APPELLATE CIVIL.

Before Mr. Justice Holloway and Mr. Justice Kindersley.

CHOKALINGAPESHANA NAICKER (PLAINTIFF) *v.* ACHIYAR AND OTHERS (DEFENDANTS.)*

Declaratory suits—Act VII of 1870, s. 12.

1875. July 15.

The provision as to declaratory suits requires great care and circumspection in its application. A declaratory decree should not be made where the object of the plaintiff is to evade the stamp laws, or to eject under colour of a mere declaration of title.

The law allows a plaintiff in some cases to rectify a mistake as to stamp duty, but this privilege is subject to qualification, and does not exist where the relief to be granted is altogether distinct from that originally sought. In such a case the plaintiff should not be allowed to put an additional stamp on his plaint.

Where a plaintiff sued on a Stamp of Rs. 10 for a declaration of his title to land worth Rs. 19,000, in the possession of the defendant, it was held that the suit could not be maintained, and that the plaintiff was not entitled to put an additional Stamp on the plaint and convert his suit into one for possession.

THIS suit was brought by the Zemíndár of Attangaray against the 1st defendant, the Huckdar of Chokalingaswami Meenatchi Temple at Vilathikulam, the 2nd defendant, the karkoon of the Demarcation Office, and the Collector of the District, 3rd defendant. The plaintiff alleged that the land in dispute formed part of Chinakamenputty attached to his Zemíndárí; that the said land had been improperly demarcated by the 2nd defendant as belonging to the inam village of Kooralayenipetty; that the plaintiff complained to the 3rd defendant who confirmed the demarcation proceedings of the 2nd defendant on the 27th March 1872. The plaintiff brought this suit for a declaration of his title to the land in dispute and for cancellation of the proceedings of the 2nd defendant and of the confirmation of those proceedings by the 3rd defendant.

The 1st defendant pleaded that the suit was barred by Section 25, Act XXVIII of 1860 and by the provisions of Act XIV of 1859, and Section 2 of Act VIII of 1859. He denied that the disputed lands ever formed part of the plaintiff's Zamin and alleged that they belonged to the temple of Meenatchi Sundara-

* Regular Appeal No. 102 of 1875, against the decree of the Subordinate Judge of Tuticorin, dated the 15th July 1875.

swami at Viathikulam and had, therefore, been correctly demarcated as such.

The 2nd and 3rd defendants supported these contentions of the 1st defendant.

The 4th, 5th and 6th defendants claimed under the 1st defendant.

The Subordinate Judge gave the following judgment :—

"This suit was filed in 1872, when the Court Fees' Act VII of 1870 had come into operation. The plaint is engrossed on a stamp of Rupees 10, but the suit is not for the setting aside of a summary decision of a Revenue Court alone, or to obtain a declaratory decree alone (without a prayer for consequential relief). It is in fact a suit to obtain a declaratory decree with a prayer for consequential relief, which ought to be valued under Clause IV, Section 7 of the Act; and if it is insufficiently valued, the Court should get it corrected under Section 31 of the Code of Civil Procedure. Nor can the institution fee be fixed as Rupees 20; Rupees 10, being the fee for obtaining declaration, and another Rupees 10, for cancelling the revenue order. The fee of Rupees 10 can be levied only where the suit is for declaration alone, or where it is to cancel a revenue decision alone. But where the suit is not only for declaration, but for something else as in this case, the subject-matter should, I think, be valued. A perusal of the plaint leads me to think that this is a suit, whose object is a declaration of plaintiff's right to the plaint lands in order that the alleged incorrect demarcation may be set aside and a correct demarcation made. Thus this is a suit for a declaration with a prayer for consequential relief just like a suit where declaration is asked for and also a perpetual injunction, which latter has been held as consequential relief. Plaintiff clearly seeks the declaration for the purpose of getting rid of an incorrect demarcation, and not the cancellation of the demarcation for the establishment of his title. The land in respect of which the demarcation is sought to be corrected, is stated to be valued at Rupees 19,660-2-6.—*Vide* the slip attached to the plaint. It is the market value, and the plaintiff is clearly bound to pay the fee on the said market value.

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"In the first place, the boundaries of the land sued for are not given. The Vakíl and the agent for the plaintiff say they are unable to specify the boundaries. No map is put in with the plaint to shew the exact situation of the disputed land with reference to the plaintiff's and defendants' villages, so that it can be easily ascertained to which of the villages the disputed land belongs. The plaint contains nothing else but the extent of land. It is not known whether all the lands are lying close to each other, or in different places. Hence it is my belief that the situation of the land, litigated in this suit, has not sufficiently been described by the setting forth of boundaries, or in such other manner as may suffice for its identification, as required by Clause 5, Section 26 of the Code of Civil Procedure, and that the plaint is therefore liable to be rejected under Section 29 of the said Code. It is now too late to get the plaint amended as the issues are already recorded; nor does the plaintiff seem willing to amend the plaint.

"The plaintiff in his plaint distinctly stated that he was in possession of the whole of the disputed land, but his Vakíl has given a deposition on the 5th instant, which shews that the plaintiff is not in possession of any of the disputed land. He admits that the disputed land consists partly of cultivated and partly uncultivated waste lands; that the 1st defendant has been enjoying the cultivated land through his tenants *since the last* 10 *years*; that the plaintiff is not in possession of any disputed land beyond one and odd chains of land; and that the waste land is in the possession of none, the cattle of plaintiff's ryots having been grazing thereon. While the plaintiff was thus out of possession, I cannot see what prevented him from bringing a regular suit for recovering possession of the property describing its situation as accurately as possible. It has been repeatedly ruled that it is discretionary with Courts whether they will give a declaratory decree or not. I do not think this to be a proper case for declaration, and feel it my duty to dismiss this suit, so that the plaintiff may bring a separate suit on a proper stamp for *recovering possession* of the land which should be properly described by the setting forth of its boundaries. The future suit could not be barred, inasmuch as its object would be to recover lands usurped, but

not the setting aside of a demarcation on the ground of the plaintiff being in possession.

"I accordingly dismiss this suit with all costs."

Against this decision the plaintiff appealed to the High Court on the following grounds :—

"1. The Lower Court was wrong in dismissing the suit because the plaint was only on a stamp of Rupees ten.

"2. The object of the suit is to have the Collector's order cancelled, and the plaintiff was right in seeking for a declaration that the proceedings of the demarcation office were not binding upon him.

"3. If this is not properly a declaratory suit, it is at all events a suit for which no provision is made in the Court Fees' Act, and the plaint was rightly written on a stamp of Rupees ten (*vide* Act VII of 1870, Schedule II, Article 17, Clause 1 or 6.)

"4. If necessary, the Court ought to have allowed time to plaintiff to amend the plaint.

"5. The fifth issue is involved in the first, and the Court ought to have tried both issues together."

The *Advocate General* for the appellant contended that all that was sought by the plaintiff was a declaration that the land wrongly demarcated by the 2nd defendant as belonging to the temple of Mínatchi Sundaraswámi at Villaticolum really belonged to him and formed part of Chinakamenputhy attached to his Zamíndárí. The prayer for the cancellation of the 2nd defendant's proceedings and the confirmation thereof by the 3rd defendant did not prevent the suit from being one for declaration of title. Such declaration would have the effect of cancelling the proceedings complained of. Act XXVIII of 1860, s. 25 provides that an appeal shall lie to the Civil Court from the decision of the settlement officer by regular suit, provided that it is filed within two calendar months from the passing of the same. It could not have been intended that the party appealing should be put to the cost of a suit for the land, but merely for a declaration that the boundaries had been erroneously demarcated.

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[HOLLOWAY, J.—If this suit had been merely brought to correct an error in demarcation, I think the Court would be with you; but here the suit is really levelled at the defendants who claim the land in dispute. It is an attempt to get a declaration of title as against them rather than a *bonâ fide* suit to correct the mistakes of the demarcation officers.]

If that be the opinion of the Court, then I submit that we are entitled to proceed with the suit treating it as one in ejectment upon paying the necessary stamp-duty. Act VII of 1870, s. 12.

HOLLOWAY, J. considered that the case had been properly disposed of. If the plaintiff had merely complained of errors of demarcation, his prayer for a declaration of title to land alleged to have been erroneously omitted from his land by the demarcation officers would have been quite correct in form. Here, however, the Zemindar sues for a declaration of title to land worth Rupees 19,000, which, when we look into the case we find to be, not in his possession, but in the possession of his adversary where it has remained undisturbed for some time. I have always felt that this provision as to declaratory suits is most dangerous, and requires great care and circumspection in its application. "Declaratory suits" are too frequently brought with the following improper objects, viz.,—either to defeat the stamp-laws, or to throw every difficulty in the adversary's way, by preventing his raising questions which would be fairly open to him in an ejectment suit, but which are irrelevant allegations in a suit simply for a declaration of title. In this case I am satisfied that the Zemíndár wanted to get possession of these lands by way of declaration and thereby deprive his adversary of the benefit of pleadings open to him in an ejectment suit which is the proper form in which the plaintiff's claim ought to be brought forward. The Advocate General says that we are bound by law to allow the plaintiff to put an additional stamp on his plaint, and go on with his suit treating it as one in ejectment. No doubt the law does allow a plaintiff who has paid an insufficient stamp-duty in some cases to rectify his mistake; but this privilege is subject to qualification. Suppose that a plaintiff, by some mistake or miscalculation, values his claim at a less sum than he ought, it would be excessively harsh to dismiss the suit without giving

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him the opportunity of putting in the additional stamps. There is not the same privilege, however, where the relief to be granted is altogether distinct from that originally sought. We ought not in such a case, to apply the section of the Act. The appeal must be dismissed with costs.

KINDERSLEY, J., concurred.

Appeal dismissed with costs.

APPELLATE CIVIL.

Before Sir W. Morgan, C. J. and Mr. Justice Innes.

SAYUD CHANDA MIAH SAHIB (SPECIAL APPELLANT) *v.* LAKSHMANA AIYANGAR (SPECIAL RESPONDENT).*

Madras Act VIII of 1865.

1876.
February 25.

Where the parties are bound to exchange written engagements in the shape of pattás and muchalkas, the landholder must, in order to maintain a suit under Sec. 9 of Madras Act VIII of 1865 to enforce acceptance of a pattá, show that he has tendered a pattá in writing. A mere indefinite demand or notice whether written or unwritten, is not sufficient to sustain such a suit.

THIS was a special appeal against the decision of Mr. H. W. Bliss, the Acting District Judge of Madura in Regular Appeal No. 436 of 1874, reversing the revised decision of the Deputy Collector of Madura in Summary Suit No. 40 of 1873.

The facts of the case sufficiently appear from the following judgment of the Acting District Judge.

"The suit was by a landlord to compel acceptance of pattá and grant of muchalka in exchange by three ryots, joint pattádárs.

"2. The Deputy Collector dismissed the suit on the ground that the pattá sought to be imposed had not been tendered in writing as required by Section 7 of Act VIII of 1865.

"3. The plaintiff appealed to this Court in Appeal Suit No. 62 of 1873, and Mr. Hutchins, the then District Judge, reversed the decree appealed against, and remanded the suit for disposal on the merits on the following grounds:—

"'Section 7 has no bearing on a suit of this description. It relates only to proceedings taken to enforce the terms of tenan-

* Special Appeal No. 665 of 1875, against the decree of the Acting District Judge of Madura, dated the 25th February 1876.