

think the Legislature would have found no difficulty in expressing it. The words "wholly or in part" used in the 1st paragraph of the section would in such case probably have been inserted in the proviso to the explanation after the words "is transferred". An enactment imposing a burden requires a strict construction in favour of the subject. But this is an exemption and must therefore be strictly construed in favour of the State. This answers both references.

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IN RE
NIRABAI.

APPELLATE CIVIL.

*Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Batchelor.*

PARVATIBAI KOM MAHADEV (ORIGINAL PLAINTIFF), APPELLANT, v.
VISHVANATH GANESH (ORIGINAL DEFENDANT), RESPONDENT.*

1904.

November 23.

Court-Fees Act (VII of 1870), section 7, paragraph 4, clause (c)—Specific Relief Act (I of 1877), section 39—Suit for declaration—Cancellation of document—Consequential relief—Valuation.

The plaintiff having sued for the cancellation of a sale-deed framed the prayer in the plaint so as to seek a declaration that the sale-deed was fraudulent and for an order to have it cancelled and a copy sent to the Sub-Registrar as provided by section 39 of the Specific Relief Act (I of 1877).

Held that the suit was one for a declaration with a distinct prayer for consequential relief.

Karam Khan v. Dargai Singh⁽¹⁾ dissented from.

The plaint was stamped with a Court-fee stamp of Rs. 10 only.

Held that the case was one falling under section 7, paragraph 4, clause (c) of the Court Fees Act (VII of 1870), and must be valued accordingly.

SECOND APPEAL from the decision of J. J. Heaton, District Judge of Násik, reversing the decree of C. D. Kavishvar, First Class Subordinate Judge.

The plaintiff sued for the cancellation of a sale-deed of certain lands, the consideration stated being Rs. 7,058. She prayed (a) that it might be declared to have been obtained from her by the defendant by means of fraud and misrepresentation, (b) that

* Second Appeal 315 of 1904.

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it might be cancelled, and (c) that a copy of the decree might be sent to the Sub-Registrar of Násik.

The defendant answered *inter alia* that he had not obtained the sale-deed by practising fraud on the plaintiff and that the Court-fee stamp of ten rupees on the plaint was inadequate.

The Subordinate Judge held that the plaint was sufficiently stamped for the following reasons :—

This claim is made for declaration that the sale-deed mentioned in the plaint was obtained fraudulently and wrongfully by the defendant from the plaintiff and for a decree cancelling it on account of fraud. The plaint is written on a ten rupees' Court-fee stamp, and it is contended that the Court-fee paid is inadequate. It is not shown how it is inadequate. The Court-fee required under the Court Fees Act, Schedule II, Article 17 (iii) or (vi), is Rs. 10. The clause (iii) applies because the suit is for a declaratory decree without praying for consequential relief and if that is not applicable, the clause (vi) applies.

On the merits he found that the sale-deed was obtained by fraud and misrepresentation and passed a decree in the following terms :—

For these reasons I pass decree for the plaintiff declaring that the sale-deed obtained by the defendant in question is fraudulent and void and ordering that it is cancelled and a copy of the decree hereby passed be sent to the Sub-Registrar at Násik as prayed for. It is ordered that the defendant shall pay the plaintiff's costs and bear his own.

The defendant having appealed to the District Court the plaintiff contended that the appeal did not lie to that Court but to the High Court, as the subject-matter exceeded Rs. 5,000. The Judge, however, entertained the appeal and gave his reasons as follows :—

After hearing the arguments on both sides, I have arrived at the conclusion that the suit is one "to obtain a declaratory decree or order where consequential relief is prayed" and so falls precisely under the provisions of clause (c) of the fourth part of section 7 of the Court Fees Act. The suit was to have it declared that a certain sale-deed obtained by the defendant from the plaintiff "has been obtained fraudulently and wrongfully and to have it cancelled and to have a copy of the decree sent to the Sub-Registrar of Násik." The decree declared that the deed is fraudulent and void, ordered its cancellation and that a copy should be sent to the Sub-Registrar at Násik. Clearly then the plaintiff asked for and the decree granted more than a mere declaration; it asked for actual cancellation of the deed, which is an entirely different thing from a mere

declaration; and it also asked that a copy should be sent to the Sub-Registrar. So two things over and above a declaration were asked for. These two things appear to me to be consequential relief and nothing else. They are certainly relief; they secure to the plaintiff more and put her in a better position than would be done by a declaration alone. They are reliefs consequent on the declaration. So directly consequent indeed that it is provided by the Specific Relief Act (section 39) that having made the declaration, the Court may order cancellation and shall send a copy of the decree to the officer in whose office the instrument has been registered.

It is true that the Allahabad High Court seem to have decided that by reason of the passing of the Specific Relief Act, the cancellation of an instrument (which previously had been considered as relief consequent on the declaration that it was void) ceased to be such relief (*Karam Khan v. Daryai Singh*, I. L. R. 5 All. 331). But the Madras High Court have differed from this conclusion and have held that cancellation is consequential relief (*Samiya Mavali v. Minammal*, I. L. R. 23 Mad. 490). I can find no Bombay case exactly in point but in *Raghunath v. Gangadhar* (I. L. R. 10 Bom. 60) and *Sardarsingji v. Ganpatsingji* (I. L. R. 17 Bom. 56) it has been held that an injunction is relief consequent on a declaration. If an injunction be such relief then certainly cancellation should be treated as such relief also.

Hence the suit is one which for fiscal purposes falls under section 7, clause 4 (c), of the Court-Fees Act, and is liable to an *ad valorem* fee, "according to the amount at which the relief sought is valued in the plaint." Consequently by the provisions of section 8 of the Suits Valuation Act (Act VII of 1887) "the value as determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same."

In this particular case the plaintiff did not state the value of the relief sought, but she had the plaint written on a stamped paper of the value of ten rupees. Therefore it is to be assumed that she valued the relief sought at such amount as would require a fee of ten rupees. This amount is between 130 and 140 rupees.

Clearly, therefore, the suit came within the ordinary jurisdiction of the Sub-ordinate Judge and the appeal lies to this Court and not to the High Court.

The appeal must, therefore, be admitted and set down for hearing by this Court.

On the merits the Judge found that it was proved that the sale-deed was not induced by fraud or misrepresentation and that it was not proved that it was induced by undue influence. He, therefore, reversed the decree and dismissed the suit.

The plaintiff preferred a second appeal.

M. B. Chaubal for the appellant (plaintiff).

D. A. Khare for the respondent (defendant).

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JENKINS, C. J.:—The plaintiff has brought this suit for the cancellation of a sale-deed, and she has framed the prayer to her plaint so as to seek a declaration that the sale-deed was fraudulent, and for an order to have it cancelled, and a copy sent to the Sub-Registrar at Násik as provided by section 39 of the Specific Relief Act.

The first Court decided in the plaintiff's favour.

The defendant thereupon appealed to the District Judge.

The plaintiff at the outset took the objection that the appeal did not lie to the District Judge, but Mr. Heaton, after careful consideration, came to the conclusion that the appeal did lie to him.

The plaintiff now comes here and repeats the objection that the appeal did not lie to the District Court, but should have been preferred to the High Court, and that is the point which we now have to decide.

The first question is whether this is a suit to obtain a declaratory decree without a prayer for consequential relief, or whether consequential relief is prayed. On that point we are in complete agreement with the District Court. We think there can be no doubt that the suit is one in which there is a distinct prayer for consequential relief, and we come to that conclusion notwithstanding the ruling in *Karam Khan v. Dargai Singh*⁽¹⁾ of the Allahabad High Court to the contrary.

Then having come to that conclusion we next have to see what was the Court to which the appeal lay.

Section 26 of the Bombay Civil Courts Act provides that "in all suits decided by the Subordinate Judge of the First Class in the exercise of his ordinary and special original jurisdiction of which the amount or value of the subject-matter exceeds Rs. 5,000 the appeal from his decision should be directly to the High Court."

The plaintiff contends here, as she contended before the District Court, that in this case the subject-matter exceeds Rs. 5,000.

There can be no doubt that the real value of the subject-matter is correctly estimated by her, but the question is whether by the combined operation of section 8 of the Suits Valuation

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Act and section 7, paragraph 4, clause (c), of the Court Fees Act, the suit must be taken to be of a value less than Rs. 5,000.

Now the Suits Valuation Act provides in section 8 that "where in suits other than those referred to in the Court Fees Act, 1870, section 7, paragraphs 4, 6, and 9, and paragraph 10, clause (d), Court-fees are payable *ad valorem* under the Court Fees Act, 1870, the value as determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same."

Turning to the Court Fees Act, section 7, paragraph 4, clause (c), we find that in suits to obtain a declaratory decree or order where consequential relief is prayed, the amount of fees payable under the Act shall be computed according to the amount at which the relief sought is valued in the plaint, and in such suits the plaintiff shall state the amount at which he values the relief sought.

The stamp on this plaint was a Rs. 10 stamp, and that, in relation to the relief sought, would cover a suit where the value of the subject-matter was up to Rs. 130. The argument for the defendant, and the argument which found favour with the District Judge, is that inasmuch as the plaintiff has valued her claim at a sum not in excess of Rs. 130, then as a result of section 8 of the Suits Valuation Act, that figure must be taken to be the value of a suit for the purpose of jurisdiction; and there can be no doubt if that argument is sound, the plaintiff is wrong. But we have to see how it was that that Rs. 10 stamp was placed on the plaint.

A question was raised before the Subordinate Judge as to the sufficiency of the stamp, and his determination was that the Court-fee was not shown to be inadequate, inasmuch as it was in compliance with Article 17 in the 2nd Schedule of the Court Fees Act under which the stamp payable on a suit to obtain a declaratory decree, where no consequential relief is prayed, is Rs. 10; and the reason why the Judge so determined was because, in his view, the suit was one for a declaratory decree without praying for a consequential relief.

Now if we assume for the moment, contrary to our view, that the Judge was right in that, then the appeal would be to this Court.

But what is the consequence of the error in that decision? We have no reason to suppose that if the Judge had decided

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rightly and had determined that there was payable by way of Court-fee stamp not the Rs. 10 which is properly payable when no consequential relief is sought, but a stamp in respect of the consequential relief the plaintiff would not have paid the proper Court fee, and, for that purpose, have estimated that value at the figure indicated in her plaint which, as we understand, is in excess of Rs. 5,000.

The learned District Judge determined that the plaintiff must be taken to have stated the amount at which she valued *the relief* sought as being Rs. 130, *i. e.*, such an amount as would require a Court-fee stamp of Rs. 10, but it appears to us that in that he makes an assumption which is opposed to the facts, because it is manifest from the contention of the plaintiff herself, and from the decision in her favour by the Subordinate Judge, that she never valued any relief sought at all; her whole contention was that by the plaint she sought no relief, but merely a declaration. Therefore it is, in our opinion, wrong to decide this case by reference to the provisions of section 7, sub-section (4), of the Court Fees Act read with section 8 of the Suits Valuation Act.

It is not as though the present objection had been taken by the plaintiff after the District Court had decided adversely to her; it was taken by her at the outset. We, therefore, think that we are free to deal with this case untrammelled by the provisions of section 7 of the Court Fees Act and section 8 of the Suits Valuation Act, and according to the facts as they are.

There seems no doubt that the subject-matter of the suit may justly be valued at the figure stated by the plaintiff, and inasmuch as the District Judge has rightly held that the suit is one not merely for a declaration but also for a relief, and so falls within the provisions of section 7 of the Court Fees Act, the plaintiff must be permitted to correct the error into which she fell by reason of the decision of the First Court, and be allowed an opportunity of dealing with the suit as one falling under section 7, paragraph (4), clause (c), of the Court Fees Act; and for that purpose she must be given a reasonable time within which to state the amount at which she values the relief sought, and to pay the proper stamp both for the purposes of her plaint and of her memorandum of appeal to this Court.

The result, therefore, is that, subject to her paying those Court Fees within one month from this date, the decree of the District Judge will be reversed; otherwise it will be confirmed.

The defendant must get the costs of the appeal to the District Court, but the costs in this Court will abide the result.

In case the Court fee is not paid within the time indicated, the defendant must get the costs also of the appeal to this Court.

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APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batchelor.

RUDRAPPA BIN SANKAPPA (ORIGINAL PLAINTIFF), APPLICANT, v. NARSINGRAO RAMCHANDRA HEBLIKAR AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.*

1904.

December 6.

Specific Relief Act (I of 1877), section 9—Civil Procedure Code (Act XIV of 1882), section 622—Tenant holding over—Dispossession by landlord—Suit by tenant to recover possession—Extraordinary jurisdiction.

A tenant holding over after the expiry of the period of tenancy was dispossessed without his consent by the landlord. The tenant then brought a suit for possession against the landlord under section 9 of the Specific Relief Act (I of 1877). The Subordinate Judge dismissed the suit. The plaintiff (tenant) thereupon applied under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882).

Held, reversing the decree, that the plaintiff (tenant) was not liable to be evicted by the defendant (landlord) *proprio motu* and that he was entitled to a decree for possession.

PER BATCHELOR, J. :—“To read the words ‘due course of law’ in section 9 of the Specific Relief Act, as merely equivalent to the word ‘legally’ is, we think, to deprive them of a force and a significance which they carry on their very face. For a thing, which is perfectly legal, may still be by no means a thing done ‘in due course of law’; to enable this phrase to be predicated of it, it is essential, speaking generally, that the thing should have been submitted to the consideration and pronouncement of the law, and the ‘due course of law’ means, we take it, the regular normal process and effect of the law operating on a matter which has been laid before it for adjudication. That, in our opinion, is the primary and natural meaning of the phrase, though it may be applied in a derived or secondary sense to other proceedings held under the direct authority

* Application No. 103 of 1903 under extraordinary jurisdiction.