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it would partake of the nature of a penalty for praying in aid the assistance of the legal tribunals. No other provision relating to the point is to be found in the Court Fees Act, except in the schedule, as already mentioned; and, as it is impossible to understand any principle of justice or equity or any rule of construction by which the proviso as to the Rs. 3,000 should be confined merely to the suits detailed in art. 1, I think it must be taken to apply generally and to establish the maximum amount of court fees that may be charged for any suit.

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### APPELLATE CIVIL.

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

SANGAM RAM (DEFENDANT) v. SHEOBART BHAGAT (PLAINTIFF).

*Sale in Execution of decree—Order setting aside sale—Suit to set aside such order—Act VIII of 1859 (Civil Procedure Code), ss. 256, 257.*

Certain immovable property was put up for sale in the execution of *B's* decree and was purchased by him. Subsequently, on the same day, such property was put for sale in the execution of *S's* decree and was purchased by him. *B* objected to the confirmation of the sale to *S* on the ground that *S's* decree had been satisfied previously to such sale, and the Court executing the decrees made an order setting aside such sale on that ground. *S* thereupon sued *B* to have such order set aside, and to have such sale confirmed, and to obtain possession of such property. *Held* that, inasmuch as such order had not been made under s. 257 of Act VIII of 1859, but had been made at the instance of a purchaser under another decree, and *B's* decree, as a matter of fact, had not been satisfied, *S's* suit to have such order set aside was maintainable.

The lower Court having given *S* a decree awarding possession of such property, as well as a declaration of his right to have such sale confirmed, the High Court set aside so much of that decree as awarded possession of such property (1).

Behari Bhagat, the father of the plaintiff in this suit, was holder of two decrees against one Abadi Begam, one for Rs. 1,812-2-10, and the other for Rs. 5,151-15-6, both decrees enjoining the mortgage of property belonging to the judgment-debtor. In the course of the execution of the decree for Rs. 5,151, Behari Bhagat and Abadi Begam came to a compromise, under

Cal. No. 479 of 1879, from a decree of J. W. Power, Esq., Judge of the High Court, dated 31st January, 1879, reversing a decree of Maulvi Muhammad Subordinate Judge of Gházipur, dated the 20th June, 1878.

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which the latter agreed to sell the former a mauza called Aurangabad for Rs. 4,000. Before the conveyance was delivered Sangam Ram, the defendant in the present suit, who also held a decree for money against Abadi Begam, and had applied for its execution, applied to the Court executing his decree and Behari Bhagat's decrees, that the sum of Rs. 4000 above-mentioned should be set-off against Behari Bhagat's decree for Rs. 5,151-15-6. On the 18th July, 1876, the Court recorded a proceeding stating that, after deducting Rs. 4,000, a sum of Rs. 1,107, or thereabouts was still due to Behari Bhagat on account of that decree, and that, if such sum was paid by Sangam Ram, the sale of a mauza called Hardya, which had been notified for sale in the execution of that decree, would be postponed. Sangam Ram did not pay such sum, and the mauza was eventually sold as hereinafter stated. On the 27th July, 1876, Behari Bhagat preferred a petition to the Court in which he stated that he had purchased Aurangabad from his judgment-debtor, and that the decree for Rs. 1,812 had been completely satisfied, and a sum of Rs. 2,187 only was due on account of the decree for Rs. 5,151-15-6. Thereupon, on the 12th August, 1876, the Court recorded a proceeding to the effect that, as the parties had adjusted their claims by mutual consent, a revised account should be prepared, which was done. On the 20th November, 1876, the rights and interests of the judgment-debtor in Hardya were put up for sale in satisfaction of the balance of Behari Bhagat's decree for Rs. 5,151, and sold for Rs. 1,000. On the same day the rights and interests of the judgment-debtor in a mauza called Khanpur were put up for sale in the execution of Sangam Ram's decree, and were purchased by him for Rs. 70 and subsequently, on the same day, such rights and interests again put up for sale in satisfaction of the balance of Behari Bhagat's decree for Rs. 5,151-15-6, stated in the notification of Rs. 1,964, and were purchased by the plaintiff for Rs. 50. Ram objected to the confirmation of the sale to the plaintiff on the ground that, inasmuch as the proceeding of the 18th July showed that a sum of Rs. 1,107 only was due on account of that decree, and Hardya had been sold for Rs. 1,000, a sum of Rs. 1,107 was all that was due on account of that decree, and in the notification of sale, a balance of Rs. 1,964

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the 9th May, 1877, set aside the sale to the plaintiff on the ground that the decree for Rs. 5,151 had been satisfied. The plaintiff thereupon instituted the present suit against Sangam Ram in which he claimed that the sale to him of Abadi Begam's rights and interests in Khanpur of the 20th November, 1876, might be confirmed, that the order of the 9th May, 1877, might be set aside, and that he might obtain possession of those rights and interests. The Court of first instance dismissed the suit. On appeal by the plaintiff the lower appellate Court gave him a decree, holding, with reference to the contention of the defendant that an order setting aside a sale in the execution of a decree was final, and a suit to contest such an order was not maintainable, that a suit to contest such an order was maintainable where the order was irregular, and that the order of the 9th May, 1877, was irregular.

On appeal to the High Court the defendant again contended that the suit was not maintainable.

Pandit *Ajudhia Nath* and Babu *Baroda Prasad Ghose*, for the appellant.

Munshi *Hanuman Prasad* and Lala *Lalta Prasad*, for the respondent.

The Court (STUART, C. J. and OLDFIELD, J.) delivered the following

JUDGMENT.—The father of plaintiff held two decrees against the same judgment-debtor, one for Rs. 1,812-2-10, the other for Rs. 5,151-15-6. He took out execution of the decree for the larger amount, and privately out of Court bought a property of the judgment-debtor for Rs. 4,000; and on an application made by defendant-appellant, who held a decree against the same judgment-debtor, this sum was set-off against the plaintiff's larger decree. There was another sale of property of the judgment-debtor for Rs. 1,000, and this was also set-off against the plaintiff's larger decree, leaving Rs. 107 or thereabouts due. But plaintiff-appellant moved the Court executing the decree for the larger decree to order payments in the first instance against the smaller decree to be done by the Court; the sum due on the larger decree would be Rs. 1,914 or thereabouts. Plaintiff-appellant then took out execution of this larger decree,

and defendant-appellant at the same time executed his decree. There were two sales of two villages belonging to the judgment-debtor, and one of these villages, Khanpur, was sold in execution of defendant-appellant's decree and bought by defendant-appellant for Rs. 700, and later on, on the same day, sold in execution of plaintiff's decree, and bought by him for Rs. 50. The defendant-appellant objected to the second sale, and it was set aside on the ground that the plaintiff's decree then in execution had been satisfied by reason of the payments which, as above related, had been at defendant's instance set-off against it, but which had been afterwards written off against the plaintiff's smaller decree, and by the sale-proceeds of the sale to defendant. The plaintiff now brings this suit to have the sale confirmed to him and for possession of Khanpur. He also sued in respect of another village, but the appeal does not refer to that. The lower appellate Court has decreed the claim and defendant-appellant contests the finding.

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It appears to us that plaintiff is able to maintain a suit for the cancelment of the order setting aside the sale and for its confirmation in his favor, for that order was not one made under s. 257, Act VIII of 1859. The sale was set aside at the instance of a purchaser under another decree, because in the opinion of the Court the decree of plaintiff had been satisfied. Now, in examining the proceedings taken in execution of the plaintiff's decree, this finding of the Court executing the decree is erroneous. The previous payments had been set-off against the plaintiff's decree of smaller amount, and any to the contrary effect, at the instance of a stranger, was improper. So far therefore the order setting aside the sale of plaintiff was unwarranted. The lower appellate Court's so far modified by declaring plaintiff's right to have the sale confirmed in his favor and cancelling the order decreeing him

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Jus*

GIRDHARI DAS (DEFENDANT) v. JAGAN NATH

*Promissory Note—Evidence—Act XVIII of 1869 (Sta*

A promissory note, not payable on demand, executed and brought to a Collector, under s. 39 of Act XVIII of

\* First Appeal No. 63 of 1878, from a decree of Subordinate Judge of Agra, dated the 1st May, 187