

[4 Mad. 204.]

APPELLATE CIVIL.

The 29th July and 26th September, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND  
MR. JUSTICE TARRANT.

Annamalai Chetti.....(Plaintiff), Petitioner

and

Lieutenant-Colonel J. G. Cloete, Deputy Superintendent of  
Revenue Survey.....(Defendant), Respondent.\*

*Court Fees Act, Section 12, Schedule II, Article 17 (1)—Madras Act XXVIII of 1860, Section 25—Award of Settlement Officer, suit to set aside, Nature of—Fee leviable—Appeal from decree dismissing suit for non-payment of Court fee not liable.*

Section 12 of the Court Fees Act, which makes the decision of a Court in which a plaint or memorandum of appeal is filed final on questions relating to valuation for the purpose of determining the amount of any fee chargeable, does not affect a question as to the class of suits in which a particular suit ranks.

A suit under (Madras) Act XXVIII of 1860, Section 25, to contest the award of a Settlement Officer, falls within the terms of Article 17 (1) of Schedule II of the Court Fees Act.

THIS was a suit brought under Section 25 of Act XXVIII of 1860 (Madras) to contest the award of a Settlement Officer. The property in dispute was valued at Rs. 2,000, and the plaint was stamped with a 10-rupee stamp.

The Munsif held that the plaint ought to have borne a stamp of 125 rupees.

On appeal—the memorandam of appeal also having been stamped with a 10-rupee stamp—the District Judge, agreeing with the Munsif, gave the plaintiff twenty days to put in the balance due for Court fees, and, on default dismissed the appeal with costs.

\* C. M. P. No. 325 of 1881 against the order of F. H. Wilkinson, Acting District Judge of Salem, confirming the decree of the District Munsif of Tirupatur, dated 3rd February 1881.

†[Sec. 25 :—Where the conflicting parties may not signify their agreement to refer the dispute to the final decision of the arbitrators, or where any of the parties interested or concerned shall after due notice fail to attend for the investigation of the same, the Settlement or other Officer aforesaid shall proceed to investigate the claims, and in the case of any party failing to attend as aforesaid, shall make

an *ex parte* investigation and after examination of the witnesses and documents shall record his decision, and the grounds for arriving at it, and after duly informing the parties of the same, he shall proceed to mark out the requisite boundary in accordance with the decision, which, subject to the revision of the authority to whom the said officer is immediately subordinate, shall be considered as the determination of all claims and disputes until set aside by a formal decree of a Civil Court. An appeal shall lie to the Civil Courts from this decision by regular suit, provided it be preferred within two calendar months from passing of the same.

Provided also that it shall be lawful for the Governor in Council, on just and reasonable cause for the same being shown, to extend the period for such appeal within such further period as may seem proper, and an order or endorsement under the signature of one of the Secretaries to Government shall be sufficient authority for the Civil Court to entertain such appeal beyond the limit above specified.]

[205] The plaintiff thereupon presented this petition to the High Court, under Section 622 of the Code of Civil Procedure, for the revision of the order of the District Court.

The petition was heard on 29th July.

Mr. *Michell* for Appellant.

The Acting Government Pleader (Mr. *Powell*) for Respondent.

Mr. *Powell*.—There is no appeal in this case by reason of Section 12 of the Court Fees Act. The District Judge has held that the plaintiff had to put in certain stamps.

(TURNER, C.J.—That is a very one-sided provision. The Government may appeal, but the party may not.)

Mr. *Michell*.—If the wording of Section 12 is regarded closely, the meaning will be found to be that no appeal lies in questions of valuation as to the amount of fee, but in a question as to what class or kind the suit comes under, an appeal lies.

If a Commissioner is appointed to value property the subject-matter of a suit and the amount is decided, there is no appeal.

The plaintiff is in possession and brings this suit to set aside the demarcation. It is like a suit for declaration of title where the plaintiff is afraid of future detriment to his title. The plaintiff is not seeking to gain anything he has not.

There is a ruling in Wigram's Rules of Practice p. 117, against me. In *Chokalingapeshana Naiker v. Achiyar* (I. L. R., 1 Mad., 40) the plaintiff was not in possession. It was considered a colorable way of getting property in order to save stamp duty.

The decision of the Lower Court is contrary to the principle on which the Stamp Law is based, *i.e.*, that the plaintiff should pay a fee according to the value of the relief sought. If any suit is a 10-rupee suit, this is one. The mistake of the Demarcation Officer cannot have the effect of putting the plaintiff out of possession. The only damage is demarcation. The title is not affected. I say the proper stamp is 10 rupees under Schedule II, Article 17 (1) or (3) or (4).

(TURNER, C.J.—He is a Revenue Court, is he not? He assists in the imposition of revenue. It is a suit to set aside a summary decision of a Revenue Court, in the words of the plaint "to cancel [206] the order passed by the Settlement Officer." To set aside the proceedings of another Court is consequential relief.)

Mr. *Powell*.—The basis of the suit is the Demarcation Officer's award. Government are in possession and not plaintiff. The suit is levelled at defendant. On page 44, I. L. R., 1 Madras Series, HOLLOWAY J., gives the reasons for rejecting a suit of this sort on a 10-rupee stamp.

(TURNER, C.J.—That a suit cannot be maintained because of its effect on the Stamp Law is not at all a sound decision.)

There are two Bombay cases on the point—*Narayan Madhav Rao Naik v. The Collector of Thana* (I. L. R., 2 Bom., 145) and *Manohar Ganesh v. Bawa Ramcharandas* (I. L. R., 2 Bom., 219)—in my favour as to the question of appeal.

The Judgment of the Court (TURNER, C.J., and TARRANT, J.) was reserved until 26th September and delivered by

**Turner, C.J.**—This suit was instituted under Act XXVIII of 1860, Section 25, to contest the decision of a Revenue Settlement Officer on a question of disputed boundary. The Court of First Instance and the Lower Appellate Court have held the suit must be regarded as a suit for the possession of the land of which the plaintiff will be deprived if the order of the Revenue Settlement Officer becomes final. It is contended, in an application presented under Section 622, Act X of 1877, that the suit falls within the terms of the Article 17 (1) of the 2nd schedule of the Court Fees Act, which prescribes a fee of 10 rupees as payable in suits to alter or set aside a summary decision of any Civil Court not established by Letters Patent or of a Revenue Court.

A preliminary objection is taken by the learned Counsel for the respondent that in view of the provisions of the 12th section of the Court Fees Act the Lower Appellate Court could not entertain an appeal from the decision of the Court of First Instance as to the sufficiency of the stamp on the plaint, and that this Court cannot interfere in revision to disturb the decisions of those Courts as to the sufficiency of the stamp on the plaint and on the memorandum of appeal.

The 12th section of the Court Fees Act, so far as it is material, runs as follows: "Every question relating to valuation for the purpose of determining the amount of any fee chargeable . . . on [207] a plaint or memorandum of appeal shall be determined by the Court in which such plaint or memorandum . . . is filed, and such decision shall be final."

In order to determine the Court fee payable on a plaint or memorandum of appeal, it is necessary to decide to which of the several classes, recognized by the Court Fees Act, the suit belongs. Where the fee prescribed for a particular class of suits is regulated by the value of the subject-matter of the suit, the further question arises, what is the valuation for the purpose of determining the amount of the fee?

The learned Counsel in support of his contention relied on the ruling of the High Court of Bombay in *Naragan Madhav Rao Naik v. The Collector of Thana* (I. L. R., 2 Bom., 146), but it is not apparent that the distinction we have noticed on the questions which may arise respecting the fee was suggested for the consideration of the learned Chief Justice and Judge of the High Court of Bombay.

On the other hand, the High Court of the North-West Provinces in *Chunia v. Ramdial* (I. L. R., 1 All., 360), adverting to the language of the section, held that it prohibited an appeal only on the question of valuation. This ruling is supported by the rulings of the High Court of Bengal in *Gunga Monee Choudrani v. Gopal Chunder Roy* (19 W. R., 214) and *The Collector of Sylhet v. Kalikumar Dutt* (7 B. L. R., 663.)

In our judgment the terms of the 12th section of the Court Fees Act ought not to receive a larger interpretation than they fairly admit of. They do not declare the decision of the Court in which the plaint or appeal is filed final on all questions which may arise respecting the Court fee, but on every question relating to *valuation* for the purpose of determining the amount of the fee.

This may be a mere arithmetical calculation; it may involve the decision of a simple question of fact. On the other hand, apart from the valuation necessary to determine the amount of the fee, questions of much nicety may arise

respecting the fee properly leviable on the suit : it is conceivable that the Legislature designedly prohibited appeal in the one case and permitted it in the other.

The suit in which the decision of the High Court of Bombay was pronounced was governed by the provision of the Procedure [208] Code, Act VIII of 1859, and their Lordships admitted that the construction they adopted of the 12 section of the Court Fees Act abrogated the right of appeal given by the 36th section of the Procedure Code where a plaint had been rejected for insufficiency of stamp.

The construction adopted by the High Courts of Bengal and the North-Western Provinces abrogated it only when the insufficiency of stamp arose from undervaluation.

The amended Code of Procedure, Act X of 1877, appears to have accepted the construction of the Court Fees Act adopted by the High Courts of Bengal and the North-Western Provinces.

No appeal lay from an order under Section 54 (a) rejecting a plaint, if the relief sought was undervalued, but an appeal was given by Section 588 (a) from an order under Section 54 (b) rejecting a plaint on the ground that, although the relief was properly valued, the plaint was insufficiently stamped.

By the Amendment Act no such distinction is drawn, but the order rejecting a plaint is included in the definition of decree, and is, therefore, general open to appeal. Of course the Procedure Code must be read with the Court Fees Act., and an appeal will not lie under the Procedure Code on a question on which an appeal is prohibited by the special law.

We hold, then, that an appeal lay in this case to the Lower Appellate Court, and that this Court is not prohibited by the provisions of the 12th section of the Court Fees Act from considering whether the decision of the Lower Appellate Court is erroneous in respect of the class in which this suit ranks.

We are unable to hold that the suit can be regarded as a suit for the possession of land. The plaintiff may assert that the decision of the Revenue Settlement Officer will, if it becomes final, deprive him of land to which he not only has title, but of which he has possession. Absence of possession is by no means a necessary incident of such a suit. To what class of suits then can such a suits be assigned? Act XXVIII of 1860 creates a special tribunal for the adjudication of questions of boundary. It empowers a Collector of land revenue, or person exercising the powers of a Collector, or a Revenue Settlement Officer, whenever he may be of opinion that a demarcation of boundaries is necessary to adjust disputes, to fix boundaries and set up boundary marks. It [209] empowers him to refer disputes respecting boundaries to arbitration if the parties to the dispute consent to that course; and, if they do not consent, it directs the officer to proceed to investigate the claims, and, after taking evidence, to record his decision and to mark out boundaries in accordance with his decision; it declares that, subject to revision by the authority to which the officer is immediately subordinate, the decision shall be considered a determination of all claims until it is set aside by regular suit; and, lastly, it provides that an appeal shall lie to the Civil Courts from the decision by regular suit, provided the suit be preferred within two calendar months from the passing of the decision. In our judgment a suit instituted under this provision fulfills all the conditions requisite to bring it within Article 17 (1) of the 2nd schedule of

the Court Fees Act. The decision of the officer exercising jurisdiction under Act XXVIII of 1860 is a decision of a Civil Court or a Revenue Court, and we apprehend it is a decision of a Revenue Court. It is a summary decision in that, strictly speaking, there is no appeal from it. It may be contested by regular suit. The suit so brought is brought to alter a summary decision of a Revenue Court, and, if the plaintiff secures the alteration he desires, he has no need of any other remedy.

We set aside the order of the Judge and direct him to hear the appeal. The appellant's costs of this appeal will be recovered from the respondent if he eventually succeeds in his suit, otherwise he will bear them himself.

#### NOTES.

[The distinction between the question of class to which the suit belongs and of the valuation of a suit in the class has been adopted in (1894) 4 M. L. J., 183; (1890) 14 Mad., 169; (1896) 19 All. 165; (1890) 12 All., 129. See, also, (1901) 28 Cal., 334; (1882) 12 C. L. R. 148.

For the distinction drawn by the Bombay High Court, see (1886) 10 Bom., 610; (1890) 15 Bom., 82; (1892) 17 Bom., 56; (1898) 23 Bom., 486.]

[4 Mad. 209.]

#### APPELLATE CIVIL.

*The 18th July and 27th September, 1880.*

PRESENT:

MR. JUSTICE KINDERSLEY AND MR. JUSTICE TARRANT.

M.R.R. M. Muthaya Chetti.....(Defendant), Appellant

and

John Harrison Allan.....(Plaintiff), Respondent.\*

*Jurisdiction Letters Patent, Section 12—Carrying on business by agent.*

Section 12 of the Letters Patent of the Madras High Court does not, in order to give jurisdiction, require a defendant personally to carry on business within the local limits of Madras.

[210] THIS was a suit instituted in the High Court upon a Charter party, made at Calcutta by an agent of the defendant, by which the plaintiff's ship "Copenhagen," then lying at Madras, was hired to sail at once to Akyab, take in a cargo of rice, and proceed to Negapatam or Jaffna.

Upon arrival at Akyab the defendant's agent neglected to load the ship, and the master was obliged to leave the port without any cargo.

The plaintiff claimed 11,000 rupees damages.

The defendant, *inter alia*, pleaded that the Court had no jurisdiction as he resided in Madura, but admitted that he had an agent in Madras for the purpose of his business.

The case was tried by the Chief Justice (Sir CHARLES TURNER) on 22nd November 1880.

The Advocate-General (Hon. P. O'Sullivan) and Mr. Wedderburn for the Plaintiff.

\* Appeal No. 1 of 1881 against the decree of the High Court on the Original Side, dated 22nd November 1880.