

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

BRAHMAYYA AND ANOTHER (PLAINTIFFS),

v.

EAKSHMINARASIMHAM AND ANOTHER (DEFENDANTS).*

*Court Fees Act—Act VII of 1870, s. 7—Decree for ejectment and mesne profits—
Court fee on memorandum of appeal.*

A memorandum of appeal from a decree directing ejectment and awarding mesne profits is chargeable with court fees calculated both on the land and on the mesne profits.

CASE stated under Civil Procedure Code, s. 617, by G. T. Mackenzie, District Judge of Kistna.

The case was stated as follows:

“ In suit No. 565 of 1890 on the file of the District Munsif of Masulipatam plaintiffs, who are agrapharamdars, sued to eject a tenant. They paid Rs. 30 court fees on the plaint under section 7, v (c) of the Court Fees Act. The defendant pleaded permanent occupancy rights, but the District Munsif passed a decision ejecting him. Against this decision the defendant appeals and contends that he has occupancy rights and cannot be ejected. He has paid only 8 annas on his appeal under clause v of schedule II of the Court Fees Act and in support of this he cites *Bibi v. Morfan*(1).

“ Such suits for ejectment in the Civil Courts of this district have become frequent. Hitherto they have been classed under section 7, v (c) of the Court Fees Act, but my attention is now drawn to this decision, *Bibi v. Morfan*(1) classifying them under No. 5 of schedule II with a fixed court fee of 8 annas.

“ The present case is that of an appeal by a defendant, and he contends that his appeal has no concern with possession, because the land is in his possession. He contends that his appeal is to establish his occupancy right in the words of schedule II, 5.

“ Section 7, xi (d) refers to suits to contest a notice of ejectment. I do not understand what suits these can be. In

* Referred Case No. 11 of 1890.

(1) 11 Cal. L.R., 91.

“*Mahomed v. Lakshmipathi*(1) the High Court says that a ‘mere notice’ does not afford a cause of action.”

Counsel were not instructed.

BRAHMAYYA
v.
LAKSHMI-
NARASIMHAM.

JUDGMENT.—The appeal is from a decree which directed ejection and awarded mesne profits. The court fee should be calculated on the land and the mesne profits which are the subject matter of the appeal.

The Judge is right in his opinion that section 7 of the Court Fees Act is applicable to the case.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

SUNDARAM (DEFENDANT), APPELLANT,

v.

SITHAMMAL AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

1892.
July 19.
October 4.

Limitation Act XV of 1877, sched. II, arts. 91, 144—Suit for land—Cancellation of instrument affecting the land by plaintiff.

In a suit brought in 1889 to recover land, it appeared that the defendant had been in possession since 1885, having obtained in 1883 a conveyance of the land from one of the plaintiffs. It was found on the evidence that that conveyance had been obtained by fraud and was supported by no consideration. The other plaintiff claimed under an instrument of 1884 which recited that of 1883 and was executed by the same person. The plaint contained no prayer for the cancellation of the conveyance of 1883 :

Held, that the suit was not barred by limitation.

SECOND APPEALS against the decrees of C. Venkobachariar, Subordinate Judge of Madura (West), in appeal suits Nos. 278 and 280 of 1890, confirming the decrees of T. Sadasiva Ayyar, District Munsif of Madura, in original suits Nos. 27 and 29 of 1889.

Suit to recover possession of land.

The facts of these cases are stated sufficiently for the purposes of this report in the judgment of MUTTUSAMI AYYAR, J.

The defendant preferred these appeals.

Mr. K. Brown for appellant.

* Subramanya Ayyar for respondents.

(1) I.L.R., 10 Mad., 368.

* Second Appeals Nos. 925 and 927 of 1891.