

1880
February 2.

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

CHEDI LAL AND ANOTHER (PLAINTIFFS) v. KIRATH CHAND AND
OTHERS (DEPENDANTS).*

Act VII of 1870 (Court Fees' Act), s. 7, clauses i. and ii., s. 12, cl. ii., and ss. 17, 28—Act X of 1877 (Civil Procedure Code), ss. 44, 45—Multifarious suit—"Distinct subjects"—Plaint—Memorandum of appeal—Suit for money—Power of the High Court to levy court-fees on improperly stamped document.

The plaintiffs sued in virtue of a conditional sale which had been foreclosed for (i.) possession of a house, (ii.) compensation, in the nature of rent, for its use and occupation from the date of foreclosure to the date of suit, and (iii.) like compensation from the latter date to the date on which possession of the house should be delivered to them, the defendants having purchased the house subsequently to the conditional sale but before the same was foreclosed. The plaintiffs stated that their cause of action arose on the date of foreclosure.

Held (SPANKIE, J. dissenting) that the suit embraced "distinct subjects" within the meaning of s. 17 of the Court Fees' Act, 1870, and the plaint and memorandum of appeal were chargeable with the aggregate amount of fees to which the plaints or memoranda of appeal in separate suits for the different claims would have been liable.

Held also that, if a document which ought to bear a stamp under the Court Fees' Act has been used in the High Court, and the mistake or inadvertence which permitted its reception in a lower Court, without being properly stamped, comes to light in the High Court, any Judge of that Court may, under s. 28 of the Court Fees' Act, direct that it should be properly stamped.

Per SPANKIE, J.—That cl. ii, s. 7 of the Court Fees' Act, did not apply to the third claim, nor was it one for money within the meaning of cl. i. of that section, but one for which s. 11 of that Act provided.

Per OLDFIELD, J.—That court-fees were leviable in respect of the third claim, with reference to cl. i, s. 7, and s. 11 of the Court Fees' Act.

THIS was a case which came before the Full Bench under the following circumstances:—The plaintiffs in this suit alleged that the conditional mortgage of a certain house made in their favour in 1872 had been foreclosed on the 19th May, 1875: that notwithstanding this the defendants, who had purchased the house in 1873 in the execution of a decree for money, had refused to surrender the possession of the house: and they claimed (i) possession of the

* Second Appeal, No. 150 of 1879, from a decree of C. Daniell, Esq., Judge of Gorakhpur, dated the 22nd November, 1878 reversing a decree of Maulvi Ahmadullah, Munsif of Gorakhpur, dated the 13th September, 1878.

house, valued at Rs. 275; (ii) Rs. 72 being compensation in the nature of rent for the use and occupation of the house from the 19th May, 1875, the date of foreclosure, to the institution of the suit, at the rate of two rupees per mensem; and (iii) similar compensation for the "future" from the institution of the suit to the date on which possession of the house should be delivered to them. They stated that their cause of action arose on the 19th May, 1875, the date of foreclosure. They paid on their plaint a court-fee of Rs. 26-4-0. On appeal from the decree of the Court of first instance awarding the plaintiffs possession of the house and "future" compensation, the defendants paid on their memorandum of appeal a court-fee of Rs. 26. On appeal by the plaintiffs to the High Court from the decree of the lower appellate Court dismissing the suit, the taxing-officer of the High Court reported that deficient court-fees had been paid both on the plaint and the memorandum of appeal in the lower appellate Court. That officer stated that the proper fee payable on the plaint was Rs. 41-10-0, and on the memorandum of appeal Rs. 39, computed as follows:—

	Rs. a. p.
(i) Claim for possession	21 0 0
(ii) Ditto for house-rent	5 10 0
(iii) Future rent at Rs. 2 per mensem under s. 7, cl. ii., Court Fees' Act	18 0 0
Total ...	44 10 0
(i) Claim for possession	21 0 0
(ii) Future rent at Rs. 2 per mensem under s. 7, cl. ii., Court Fees' Act,	18 0 0
Total ...	39 0 0

In consequence of this report the case came before the Full Bench together with that of *Mul Chand v. Shib Charan Lal* (1), with the report of which it should be read.

Pandit *Bishambhar Nath*, Munshi *Sukh Ram*, and Maulvi *Mehdi Dasan*, for the appellants.

(1) See ante p. 675.

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The *Senior Government Pleader* (Lala Juala Prasad) and the *Junior Government Pleader* (Babu Dwarika Nath Banarji), for the respondents.

The following judgments were delivered by the Full Bench :

STUART, C. J.—This case also came before us on the report of the Office. It appears that there is no deficiency of court-fees in this Court, but that there is a deficiency to the extent of Rs. 18-6-0 on the part of the plaintiff in the Munsif's Court, and of Rs. 12-12-0 on the part of the defendant in the lower appellate Court.

Pandit Bishambhar Nath for the appellants objected that this Court had no jurisdiction at this stage to entertain the question relating to the deficiency of court-fees reported by the Office, but I am ^{clearly} of opinion that s. 28 of the Court Fees' Act gives us full power for that purpose.

On the merits of the question respecting the court-fees to be charged, this case falls within the principle of the decision we have given on the same legal question in First Appeal No. 15 of 1879 (1). According to the principle recognized in that case the report of the Office in this case is clearly right, and the additional court-fees to be paid by both parties is ordered accordingly.

STRAIGHT, J.—I agree in the views and conclusions of the Chief Justice.

SPANKIE, J.—The learned Pandit Bishambhar Nath appears to question the power of this Court to decide that a document found in the record of a case sent up in appeal or on reference, as for revision, to this Court should be properly stamped. With reference to fees in other Courts than the High Courts and Presidency Small Cause Courts, the pleader argues that our power of interference is limited by s. 12, cl. ii, of the Court Fees' Act. But I would claim full power for the Court's interference, quite outside chapters II and III of the Act. S. 28 provides that no document which ought to bear a stamp under the Act shall be of any validity, until it has been properly stamped. The section deals with the case in which a document through mistake or inadvertence has been received, filed or used in any Court, without being properly stamped. Such a document may be returned at the outset by the presiding Judge of the

(1) See *ante* p. 676.

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Court in which it has been so received or filed or used, or if the document has been received, filed or used in a High Court, any Judge of that Court, may, if he thinks fit, order that such document may be stamped as he may direct. But the section does not say that the High Court Judge can interfere only when this document has actually been filed in his Court. If the document has been used in the High Court, and the original mistake or inadvertence which permitted its reception in a lower Court, without being properly stamped, comes to light in the High Court, any Judge of that Court may direct that it should be properly stamped, always having regard to the fact that it must be a document chargeable under the Court Fees' Act. This construction appears to be quite reasonable and consistent with the concluding provision of the section, "and on such document being stamped accordingly the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance." In fact, when the insufficiency of the stamp has been detected and when a proper order has been made and carried out, the original mistake or inadvertence and all subsequent consequences of such mistake or inadvertence are cured.

On the other question my opinion in the reference regarding First Appeal No. 15 of 1879, *Mul Chand*, plaintiff (1), would govern this case.

The suit does not appear to be multifarious within the terms of s. 17 of the Court Fees' Act. It is one for immoveable property, and a claim for arrears of rent in respect of the property claimed is joined with it under s. 44, *Rule a*, to which s. 45 of the Procedure Code is subject. I do not think that the plaint would be chargeable as provided by s. 17 of the Court Fees' Act. The application of clause ii, s. 7 of the Court Fees' Act seems altogether wrong; the plaintiff asks for house-rent in future, as he would ask for the mesne profits from the date of decree to the date of possession under the decree. It is not a claim for money in the meaning of cl. i.; the rate is known, but not the sum that would be actually due when possession was given under the decree. Probably s. 11 of the Court Fees' Act provides for this part of the claim.

(1) See *ante* p. 676.

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OLDFIELD, J.—The suit in my opinion embraces distinct subjects of the nature of those referred to in s. 17, Court Fees' Act. Here the claim for possession of the house and the claim for rent, which in this suit is by way of damages, arise out of different causes of action and might have been made subjects of different suits. So much of the claim as refers to future rent should be charged for court-fees under cl. i., s. 7, leviable under the provisions of s. 11 of the Act. The objection is quite untenable that this Court has no power to interfere to order that the documents shall be properly stamped, as full power to that effect is conferred by s. 28, Court Fees' Act.

CIVIL JURISDICTION.

Before Mr. Justice Parson and Mr. Justice Straight.

MIAN JAN (AUCTION-PURCHASER) v. MAN SINGH (DECREE-HOLDER).*

Sale in execution—Act X of 1877 (Civil Procedure Code), ss. 311, 312—Review of judgment.

On the day fixed for the sale of certain immoveable property in the execution of a decree the Court made an order postponing the sale, but the sale had been effected before such order reached the officer conducting it. The Court, no application having been made to set aside the sale, passed an order confirming it. Subsequently, an application by the decree-holder for a review of this order having been granted, the Court passed an order setting the sale aside as illegal. *Held* that, the sanction to the sale originally given having been withdrawn, the sale could not legally be held, and that the sale which was effected, the order of postponement notwithstanding, was unlawful and in valid, and in reviewing its first order and in setting aside the sale as illegal the Court executing the decree had not acted *ultra vires* and its action was not otherwise illegal (1).

On the day fixed for the sale of certain immoveable property in the execution of a decree, the judgment-debtor applied to the Subordinate Judge of Aligarh, the Court executing the decree, for the postponement of the sale. This application was granted, the Subordinate Judge making an order for the postponement of the sale. Before this order reached the officer appointed to conduct the sale,

* Application No. 43B. of 1879, for revision of an order of W. C. Turner, Esq., Judge of Aligarh, dated the 5th September, 1879, and of an order of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 28th July, 1879.

(1) See also *Maijha Singh v. Jhoo Lal*, H. C. R., N.-W. P., 1874, p. 354.

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