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fees. The plaintiff has valued his claim under the Court Fees Act (VII of 1870) at less than Rs. 5,000. The same valuation should, therefore, be taken for purposes of jurisdiction. The appeal, therefore, lies to the District Court.

Gokuldas K. Parekh.—The provisions of s. 8 of Act VII of 1887 apply to suits only. It would be straining the language of the section to extend its provisions to appeals. The section is, therefore, applicable to Courts of first instance, and not to appellate Courts. In this case the plaint expressly states that the property in dispute is worth about Rs. 14,000. This should [209] be taken to be the valuation for purposes of jurisdiction. The appeal, therefore, lies to this Court.

The following judgment was delivered by the Court (CANDY and FULTON, JJ.):—

JUDGMENT.

PER CURIAM:—A preliminary objection has been taken that the appeal in this case lies to the District Court and not to the High Court. Mr. Gokuldas seeks to avoid the provisions of s. 8 of Act VII of 1887 by contending that it applies to Courts of first instance and not to appellate Courts. But we are unable to allow the contention. This is a suit decided by the Subordinate Judge, First Class, of which the value of the subject-matter was for the computation of Court fees less than Rs. 5,000 and s. 8 of Act VII of 1887 provides that in such a suit the value as determinable for the computation of Court fees and the value for the purposes of jurisdiction shall be the same. But it is only in suits in which the value of the subject-matter (which must be determined according to the provisions of (s. 8 of Act VII of 1887), exceeds Rs. 5,000 that the appeal lies to the High Court (s. 26 of Act XIV of 1869). In all other cases the appeal from an original decree of a Subordinate Judge lies to the District Court. We must, therefore, return the memorandum of appeal to be presented in the District Court. All costs in this Court on appellant.

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APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

BALVANT GANESH AND OTHERS (*Original Defendants*), *Appellants v.* NANA CHINTAMON AND OTHERS (*Original Plaintiffs*), *Respondents.**

[6th March, 1893.]

Stamp—Court-fees—Valuation of suit—Suit for partition.

The stamp on a suit for partition and possession of the plaintiff's share of joint family property must be an *ad valorem* one on the value of the share.

[F., 28 A. 340 (342)=3 A L.J. 181=26 A.W.N. 38; 16 Ind. Cas. 771=6 S.L.R. 72; 8 Ind. Cas. 512=21 M L.J. 21=9 M.L.T. 3; 4 L.B.R. 279 (281); Appl., 22 B. 315 (316); R., 6 C.L J. 651=12 C.W.N. 37 (41); 15 C.P.L.R. 120 (122); Cons., 28 P.R. 1903=65 P.L.R. 1903.]

THIS was an appeal from the decree of Rao Bahadur Chunilal Maneklal, First Class Subordinate Judge of Poona, in suit No. 104 of 1891.

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[210] The plaintiffs sued for a partition of joint family property by metes and bounds, and for an injunction restraining the defendants from obstructing the plaintiffs in receiving their share of certain cash allowances directly from the Revenue authorities.

The market value of plaintiffs' share of the property in dispute was more than Rs. 5,000.

The plaintiffs valued the reliefs sought at Rs. 140 for purposes of Court-fees.

The defendants pleaded (*inter alia*) that the suit was under-valued.

This contention was not pressed by the defendants' pleader, and the Court passed a decree on the merits in plaintiffs' favour.

Against this decree the defendants appealed to the High Court.

Mahadev Chimnaji Apte and *Daji Abaji Khare*, for appellants.

Phirozsha M. Mehta (with *Purshotam Parashram Khare*), for respondents.

JUDGMENT.

CANDY, J.—As regards the immoveable property (lands, houses, sites, &c.), the subject-matter of the present appeal, the suit was brought for demarcation by metes and bounds, according to the shares received by the plaintiff co-sharers in the profits of the said property. An objection has been taken, in appeal, that the claim was simply for a declaration of the plaintiffs' right to the share claimed, and that, therefore, the lower Court was not justified in making a division of the property. The language of the prayer of the plaint is somewhat ambiguous, the words used being "*taraun dyava.*" But the parties and the Subordinate Judge evidently considered this to be a prayer for actual division. Defendants Nos. 2 to 4 took an objection in their written statement that the claim had not been duly valued and the plaint not duly stamped; but the Subordinate Judge remarked in his judgment that "the question as to the under-valuation of the claim has not been urged by the pleader for the defendants." The reason why the Subordinate Judge did not of his own motion correct the valuation (which was Rs. 130, the supposed value on which a stamp of Rs. 10 was paid, to which was added Rs. 10 for the injunction prayed for), is to be found in *Mahadeva Balwant* v. [211] *Laxuman Balwant* (1). It appears to have been the practice in the First Class Subordinate Judge's Court at Poona to value such suits as the present one at Rs. 130. But the ruling of the Chief Justice in the above quoted case shows that "as the suit asks for partition and possession of the plaintiffs' share, the stamp must be an *ad valorem* one on the value of the share." The stamp on the present appeal has been levied in accordance with that ruling, and counsel for the respondent-plaintiffs admits that his clients must, if so ordered, pay the stamp which was leviable on their plaint according to the same principle. Even had the plaintiffs in the present case simply sued to establish their title to the share which they claim in the property, they would still have had to pay an *ad valorem* stamp fee upon the value of that share. (See the dictum of Garth, C. J., in *Kirty Churn Mitter* v. *Aunath Nath Deb* (2), which has been approved of by the Chief Justice in this Court). As they claimed partition and possession of a definite share in certain lands, houses, &c., which they could not say it was impossible to estimate at a money value, there can be no doubt that the valuation of the plaint as allowed by the Subordinate Judge was to the detriment of the revenue.

(1) P. J. (1892) 13. (2) 8 C. 757 (758).

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Passing to the merits, it must be noticed, that the representative of the Sirdar Ramchandra Lakshman, who was alive when the suit was filed, and who could be sued in the Agent's Court only, has now been placed on the record. We are of opinion, therefore, that the question of non-joinder of parties need not now be considered. With reference to the property in the Ratnagiri District, it is not contended that the plaintiffs are in possession of the same. There is no equity, therefore, which compels them to include it in their present claim. They exclude it at their own risk, and we offer no opinion as to whether they can, in a subsequent suit, claim actual partition of those lands. The other points urged by appellants' pleader need no remark. The property, the subject-matter of the present appeal, is shown to be liable to actual partition. The fact that some of it was *saranjam*, which has recently been resumed by Government, that is, made *khalsa*, would not render it less so. Cash allowances cannot, of course, be demarcated. The pleader for appellants admitted [212] that he could not satisfy the Court that his clients had not divided the profits of all the properties in the plaint among the co-sharers, including the plaintiffs. We must, therefore, with reference to the above remarks regarding the Court fee, direct that if the plaintiffs do within one month pay the Court fee due on Rs. 5,406-6-10½ in place of the Court fee paid by them on Rs. 130 on their plaint, the decree of the lower Court shall stand confirmed with costs on appellants; in default of such payment the decree of the lower Court will be reversed with all costs on plaintiffs.

Decree confirmed.

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CRIMINAL REFERENCE.

Before Mr. Justice Candy and Mr. Justice Fulton.

QUEEN-EMPRESS *v.* SITA.* [9th March, 1893.]

Indian Penal Code (Act XLV of 1860), s. 403—Criminal misappropriation of moveable property—Property found on an open plain.

The accused, finding a gold *mohur* on an open plain, sold it the next day to a shroff for the full value, and appropriated the sale-proceeds.

Held that, in the absence of any information as to the circumstances under which the coin was lost, and as it was not improbable that the property in the coin had been abandoned by the original owner, the accused could not be convicted of criminal misappropriation under s. 403 of the Indian Penal Code.

[D., 8 Cr. L. J. 249=11 P. R. 1908 (Cr.)=27 P.W.R. 1908 (Cr).]

THIS was a reference by the District Magistrate of Ahmednagar under s. 438 of the Code of Criminal Procedure (Act X of 1882).

The reference was in the following terms:—

"The accused has been convicted under s. 403, Indian Penal Code, of the dishonest misappropriation of a gold *mohur* coin which according to her statement (and it is not disproved) she had picked up in an open plain in a village near Ahmednagar and which she forthwith sold to a shroff for Rs. 22-12-0.

"The accused has been sentenced by Rao Bahadur M. C. Joshi, First Class Magistrate, to pay a fine of Rs. 30, or, in default, to suffer simple imprisonment for one month."

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* Criminal Reference No. 24 of 1893.