

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

1838  
February 14.

KARAM KHAN AND OTHERS (PLAINTIFFS) v. DARYAI SINGH AND ANOTHER (DEFENDANTS)\*

*Suit to set aside mortgage—Declaratory suit—Court-fee—Act VII of 1870 (Court-Fees Act), s. 17 (iv), cl. (c)—Act I of 1877 (Specific Relief Act), s. 39.*

C's father mortgaged certain land to D. A purchased the instrument of mortgage and sued C, whose father had died, upon it, and obtained a decree enforcing the mortgage. C then mortgaged a moiety of the land to B, and subsequently sold the same moiety to A. A sued B for the cancellation of the instrument of mortgage to B. *Held* that the suit was in the nature of a simple declaratory suit.

THE following case was referred to Straight, J., by the taxing officer of the High Court, for determination as to the amount of court-fees payable on the plaint and petition of appeal :—

The father of C hypothecated to D twenty-five biswansis of land for a loan of Rs. 400. A purchased the bond, and subsequently sued C, whose father had died, upon it, and obtained a decree for enforcement of lien. C then mortgaged to B twelve and a half biswansis of the twenty-five biswansis, and afterwards executed a sale-deed to A of the same twelve and a half biswansis. A now sued B for the cancelment of the mortgage-deed to B.

The taxing officer was of opinion that the suit was one "to obtain a declaratory decree or order, where consequential relief is prayed," and that it fell under s. 7, para. iv, cl. (c), Court-Fees Act 1870.

STRAIGHT, J., referred the point to the Full Bench, the order of reference being as follows :—

STRAIGHT, J.—I have hitherto held this view, and have decided in accordance with it in several cases ; among others in *Ram Lal v. Kashi Ram* (1) and *Mahadeo Pershad Singh v. Deo Narain Rai* (2). In doing so I considered myself bound by the ruling in *Tacoorden Tewarry v. Ali Hossain Khan* (3) which was followed in *Joy Narain Giree v. Grish Chunder Mytee* (4). As, however, both these decisions

\* Second Appeal No 1381 of 1881, from a decree of T R. Redfern, Esq. Judge of Mainpuri, dated the 23rd August, 1881, modifying a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Mainpuri, dated the 24th June, 1881.

(1) 1 Legal Remembrancer (N.-W. P.), (3) 21 W. R. 340.  
140.

(2) 1 Legal Remembrancer (N.-W. P.),  
141,

(4) 22 W. R. 438.

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were passed long before the Specific Relief Act came into operation, and as upon careful consideration the case now referred appears to me to be one exactly of the kind mentioned in s. 39 of that Act, and to be in the nature of a simple declaratory suit, I think it desirable to take the opinion of the Full Bench upon the point.

The Full Bench delivered the following opinion :—

STUART, C. J., and STRAIGHT, OLDFIELD, BRODHURST, and TYRRELL, J.J.—We concur in the opinion expressed in this reference, that the case is in the nature of a simple declaratory suit.

## APPELLATE CIVIL.

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

KUBAIR SINGH (PLAINTIFF) v. ATMA RAM (DEFENDANT)\*

*Mortgage—Suit for redemption—Valuation of suit—Jurisdiction.*

The purchaser of the equity of redemption of certain land sued to redeem the same. He made the mortgagor and vendor of the land a "pro forma" defendant. *Held* that the value of the subject-matter of the suit was not the market-value of the land, but the amount of the mortgage-money.

THE plaintiff in this suit, who had purchased the equity of redemption of a five biswas share of a certain village for Rs. 1,500, claimed to redeem the mortgage of the share on payment of Rs. 240, the mortgage-money. He joined as a defendant, *pro forma*, the mortgagor and vendor of the share in suit. The suit was instituted, regard being had to the amount of the mortgage-money, in the Munsif's Court. The defendant mortgagee set up as a defence to the suit that the value of the share being Rs. 1,500, the suit was not cognizable in the Munsif's Court. The Munsif held that the suit should be valued, for the purposes of jurisdiction, at the alleged value of the mortgage, that is to say, Rs. 240, and not at the value of the property, and that the suit was therefore within his cognizance; and in the result gave the plaintiff a decree. On appeal by the defendant the lower appellate Court held that the suit was not cognizable by the Munsif, inasmuch as it should be valued at the value of the mortgaged property, not being one merely between a

\* Second Appeal No. 826 of 1882, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 5th July, 1882, reversing a decree of Maulvi Abdul Haq, Munsif of Fyapund, dated the 20th February, 1882.

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February 15.