

of the *khoti* was in actual possession of either of the heirs of the deceased Khatizabibi, the latter part of the description of the property may, we think, having regard to the form of the suit, be disregarded as *falsa demonstratio*, and not as intended to restrict the property sold to the minor's share. The purchaser would, therefore, be justified in assuming that he was bidding for the entirety of Khatizabibi's share in the *khoti*, and (on the principle established by the case of *Ishun Chander Mitter v. Buksh Ali Soudagar*<sup>(1)</sup>, which was acted upon by this Court in *Jairám Bajabáshet v. Jomá Kondia*<sup>(2)</sup>.) would acquire a title unimpeachable by the daughter, who was equally responsible for the debt; on any other ground than that the debt was not due. As there was no suggestion that this was the case, we think the defendants could not justify their refusal to pay the whole 3 annas 6 pies' share in the produce of the *khoti*, on the mere technical ground that the daughter had not been made a party to the original suit.

(1) Marsh. Rep., 614.

(2) I. L. R., 11 Bom., 361.

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## APPELLATE CIVIL.

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*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Nándbhái Hariddás,  
and Mr. Justice, Birdwood.*

### IN RE KARACHI MUNICIPALITY.

*Stamp Act I of 1879, Sch. I, Art. 52—Tax—Receipt for money paid as taxes—Municipality, receipt by, for house-tax exceeding twenty rupees—Receipt stamp necessary.*

A receipt by a municipality acknowledging payment of house-tax exceeding twenty rupees, requires a receipt stamp under Schedule I, Art. 52 of Act I of 1879.

THIS was a reference by H. N. B. Erskine, Esq., Commissioner in Sind, under section 46 of the Indian Stamp Act I of 1879.

The secretary of the Municipality of Karáchi having given a receipt to a tax-payer for a sum of Rs. 56-11-0 paid by him on account of house-tax, the question was raised whether under the

\*Civil Reference, No. 36 of 1886.

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IN RE  
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Stamp Act I of 1879 such a receipt required a receipt stamp. The matter was laid before the Collector, and by him referred to the Commissioner, who referred the following question to the High Court:—

Whether a receipt granted on behalf of a municipal body acknowledging receipt of monies paid in satisfaction of municipal taxes, the amount paid being over rupees twenty, requires a receipt stamp.

The opinion of the Commissioner was that it should not bear a receipt stamp.

RÁV Sáheb V. N. Mandlik for Government:—The receipt is not exempt from stamp duty. The municipality has done something for which it is remunerated, and the payment by the tax-payer is for a consideration. It is not gratuitous or “without consideration,” as contemplated by Schedule II, art. 15 (b). The case of *In the matter of the Uncovenanted Service Bank*<sup>(1)</sup>, though under the old Stamp Act, applies here.

There was no appearance for the other party.

*PER CORIAM*:—We think the question referred to us must be answered in the affirmative. The receipt sent up with the reference is one for the payment of money “the amount of which exceeds twenty rupees.” It is, therefore, an instrument requiring a stamp under Act I, 1879, Schedule I, art. 52, unless it comes under Schedule II, art. 15 (b). That article exempts from stamp duty a receipt for payment of money “without consideration.” The exemption was intended apparently to apply to receipts for “voluntary” payments, which in the ordinary legal acceptance of the term are payments without consideration, such as payments made merely in consideration of natural love or affection or mere gifts. The receipt in question is one for payment of house rate due to the municipality under the Act constituting the municipality. The payment is not gratuitous, but one in satisfaction or discharge of a legal obligation imposed by the Act, and in order to relieve the payer from the consequence which would ensue in case of his committing default, and is, therefore, not one without “consideration.”

(1) I. L. R., 4 Calc., 829.