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regarding themselves as the absolute proprietors thereof, shall remain in possession of it from the date on which he may obtain possession of it in execution of the decree aforesaid.

Such being the terms of the deed, the plaintiffs are not in a position to sue that the defendant may be compelled to put them in possession in fulfilment of a specific engagement to do so, nor is such the prayer of their plaint. As we have already observed, they sue to obtain possession in virtue of the right and title conveyed to them by the sale-deed.

In the 3rd paragraph of the plaint they say that the possession was agreed to be delivered "on the receipt of possession by the vendor," but, inasmuch as there was not really any such express agreement, we must understand what they say to mean no more than that he was bound by an implied agreement to put them in possession.

Taking this view of the nature of the suit, we are unable to concur in the ruling that art. 113, sch. ii, Act XV of 1877, is applicable to it, and we rule that either art. 136 or art. 144 is applicable, and that, whichever of them be applicable, the suit is within time. (The judgment then proceeded to determine the appeal on its merits).

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FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

RAM PRASAD (DEFENDANT) v. SUKH DAI (PLAINTIFF).*

Declaratory decree—Consequential relief—Act VII of 1870 (Court Fees' Act), s. 7, cl. iv. (c), and sch. ii, art. 17 (iii)—Suit to establish right to attached property—Act X of 1877 (Civil Procedure Code), s. 283.

In a suit, under s. 283 of Act X of 1877, for a declaration of her proprietary right to certain immovable property attached in the execution of a decree, the plaintiff asked that the property might be "protected from sale." Held, that consequential relief was claimed in the suit and court-fees were therefore leviable under s. 7, cl. iv. (c), and not under sch. ii, art. 17 (iii), of Act VII of 1870.

* Second Appeal, No. 499 of 1879, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 24th February, 1879, affirming a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 3rd May, 1878.

This was a reference to the Full Bench arising out of the following facts: A certain dwelling-house having been attached in the execution of a decree as the property of one Ram Dial, the plaintiff claimed to be the owner of the house under a gift. The Court executing the decree disallowed this claim. Thereupon the plaintiff instituted the present suit against the defendant, the decree-holder, in which she claimed that her proprietary right under the gift might be declared, and the house be "protected from sale." She paid in respect of her plaint the *ad valorem* fee computed on the market-value of the house leviable under the Court Fees' Act. The Court of first instance gave the plaintiff a decree as claimed. On appeal by the defendant the lower appellate Court affirmed this decree. On appeal to the High Court from the decree of the lower appellate Court the defendant only paid on his memorandum of appeal the fixed fee leviable in a suit to obtain a declaratory decree, where no consequential relief is prayed. The taxing-officer of the High Court reported that the proper fee leviable on the memorandum of appeal had not been paid, inasmuch as consequential relief was prayed. The Division Bench (STUART, C. J. and SPANKIE, J.) before which the appeal came referred the case to the Full Bench, the order of reference being as follows:—"Finding that the rulings of this Court—S. A. No. 168 of 1879, decided the 13th May, 1880 (1): S. A. No. 296 of 1879, decided the 29th July, 1879 (2): S. A. 334 of 1879, decided the 22nd August, 1879 (3): S. A. No. 384 of 1879, decided the 1st August, 1879 (4)—are contradictory as regards the principle on which court-fees are payable in suits under s. 283 of the Code of Civil Procedure, and that some of them are opposed to rulings of other High Courts—*Jai Narayan Giri v. Grish Chandar Myti* (5): *Thakur Din Tiwary v. Nawab Syed Ali Husain* (6): *Bakur-un-nissa Bibi v. Karim-un-nissa Khatun* (7): *Bank of Hindustan v. Premchand Raichand* (8)—we refer for the consideration of a Full Bench the question whether court-fees are payable in such suits under cl. iv. (c), s. 7, or under cl. iii., art. 17, sch. ii, Act VII of 1870."

The following judgments were delivered by the Full Bench:

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| (1) Unreported. | (5) 22 W. R. 433. |
| (2) Unreported. | (6) 21 W. R. 340. |
| (3) Unreported. | (7) 19 W. R. 18. |
| (4) Unreported. | (8) 5 Bom. H. C. R., O. C. J., 33. |

STUART, C. J.—Since this case was before Spankie, J., and myself I have had an opportunity of perusing the plaint, and it cannot be doubted that by it, not only a declaration of right, but that consequential relief is also prayed for. And I may observe that in my opinion the plaintiff was quite entitled to frame her suit in this form and was in no way bound to await the eventualities of a mere declaration of right; and she appears to me to have wisely considered that her object would be most effectually attained by a plaint in the form which she adopted. The plaint shows how Sukh Dai the plaintiff acquired the house, which is the subject of the suit, and that her claim as owner had been interfered with by the action of the purchaser of a decree against the house, or rather one-third of it, and that she had applied to have the sale postponed, but that the Munsif had rejected her application. The plaintiff therefore prays for the following relief:—“That her right be established in respect of the said house, or one-third of the said house, valuing Rs. 1,333-5-4, by virtue of the deed of gift dated the 26th March, 1873, and for her possession and enjoyment thereof being protected from sale be established.” There cannot be a doubt that consequential and substantial relief is here asked for, and that the court-fee payable is that provided by cl. iv., (c), s. 7 of the Court Fees’ Act, and that cl. iii., art. 17, sch. ii. of the same Act has no application.

This is my clear opinion irrespective of any rulings on the subject by this or by any other of the High Courts. But I have looked into all those printed for us in this case, and they all appear to me to have been correctly decided and to be in strict consistence with the opinion I have formed and stated in the present case, not even excepting the ruling by Pearson, J., and Turner, J., in *Chunia v. Ram Dyal* (1), for in that case all that was prayed for was a mere declaration of right. The decision of the Privy Council of the 6th March, 1874, *Thakur Din Twary v. Nawab Syed Ali Husain* (2), as also the rulings by the Calcutta and Bombay High Courts are as satisfactory as they are to my mind conclusive.

PEARSON, J.—In the suit out of which this appeal has arisen it would seem that the plaint asked, not only for a declaration of

(1) I. L. R., 1 All. 360.

(2) 21 W. R., 349.

the plaintiff's right to the property in question, but also for its protection or exemption from sale in execution of the defendant's decree. The latter prayer was, in my opinion, superfluous; for, if the plaintiff succeeded in obtaining a decree declaratory of his right, he could on the strength thereof apply to the Court executing the decree to release the property from attachment and to refuse to proceed to the sale thereof. As, however, he was so ill-advised in framing his suit as to pray for consequential relief which he did not need to obtain by means of the decree passed in the suit, it is impossible to hold that his suit is not one of the nature described under letter *c*, cl. iv., s. 7 of the Court Fees' Act. I confine my remarks to the particular case under reference, and refrain from noticing or commenting on the decisions to which our attention has been drawn. The distinction between suits under letter *c*, cl. iv., s. 7, and suits under cl. iii., art. 17, sch. ii. of the Act is plain; the former are suits for a declaratory decree where consequential relief is prayed; the latter are suits of the like kind where no consequential relief is prayed. There is no scope for argument in the matter.

SPANKIE, J.—I concur.

OLDFIELD, J.—I am of opinion that in this case, looking to the relief sought, there is a claim for consequential relief, and the court-fees should be levied under letter *c*, cl. iv., s. 7 of the Court Fees' Act.

STRAIGHT, J.—Plaintiff rightly estimated the nature of the relief she was seeking in her suit, by paying a court-fee of Rs. 60-12-0 in the first Court. It was not a mere declaration of her right at which she aimed, but she sought consequential relief as well. The defendant-appellant has therefore inadequately stamped his petition of appeal and he will have to make up the deficiency.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

EMPRESS OF INDIA v RAM KUAR.

Buying or disposing of a person as a slave—Act XLV of 1860 (Penal Code), s. 370.

R, having obtained possession of D, a girl about eleven years of age, disposed of her to a third person, for value, with intent that such person should marry her,

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