

1879

BHAGVANDA S
v.
HATHIBHAL.

specifically adding to the Code, and going against the distinct language and intention of the Legislature.

The judgment of the Court was delivered by

M. MELVILL, J.—In this case the judgment-creditor applied for the sale of the house of his judgment-debtor (an agriculturist) which had been specifically mortgaged to him. The decree, in execution of which the application was made, directed that the debt should be recovered from the mortgaged property, or from the debtor personally. We are of opinion that the sale of the house, under these circumstances, should be made, for we cannot suppose that it was the intention of section 266 of Act X of 1877 to prohibit the sale of property specifically mortgaged. The orders of the Courts below are reversed, and it is ordered that the application of the plaintiff for the sale of the house be granted. The defendant to bear the costs in the Court of first instance. The parties to bear their own costs in appeal and in the application to this Court.

Order accordingly.

APPELLATE CIVIL.

Before Mr. Justice M. Melvill.

In re MANOHAR C. TAMBEKAR.

r 11.

Petition of Review—Court Fees Act (VII of 1870), Sec. 7 and Sch. I, Arts. 4 and 5—Stamp.

When a plaint or memorandum of appeal comprises a number of claims, and a portion only of such claims has been allowed by the judgment, the party seeking a review should be required to stamp his application with a fee sufficient to cover the amount of the claims in regard to which he wishes the Court to review its judgment: Act VII of 1870, sch. I, arts. 4 and 5.

THIS was a reference by A. C. Watt, Taxing Officer, High Court, Appellate Side, to the Honourable the Chief Justice under section 5 of the Court Fees Act, 1870. He stated the case thus:—

“The point for decision was whether the petition of review should be stamped with reference to the amount of relief prayed for in

the review, or should it be stamped with reference and whole amount of the appeal * * * The prayed for in the review is Rs. 40,000, whereas the appeal is over 2 lakhs * * * The words in section 5 of the Court Fees Act, under the column headed 'Proper appeal,' and 5, are 'the fee leviable on the plaint or appeal,' and it has always been the practice in this office to demand a stamp on review petitions calculated on the amount of the appeal as it originally was, and not on the relief sought for in review. *vidis practicus* and in strict accordance with the words and in this particular case me

of general importance, it is referred for the consideration of the Chief Justice under section 5 of the Court Fees Act (Act II of 1870)."

Chief Justice under the provisions of the said Act. The question for disposal to the Hon. Mr. Jus

pl *irám Náráyan* for the petitioner.—The words "plaint or memorandum" should be liberally construed so that such a fee should be taken as would be leviable on a fresh memorandum of appeal which would be required if a fresh plaint or memorandum seeking the additional relief asked for in the review asks for.

MELVILL, J.—Article 5, schedule I, of the Court Fees Act provides that an application for review of judgment presented before the ninetieth day from the date of the judgment shall bear a fee equal to one-half of the fee leviable on a memorandum of appeal.

At first sight it would appear that the proper fee under article 5 must be one-half of the whole fee leviable on the memorandum of appeal, whatever may be the nature and number of the different claims comprised in the said memorandum.

it would be manifestly unjust that when a memorandum of appeal comprises a number of claims, the fee has been

ng a review in regard to those claims which have
ould be required to stamp his application with a
cover the amount of the claims which have been
is favour, as well as the amount of the claims in
h he wishes the Court to review its judgment.

ard to the provisions of section 17 of the Act, I
the conclusion (though not without hesitation) that
onstruction of article 5, as that above indicated,
d. Section 17 provides that when a suit embraces

~~the~~ the plaint or memorandum of appeal shall
ate amount of the fees to which

memoranda of appeal in suits embracing
subjects, would be liable under the Act
memorandum of appeal, which embraces
acts, is treated, for the purposes of the stamp
n of distinct plaints or memoranda of ap
n this manner I think that the words "the
m of appeal" in article 5 may be construed
cessarily the plaint or memorandum of appeal
bination of the several subjects comprised i
r memorandum of appeal which would have be
spect to the particular subject, in regard to wh
sought, if the suit had embraced that subject
the present case the plaint and the memoranda
braced several distinct subjects; but the only
awarded was one in respect of which the plai
ae sum of Rs. 40,000, and which was valued at
e plaint and memoranda of appeal. In cases of c
egulation should be construed in favour of the subj
g of opinion that the construction which I now put u
is in harmony with the intention of section 17, and
ly inconsistent with the words of article 5, I direct th
ication for review of judgment be received, if it bear
one-half the fee leviable on a plaint for Rs. 40,000.

Order accordi