1892
APRIL 11.

APPEL-
LATE
CIVIL.

17 B. 56.

17 B. 56.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Telang.

SARDARSINGJI (*Original Plaintiff*), *Appellant v.* GANPATSINGJI AND ANOTHER (*Original Defendants*), *Respondents.**

[11th April, 1892.]

Court Fees Act (VII of 1870), s. 7, cl. 4, sub cls. (c) and (d)—Valuation of suit—Valuation of a suit for injunction—Injunction—Appeal—Order rejecting plaint as insufficiently stamped.

A suit for a declaration of right and for an injunction falls under s 7, cl. 4 sub-cls. (c) and (d) of the Court Fees Act VII of 1870. The valuation of the relief sought in such a suit rests with the plaintiff, and not with the Court.

[57] A. sued B. and C. (1) for a declaration of his title to certain property, and (2) for an injunction restraining C. from paying, and B. from receiving, an allowance of Rs. 2,400 a year out of the income of the property in dispute. A. valued each of the reliefs sought at Rs. 130, and affixed a Court-fee stamp of Rs. 20 to the plaint.

The Court of first instance rejected the plaint as insufficiently stamped, holding that the claim for the injunction sought should have been valued at ten times the annual allowance paid by C. to B., as provided by s. 7, cl. 2 of Act VII of 1870.

On appeal to the High Court,

Held, that the suit fell under s. 7, cl. 4, sub-cls. (c) and (d) of the Court Fees Act, and the plaintiff had a right to put his own valuation on the relief sought.

Held, also, that the order rejecting the plaint as insufficiently stamped was appealable.

[F., 111 P.R. 1913=23 P.L.R. 1914=228 P.W.R. 1913; Appr., 32 C. 734 (739)=9 C. W.N. 690; R., 19 B. 198 (201); 23 B. 486 (490); 34 B. 267=12 Bom. L.R. 149 (154)=5 Ind. Cas. 867; 6 C.L.J. 427=11 C.W.N. 705 (707 and 709); 16 C.L.J. 371=17 C.W.N. 503 (505)=16 Ind. Cas. 575 (576); 13 Ind. Cas. 408=93 P.L.R. 1912=52 P.W.R. 1912; 19 Ind. Cas. 859=93 P.R. 1913=232 P.L.R. 1913=134 P.W.R. 1913; 63 P.R. 1902.]

APPEAL from the decision of E. H. Moscardi, Acting Assistant Judge of Surat at Broach, in suit No. 1 of 1887.

This was a suit originally brought for a mere declaration that the plaintiff was the sole heir and successor of his father to the Sarod *wanta* estate. The plaintiff alleged that the defendant No. 1 was a spurious child set up by his step-mother to defeat the plaintiff's right of inheritance; that the estate was in the management of the Talukdari Settlement Officer, defendant No. 2, under Bombay Act XXI of 1881; and that out of the revenues collected by that officer, the defendant No. 1 was illegally paid Rs. 200 per mensem on account of his maintenance.

The plaint was filed on a ten-rupee stamp.

The suit was dismissed by the Court of first instance under s. 42 of the Specific Relief Act (I of 1877).

On appeal, the High Court also held that the suit for a mere declaration of title would not lie, but allowed the plaintiff to amend the plaint by adding a prayer for consequential relief, and remanded the case to the lower Court, to enable the plaintiff to make the necessary amendment(1).

On remand, the plaintiff amended the plaint by inserting an additional prayer for an injunction, restraining the defendant No. 2 from paying,

* Appeal No. 134 of 1890.

(1) See 14 B. 395.

and defendant No. 1 from receiving, Rs. 200 a month out of the income of the property in dispute.

[58] The plaintiff valued the claim for injunction at Rs. 130, and paid a Court-fee of Rs. 10.

Thereupon the Court raised the following issue:—

"Is the amended plaint properly stamped?"

The Court held that the plaint was not properly valued, and that it should have been valued at Rs. 24,000.

The reasons for this finding were stated as follows:—

"The object of the amended suit is to put a stop to the allowance paid by defendant No. 2, the Talukdari Settlement Officer, to defendant No. 1, whose estate he is administering under the Talukdari Settlement Act, on the ground that the plaintiff, and not defendant No. 1, is the rightful heir to the estate. In other words, plaintiff claims the money which defendant No. 2 pays defendant No. 1 as allowance, on the ground that he, and not defendant No. 1, is rightfully entitled to it. I am, therefore, of opinion that plaintiff's claim should be valued in accordance with Act VII of 1870, s. 7, cl. 2, at ten times the amount of the yearly allowance paid by defendant No. 2 to defendant No. 1. This allowance being Rs. 200 per month, or Rs. 2,400 per year, I think the proper valuation of the relief sought is Rs. 24,000."

For these reasons the Court directed the plaintiff to correct the valuation of his plaint to Rs. 24,000 within a period of two months.

The plaintiff refused to pay any additional Court-fee, and the plaint was rejected.

Against this order of rejection the plaintiff appealed to the High Court.

Ganpat Sadashiv Rao, for appellant.—This is a suit for a declaratory decree and an injunction. In such a case the plaintiff is at liberty to put his own valuation on the reliefs sought. The case falls under s. 7, cl. 4, sub-cls. (*c*) and (*d*) of the Court Fees Act VII of 1870. This is not a suit for an annuity or other periodical payment. The plaintiff does not claim any sum of money in this suit. Clause 2 of s. 7, therefore, [59] does not apply. Refers to *Raghunath Ganesh* v. *Gangadhar Bhikaji* (1).

Rao Saheb *Vasudev Jagannath Kirtikar*, for respondents.—The claim for the injunction sought is not properly valued. The valuation should be the same as if the suit was for actual money, and the amount can be calculated under cl. 2 of s. 7 of the Court Fees Act. This is not an ordinary case of an injunction where the relief sought is not capable of valuation even approximately. Refers to *Omrao Mirza* v. *Jones* (2).

JUDGMENT.

JARDINE, J.—This case, which has been before the High Court at an earlier stage (3), is one in which the Court has jurisdiction to hear an appeal from an order rejecting the plaint on a question of valuation. See the Full Bench decision in *Vithal Krishna* v. *Balkrishna Janardan* (4).

The plaintiff sues for a declaration of right and for an injunction to prevent the first defendant from receiving from the second defendant, the Talukdari Settlement Officer, the amount of an annual allowance. Such a suit comes, in our opinion, within the words of s. 7, cl. 4, sub-cls. (*c*) and (*d*) of the Court Fees Act VII of 1870, and the amount of fee payable is to be computed under that section "according to the amount at which the

(1) 10 B. 50. (2) 10 C. 599. (3) See 14 B. 395. (4) 10 B. 610.

1892
APRIL 11.
APPELLATE CIVIL.
17 B. 56.

relief sought is valued in the plaint," and this amount the plaintiff is required to state. It may be that the result of the suit, if successful, will eventually be tantamount to the relief which might be awarded in a suit of the kind described in cl. 2, which states the mode of computing the fee " in suits for maintenance and annuities or other sums payable periodically ;"and the Assistant Judge has rejected the plaint on the ground that the valuation should be computed according to this clause. A fiscal Act ought, however, to be interpreted precisely ; and no authority has been shown us for holding that cl. 2 applies. The case of *Boidya Nath Adya* v. *Makhan Lal Adya* (1) to which we referred at the hearing, deals with the valuation of a partition suit and is not in point. The decisions in [60] *Ostoche* v. *Hari Das* (2) and *Jogal Kishor* v. *Tale Singh* (3) are upon the section and clause which we have to interpret. In them it was held that the valuation of the relief sought rests with the plaintiff and not with the Court. The reasons which appear to account for the Legislature leaving it to the plaintiff to name the valuation of suits of the nature described in cl. 4, s. 7 are given by Westropp, C.J., in *Manohar Ganesh* v. *Bawa Ramcharandas* (4). Being of opinion that the Assistant Judge was bound to treat the suit as coming under cl. 4, sub-cls. (*c*) and (*d*), we reverse his order and remand the case for trial on the merits. Costs to be dealt with when the new decree is passed, except the costs of this appeal, which we order the defendant No. 2 to pay.

TELANG, J.—I concur. The plaintiff in this case prays, in terms only, for a declaration and an injunction ; and the case, therefore, *prima facie*, must be dealt with under s. 7, cl. 4, sub-cls. (*c*) and (*d*) of the Court Fees Act. The Judge in the Court below, however, applied s. 7, cl. 2, to the case, because, as he says, " the plaintiff claims the money which the defendant No. 2 pays to defendant No. 1 as allowance, on the ground that he, and not defendant No. 1, is rightfully entitled to it." But this view is plainly not correct, for the plaintiff does not in fact " claim the money " in the ordinary meaning of that expression, and cannot possibly get a decree for it in this suit. Indeed, in the judgment of Jardine, J., in this case on the previous remand, it was expressly decided (Candy, J., apparently not dissenting from that view) that " the plaintiff cannot sue for the possession of the estate, as it is under management in pursuance of an order under the special Statute." And *Ganpatgir* v. *Ganpatgir* (5) and *Chokalingapeshana* v. *Achiyar* (6) were on that ground distinguished. If, then, possession cannot be claimed of the whole estate, or of the portion of it referred to by the Court below, it cannot be fair, even apart from the actual language of the Court Fees Act, to levy a Court fee from the plaintiff as if the suit was for possession. Yet this [61] is the result of the order of the Court below. Mr. Vasudev sought to support that order on the ground that this is not like an ordinary case for an injunction, where the relief sought cannot be valued. But I do not think that the words of the Act warrant any such distinction as Mr. Vasudev seeks to draw. And, in any event, I cannot perceive why, in construing a fiscal enactment, we are to take a distinction, by which, without clear authority in the language used by the Legislature, a suit in which a plaintiff does not pray for money or property to be paid or delivered to him is to be treated on exactly the same footing as a suit in which he does pray for such relief.

(1) 17 C. 680. (2) 2 A. 869. (3) 4 A. 320.
(4) 2 B. 219 (226, 227). (5) 3 B. 230. (6) 1 M. 40.

1892
APRIL 11.

APPELLATE CIVIL.

17 B. 56.

If, then, cl. 4, sub-cls. (*c*) and (*d*), apply to the case, the question arises whether the words "the amount at which the relief sought is valued in the plaint" allow the plaintiff to put forward an arbitrary valuation. *Prima facie*, they certainly do seem to leave such a liberty to a plaintiff, and some reasonable grounds for such liberty being allowed are suggested by Westropp, C. J., in *Manohar Ganesh* v. *Bawa Ramcharandas*(1). But, without going into the general question on the present occasion, I think the case before us is one in which the valuation did not form part of the functions of the Court, but could be made by the plaintiff as he pleased. And the Judge's order, therefore, to amend the valuation, and his subsequent dismissal of the suit for refusal to amend, were both erroneous. The decree of the Court below must, therefore, be reversed and the suit remanded for trial on the merits. The defendant ought, I think, to pay the appellant his costs of his appeal. All other costs to be dealt with by the Court below in making its decree on the new trial.

Order reversed.

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17 B. 62.

[62] ORIGINAL CIVIL.

Before Mr. Justice Farran.

LILLADHAR JAIRAM NARRANJI AND OTHERS (*Plaintiffs*) *v.* GEORGE WREFORD AND OTHERS (*Defendants*).*

[15th September and 3rd October, 1892.]

Sale of goods—Appropriation to vendee—Passing of property to vendee—Bankruptcy of agents for purchase—Unpaid vendor—Stoppage in transit—Termination of transit—Goods landed in Dock and held by Dock authorities—Bombay Act, VI of 1879, *ss.* 43 *and* 62*—Port Trustees of Bombay—Bye-laws of Port Trust, Rule* 59.

In August 1890, the plaintiffs, through Benn, Ashleyand Co., of Bombay, ordered from Bevis, Russell and Co., in London, 100 bales of grey shirtings at 7*s.* 10*d.* per piece f. o. b., November-December shipment. In order to carry out this order, Bevis, Russell and Co. purchased goods of the required description from Messrs. Dewhurst and Co. of Manchester. The heading of the invoice of the goods supplied by Dewhurst and Co. contained these words: "Proceeds to be remitted to Messrs. Bevis, Russell and Co., London, specifically for the protection of their acceptances of Geo. and R. Dewhurst's draft against this or any of these shipments," and the letter addressed by Dewhurst and Co., to Bevis, Russell and Co., forwarding draft, contained the following clause:—"It is understood that the proceeds of the goods are to be remitted to be held by you specifically for the protection of the enclosed bill, or any other of your acceptances of our drafts against such shipments, which please confirm." To this letter Bevis, Russell and Co. replied: "We confirm the arrangements between us as to the disposal of remittances and against the shipments." The bales were duly marked with the plaintiffs' mark by direction of Bevis, Russell and Co. and were to be delivered f. o. b. at Liverpool. Dewhurst and Co. accordingly despatched the 100 bales to Liverpool, and there Bevis, Russell and Co. had them shipped in eight different vessels, *viz.*, 13 bales in each of the four steamers "Nubia," "Clan Drummond," "Inchulva" and "Roumania," and 12 bales in each of the ships "Hispania," "Eden Hall," "City of Edinburgh" and "Wistow Hall." The 100 bales were consigned to Bombay by Bevis, Russell and Co., in their own name, the bills of lading being made out to their order or to his or their assigns." Bevis, Russell and Co. paid the freight at Liverpool and effected insurance on the plaintiffs' behalf. All the shipments were made before the 1st December,

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* Suit No. 679 of 1890.

(1) 2 B. 219.