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PARAS RAM
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GARDNER.

All that is contended is that the former application was practically reversed when a decree in the regular suit allowed by s. 246, Act VIII of 1859, reversed the order of the Court executing the decree. It may be said that there are circumstances in the case referred to us, which are unfavourable to the decree-holder and show that he did not use due diligence in bringing his suit or in making his application to revive the former execution proceedings. This may be so, and, if so, it is for the divisional bench to deal with that part of the case.

OLDFIELD J.—I think we may hold that the last application may be considered as a continuance or renewal of the former application for execution in which the proceedings had been interrupted by the reference to the Civil Court, and were renewed on the second application, the latter will not therefore be an application to which the period of limitation in art. 167 will apply.

THE DIVISION BENCH TURNER and OLDFIELD, JJ. made the following order in the special appeal.—In accordance with the opinion expressed by the majority of the Court, we hold the application within time. Setting aside the order of the Courts below we remand the application for disposal on the merits to the Subordinate Judge's Court. Costs of the appeal in the Judge's Court and in this Court to abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Turner.

CHUNIA AND ANOTHER (PLAINTIFFS) v. RAM DIAL AND ANOTHER (DEFENDANTS).

Act VII of 1870 (Court Fees Act), ss. 3 (c), 12, and sch. ii, art. 17, (iii)—Suit for a Declaratory Decree—Consequential Relief—Decision of questions relating to Valuation—Appeal.

S. 12 of the Court Fees Act prohibits appeals on questions relating to valuation for the purpose of determining the amount of a fee, but does not prevent a Court of appeal from determining whether or not consequential relief is sought in a

*Special Appeal, No. 1032 of 1876, from a decree of S. S. Melville, Esq., Judge of Cawnpore, dated the 26th June, 1876, affirming a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 27th September, 1876.

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suit, so that it may determine under what class of cases the suit falls for the purpose of the Court Fees Act.

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A suit by a person against whom an order has been made, under s. 246 of Act VIII of 1859, disallowing his claim to the attached property, for a decree declaring his right to the property, need not be valued according to the value of the property, but can be brought on a stamp of Rs. 10, under Act VII of 1870, sch. ii, art. 17, (iii), [1].

THIS was a suit in which the plaintiffs, who were still in possession, claimed a declaration of right as owners to the moiety of certain shops, and to the whole of a certain other shop. They had preferred a claim to this property, when attached in execution of decree, but after investigation their claim had been disallowed under s. 246 of Act VIII of 1859, on the 27th March, 1875.

On the institution of the suit, the plaintiffs paid in respect of the plaint a court fee of Rs. 10, being the fixed fee payable under Act VII of 1870, sch. ii, art. 17, (iii), in respect of a plaint or memorandum of appeal in a suit where no consequential relief is prayed. Subsequently, by order of the Court of first instance, they paid a court fee computed on the market value of the property in suit. The Court of first instance dismissed the suit.

The plaintiffs appealed paying in respect of their memorandum of appeal the same court fee as they had at first paid in respect of the plaint in the suit. On the 5th May, 1876, on the appeal coming on for hearing, the lower appellate Court being of opinion that consequential relief was sought in the suit, returned the memorandum of appeal to the plaintiffs, directing them to pay in respect of the same a court fee computed on the market value of the property, and to present it again within three days. On the 26th June, 1876, the plaintiffs having failed to present the memorandum of appeal as directed, the lower appellate Court dismissed the appeal.

(1) See, however, *Mufti Jalaluddeen Mahomed v. Shohorullah*, 15 B. L. R., App. 1, in which it was held that a suit brought under the provisions of s. 246 of Act VIII of 1859 to set aside an order allowing a claim to attached property and releasing the property from attachment is a suit to try the title and establish the right of the person who brings the suit, and such a suit

must be valued according to the value of the property, and cannot be brought upon a stamp of Rs. 10, under No. 17 of sch. ii of the Court Fees Act; and *Motichand Jaichand v. Dadabhai Pestonji*, 11 Bom. H. C. Rep., A. C. J. 186, where it was held that a suit, having for its object the relief of property from attachment, seeks consequential relief.

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On special appeal by the plaintiffs to the High Court, it was contended on their behalf, that inasmuch as no consequential relief was sought in the suit, but a declaration of right only, the plaintiffs were right in paying a fee, in respect of their memorandum, of Rs. 10.

Mir Akbar Husain, for the appellant.

Pandit Ajudhia Nath and Babu Aprakash Chander Mukerji, for the respondents.

Judgment.—It is contended by the respondents that the Court is bound by the provisions of s. 12 of the Court Fees Act, and cannot determine whether this suit is one in which specific relief is sought or not, so as to determine under what class of cases it falls for the purpose of the Court Fees Act. We observe, and it has been so held in the Calcutta Court (1), that s. 12 of the Court Fees Act prohibits appeals on questions “relating to valuation for the purpose of determining the amount of a fee.” There is no question of valuation for the purpose of determining the amount of a fee raised in the appeal before us, for if the appellant is right in his contention a special and certain fee is fixed for all suits of the nature of the present suit and no question of valuation arises. We therefore overrule the objection and entertain the appeal.

It appears to us that the appellant correctly contends he seeks a declaration of right and no consequential relief. The Civil Procedure Code declares that a person against whom an order is passed under s. 246 may bring a suit to establish his right. If he obtains a decree in such a suit, he will then present himself to the Court executing the decree by which the order was made, and that Court will be bound to recognize the right declared, and either withdraw or order attachment as the case may be. We set aside the decree of the lower appellate Court, and remand the case to that Court for decision on the merits. Costs of this appeal to abide and follow the result.

Decree set aside and case remanded.

(1) See *Gunga Monee Chowdhrao v. Gopal Chunder Roy*, 19 W. R. 214.