1922

RAM KISHAN RAI *v.* CHHEDI RAI.

father of the defendant. The only plea which has been argued before us is one of limitation. The case has been put before us by the learned vakil for the appellant in this form. He said that on the date the father executed the bonds which are now being sued upon, the earlier bonds in exchange for which the fresh bonds were executed had become barred by time and, therefore, there was no consideration for them and execution of these bonds would not be binding on the sons. There is no doubt whatever that the father was competent to execute the present simple bonds in lieu of time-barred debts. Against him the contract would have been a valid one under section 25, clause (3), of the Indian Contract Act. Moreover, the Hindu law does not recognize any rule as to the extinction of claims by the efflux of time, so that looked at from any point of view the bonds in dispute amounted to a valid contract made by the father. The father being dead, the sons were liable to pay the money which their father was bound to pay. This view finds support in *Narayanasami Chetti* v. *Samidas Mudali* (1). In our opinion the decree of the lower appellate court was a correct one. We accordingly confirm the decree of the lower appellate court and dismiss this appeal with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Piggott.

RUP NARAIN AND OTHERS (DEFENDANTS) *v.* BISHWA NATH SINGH (PLAINTIFF).*

1922 *May*, 6.

Act No. VII of 1870 *(Court Fees Act), section* 7 (v) (*a*) (*b*)—*Court-fee—Suit by a member of a joint Hindu family to avoid a sale of ancestral property—Nature of relief to be asked for—Appeal.*

In a suit where a member of a joint Hindu family seeks to avoid the effect of a private sale of ancestral property executed by other members of the family, the plaintiff need not ask for any other relief than possession of the property sold: he is not bound to ask for cancellation of the sale-deed; but if he does so he will have to stamp his plaint according to the full value of the property sold, unless he is permitted by the Court to amend his plaint.

The case of the defendants' appeal against a decree in favour of the plaintiff in such a suit is, however, different, and they are entitled to value their appeal, for the purposes of the Court Fees Act, under section 7 (v) (*a*) of the Act.

Raja Dhakeswar Prasad v. *Jivo Chaudhry*, (2) distinguished.

THIS was a reference to the Taxing Judge on the question of the court fee payable on the plaint in a suit relating

* Stamp Reference in First Appeal No. 255 of 1920.

(1) (1883) I. L. R., 6 Mad., 293.

(2) (1918) 3 Patna L. J., 448.

1922

Rup Narain v. Bishwa Nath Singh.

to a sale of joint ancestral property effected by certain members of a joint Hindu family, which the plaintiff (another member of the family) sought to avoid. The decree of the lower court being in favour of the plaintiff, a like question was also raised as to the court fee payable on the defendants' appeal. The facts of the case are stated in the office report.

Munshi *Kamalakant Varma*, for the appellants.

Dr. *Surendra Nath Sen*, for the respondent.

Office report:—The suit giving rise to this appeal was brought for cancellation of a sale deed and possession over the zamindari property involved in the said sale deed. The suit was valued at Rs. 10,000, for purposes of jurisdiction but the court fee was paid on Rs. 1,000, being 10 times the Government revenue.

In view of a ruling reported in 3 P. L. J., 448, which lays down that in a suit for a declaration that the sale was invalid and for restoration of possession the plaintiff must pay an *ad valorem* court fee on the value of the whole estate sold and was not entitled to calculate an *ad valorem* fee on 10 times the amount of the Government revenue, the court fee payable on the plaint of this suit is to be calculated on Rs. 10,000 being the price of the property in dispute, which comes to Rs. 475. Deducting Rs. 75 already paid, there is a deficiency of Rs. 400 payable by plaintiff respondent for the court below.

The court below decreed the plaintiff's suit subject to payment of Rs. 4,000 by the plaintiff to defendants Nos. 1 to 6. The said defendants appealed to this Hon'ble Court with the prayer that the decree of the court below be set aside and that the plaintiff's suit be dismissed. They valued their appeal at Rs. 10,000 and paid Rs. 75, the same court fee as was paid on the plaint. For the reasons stated above, the memorandum of appeal to this Court was deficiently stamped by Rs. 400.

The result is that the deficiency payable by defendants appellants for this Court is Rs. 400 and due from the plaintiff respondent for the lower court is Rs. 400.

Objection.—I dispute the correctness of the stamp report. The facts of the case reported in 3 P. L. J., 448, are entirely different and that case does not apply to the present case. There it was held by the Patna High Court

that the relief for declaration was essential and that the plaintiff could not succeed without the declaration sought for.

In the present case the suit is by a Hindu co-parcener for possession of family property (which belonged to him as much as to his father and brother) on the ground that it had been transferred by the father and the brother without legal necessity. Such a suit is essentially a suit for possession. It is settled law that so far as limitation is concerned, such a suit is governed by the twelve years' rule of limitation, and not by the three years' rule under article 91, or by the six years' rule under article 120, of the Limitation Act, the reason being that in such a suit the main relief is one for possession, and it is not necessary for the plaintiff to obtain a declaration or cancellation of the sale deed, as a condition precedent for getting possesion. In the present case itself the suit has been brought about eight years after the execution of the sale deed. Such a suit, therefore, falls under section 7, clause v, of the Court Fees Act. The ruling reported in 3 P. L. J., 448, therefore, does not apply. But if it be held to apply to a case like the present, then I contend that it does not lay down the law correctly.

PIGGOTT, J.—The Stamp Reporter has done no more than his duty in bringing this question forward, and the position taken up by him can be supported by strong arguments based upon the actual wording of the relevant clauses of the Court Fees Act. Nevertheless I cannot escape from the feeling that the line of action suggested does violence to the spirit of the Act. The plaintiff's case is that property of which he is the joint owner has been sold without his concurrence or authority, and the essential relief sought is recovery of possession upon such terms as the trial court may see fit to impose. The suit could have been framed as one for recovery of possession pure and simple; this is made the more apparent by the form of decree actually passed. The case of *Raja Dhakeswar Prasad Singh* v. *Jivo Chaudhry* (1) is not really in point. The sale in that case had been held by order of a public officer acting under statutory powers; it conveyed a good title to the purchaser unless it could be set aside on the ground of irregularity or fraud. "The declaratory relief sought was a necessary part of the

(1) (1918) 3 Patna L. J., 448.

1922

RUP NARAIN
v.
BISHWA
NATH SINGH.

suit." Here no relief by way of declaration has been granted; the decree passed is one for recovery of possession of property paying annual revenue to Government. It seems to me clearly against the intention of the Legislature that in a suit (or appeal) where the question at issue is the possession of land so assessed to revenue, the valuation of the property for purposes of court fee assessment should be otherwise than under section 7 (v) (*a*) or (*b*) of the Court Fees Act.

The difficulty remains that the plaint has been so worded that it falls within the purview of section 7 (iv) (*c*). This difficulty is a real one, and I do not think it can be got over unless the plaintiff can be permitted even at this stage to amend either—

(*a*) the plaint itself, or

(*b*) the statement of "the amount at which the relief sought is valued" in the said plaint.

I hold, therefore, that as against the plaintiff, who is the respondent to this appeal, the report must be affirmed. It will remain open to the said plaintiff to move the Bench hearing the appeal for leave to amend either the plaint or the valuation as above suggested. I would, however, warn him that he would do well to present himself at the hearing with the money necessary to make up the reported deficiency in his hand: if he is refused leave to amend, he may be required to make good the deficiency before he is heard on his petition of cross-objections.

The position of the appellants is different. Even on the principle suggested by the Stamp Reporter, the report is unjust to them; for the *ad valorem* fee would require to be calculated on Rs. 10,000, less Rs. 4,000 which the plaintiff has been ordered to pay, *i.e.*, on Rs. 6,000. I think, however, that they are entitled to appeal against the decree as it stands and to value their appeal for the purposes of the Court Fees Act, under section 7 (v) (*a*) of the said Act. I hold that the memorandum of appeal is sufficiently stamped.

Report partly accepted.