.

* Civil Reference No. 18 of 1891.

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OPINION.

SARGENT, C. J.—We think that no additional stamp would be required on account of the claim for interest from institution of the suit until payment. It stands on the same footing as future mesne profits, which in *Bamkrishna v. Bhimabai* (1) were held not to fall under s. 7 of the Court Fees Act.

Order accordingly.

17 B. 42.

APPELLATE CIVIL.

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

DAMODAR GOPAL DIKSHIT (*Original Defendant*), *Appellant v.* CHINTAMAN BALKRISHNA KARVE AND OTHERS (*Original Plaintiffs*), *Respondents*.* [28th January, 1892.]

*Small Cause Court—Provincial Small Cause Courts Act (IX of 1887), sch. II, cls. (4) and (31); s. 23, cl. (1)—Jurisdiction—Suit to recover share of profits of *inam* villages—Money had and received for plaintiffs' use.*

In a suit for the recovery of a certain share in the profits of *inam* villages, of which the defendant was the manager, the only relief claimed by the plaintiffs being payment of money, namely Rs. 130.

Held, that the suit was for money had and received for plaintiffs' use, and was cognizable by the Court of Small Causes. It did not fall under cl. (4) of sch. II of the Provincial Small Cause Courts Act (IX of 1887), as it was not [43] a suit for the possession of immoveable property, or for recovery of an interest in such a property. If the plaintiffs had alleged that the defendant had "wrongfully received" the plaintiffs' share of profits, then the suit would have fallen under cl. (31), sch. II of the Act.

[F., 23 A. 437 (438)=21 A.W.N. 128; 32 B. 560 (562)=10 Bom.L.R. 733; 34 B. 171=11 Bom.L.R. 1330=4 Ind. Cas. 830; 9 Bom.L.R. 207-N: Appr., 21 B. 248 (250); R., 35 M. 726=11 Ind. Cas. 31=21 M.L.J. 442=(1911) 2 M.W.N. 189; 16 Ind. Cas. 868=6 S.L.R. 85; 1 L.B.R. 335 (336); 14 M.L.J. 396 (400); 18 M.L.J. 88 (89); 2 O.C. 276 (279); 13 P.R. 1901=137 P.L.R. 1901; 93 P.L.R. 1904; Expl., 25 B. 85 (89).]

THIS was an appeal against an order of remand passed by A. D. Pollen, District Judge of Poona.

Suit to recover a share of the profits of *inam* villages.

The plaintiffs, Chintaman Balkrishna Karve and others, stated that the two villages in dispute belonged to the families of the parties as *inam*; that the plaintiffs had one-fifteenth share therein; that the defendant, Damodar Gopal Dikshit, had the management thereof, and that they claimed to recover Rs. 130 from the defendant as their share of the profits for three years.

The defendant, Damodar Gopal Dikshit, resisted the suit on the ground that it was time-barred; that Vishnu Dikshit, whose heirs the plaintiffs claim to be, had no share in the property in dispute; and that the Court had no jurisdiction to entertain the suit.

The Subordinate Judge (Rao Saheb Vaman M. Bodas), in whose Court the suit was originally instituted, held that it was within the

* Appeal No. 25 of 1891.

(1) P. J. 1890, p. 364.