

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

1895.
September 11.

RAMCHANDRA PARSHARA'M AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT NO. 2), APPELLANTS, *v.* BHA'GUBA'I AND ANOTHER (ORIGINAL DEFENDANTS NOS. 3 AND 4), RESPONDENTS.*

Regulation II of 1827, Sec. 52,† Appendix I;—Act I of 1846, Sec. 7§—Costs—Fee of pleader—Maintenance—Partition—Party to suit claiming only maintenance—Fee of pleader of such party.

The plaintiff sued for partition and made two widows, who were entitled to maintenance out of the estate, co-defendants in the suit. The plaintiff and the male defendants compromised the suit and a decree was passed in terms of the compromise. By the compromise the costs of the widows were to be paid by the estate, and in estimating the costs the lower Court allowed each widow a separate set of costs and calculated the amount to be paid to each as pleader's fees on the value placed on his claim by the plaintiff. On appeal to the High Court,

* Appeal, No. 174 of 1894.

† Section 52 of Regulation II of 1827—

LII. *First.* Each pleader employed in prosecuting or defending an original suit shall be entitled to a percentage on the amount sued for, according to the rates specified in Appendix L, as a remuneration for his trouble in acting in behalf of his client, until the decree in the suit is passed, and thereafter until such decree is fulfilled:

Second. The remuneration to a pleader employed in prosecuting or defending an appeal, regular or special, shall be the same as is above prescribed in the case of an original suit:

Third. The above rules shall not prevent an express agreement being entered into between pleader and client, for either a larger or smaller sum than the established fee:

Fourth. But, if a larger sum than was agreed for between a pleader and client is awarded in costs against the other party, the pleader, notwithstanding his agreement with his own client, shall be entitled to the excess when recovered.

‡ Appendix L, section 52, Regulation II of 1827—

Statement showing the fees to which pleaders are entitled for acting throughout ordinary suits, when there is no specific agreement.

The Pleader's fee is	{	In suits for not more than Rs. 2,000	3 per cent.
		In suits for from Rs. 2,000 to 10,000 inclusive, on Rs. 2,000 as above, and on the remainder	2 per cent.
		In suits for from Rs. 10,000 to 20,000 inclusive, on Rs. 10,000 as above, and on the remainder	1 per cent.
		In suits for more than Rs. 20,000, on that sum as above, and on the remainder	½ per cent.

§ Section 7 of Act I of 1846—

VII. Parties employing authorized pleaders in the said Courts shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and that it shall not be necessary to specify such agreement in the vakalatnāma; provided that when costs are awarded to a party in any regular suit, original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained in the sections of Regulations specified in section VI of this Act; and that when costs are awarded in other cases the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits.

Held that the pleaders of the widows were not employed in prosecuting or defending an original suit of the value of the plaintiff's claim so as to be entitled under section 52, Regulation II of 1827, to a percentage on the amount that the plaintiff sued for according to the rates specified in Appendix L. The widows were in reality prosecuting a suit for their maintenance, and their pleaders were entitled to a percentage only on the amount claimed by them for maintenance.

Case remanded for the amount of the pleaders' fees to be correctly calculated.

When a case is decided on the merits, the full percentage is to be paid; in other cases one-fourth only should be paid under section 7 of Act I of 1846.

· APPEAL from the decision of Ráo Bahádur Chunilál Máneklál, First Class Subordinate Judge of Dhulia.

Plaintiff sued for partition of ancestral family property and for recovery of his share therein. The claim was valued at Rs. 5,87,586-2-0. The defendants were plaintiff's co-sharers and two widows (defendants Nos. 3 and 4) of two deceased co-sharers, who had a claim for maintenance on the property. After the written statements were filed, the plaintiff and the male defendants compromised the suit. As to the costs of the suit, it was agreed that costs of certain defendants should be borne by defendant No. 1 and the remainder by the estate. The compromise was silent as to the widows' claim for maintenance. The Judge passed a decree in the terms of the compromise, and in estimating the costs incurred by the widows, he allowed them each a separate set of costs and awarded to each of them Rs. 3,158 for pleaders' fees according to the usual rate on the sum of Rs. 5,87,586-2-0.

The plaintiff and defendant No. 2 appealed.

Inverarity (with *Máneksháh J. Taleýárkhán*) for the appellants (plaintiff and defendant No. 2):—The two widows were joined as co-defendants, because they were entitled to maintenance from the family property. In the plaint we admitted that they were entitled to maintenance, and notwithstanding this admission we have been directed to pay to each of them a separate set of costs. Their pleaders' fees have been calculated on the amount of the claim according to section 52 of Regulation II of 1827, Appendix L, and Rs. 3,158 have been awarded to each of them. They are not entitled to that amount. The most that they are entitled to is a fee calculated on the amount of maintenance awarded to them. Even under section 7 of Act I of 1846 they

1895.

RÁMCHANDRA
PARSHARÁM
v.
BHÁGUBÁI.

1895. • would be entitled to recover only a fourth of Rs. 3,158 and nothing more.

RÁMCHANDRA
PARSHARÁM

v.
BHA'GUBA'I.

Dáji A. Khare for the respondents (defendants Nos. 3 and 4):—
We engaged pleaders before the compromise was arrived at. Maintenance was a charge on the whole estate and, therefore, we were interested in the entire subject-matter of the suit. The costs are, therefore, properly calculated.

PARSONS, J. :—This was a suit for partition brought by the plaintiff against his co-sharers, the defendants Nos. 1 and 2, in which the defendants Nos. 3 and 4 were made co-defendants as widows having a right to maintenance. The suit was compromised by the plaintiff and the defendant No. 2 agreeing to buy the share of the defendant No. 1 for 1½ lách.

The Subordinate Judge ordered the costs of the defendants Nos. 3 and 4 to come out of the estate. He gave each a separate set of costs and calculated the amount to be paid on account of fees of pleaders in each set at the full rate on the value placed on his claim by the plaintiff, and thus made those fees alone come to Rs. 6,316.

Against this order the present appeal has been brought, and it is contended before us that the fees ought not to have been calculated on the value of the plaintiff's claim, or that, if that calculation is right, yet, as the suit was not decided on the merits, one-fourth only of the ordinary fees should have been allowed. It is clear, we think, that the order is bad. The pleaders of the defendants Nos. 3 and 4 were not employed in prosecuting or defending an original suit of the value of the plaintiff's claim, so that they would be entitled under section 52 of Regulation II of 1827 to a percentage on the amount that the plaintiff sued for according to the rates specified in Appendix L. Their clients were not, strictly speaking, defending the suit at all, for their right to maintenance was admitted. Even if it had been denied, however, their position would not have been very different. They were in the suit as claimants of a right to maintenance, which right they asked to have determined and awarded to them by the Court. They were, therefore, in reality prosecuting a suit for their maintenance, and their pleaders ought to be entitled to

a percentage only on the amount claimed by them for maintenance. If this claim were decided on the merits, the full percentage would be paid; in other cases one-fourth only would be paid under section 7 of Act I of 1846. In the present case, there has been no decision passed on their claim either on the merits or in any other way. The lower Court decided the case on the compromise, which is silent as to the amount of maintenance to which the defendants Nos. 3 and 4 are entitled. It does not appear that they asked the Court below when it decided the case on the compromise to proceed on their claim and to define and award them their maintenance, and they have not here objected to the decision of the suit on the compromise alone. Had they done so, we should have been bound to have allowed the objection.

We, therefore, only reverse the order of costs, and remand the case for the amount of pleaders' fees to be correctly calculated. This will involve a determination of the amount of maintenance to which the defendants Nos. 3 and 4 are respectively entitled. If there is a dispute necessitating a decision on the merits as to the amount of maintenance to which either defendant is entitled, the pleader of that defendant will be entitled to the full percentage on the amount, if any, claimed, or if no amount is claimed, on the amount awarded. In other cases he will be entitled to one-fourth only. We make no order as to the costs of this appeal.

Order reversed and case remanded.

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

SHANKAR RAGHUNA'TH (ORIGINAL OPPONENT No. 1), APPLICANT, v. VITHAL BA'BA'JI RA'GHU BADVE AND ANOTHER (ORIGINAL APPLICANT AND OPPONENT No. 2), OPPONENTS.*

1895.

September 17.

Insolvency—Jurisdiction—Civil Procedure Code (Act XIV of 1882), Secs. 344—360—Second Class Subordinate Judge's Court invested by the Local Government with insolvency jurisdiction—A debt of a scheduled creditor exceeding Rs. 5,000.

Where a person arrested in execution of a decree for money by the Court of a Second Class Subordinate Judge invested under section 360 of the Civil Procedure Code. (Act XIV of 1882) with the powers conferred on District Courts by sections 344

* Application No. 41 of 1895 under the extraordinary jurisdiction.

1895.
RAMCHANDRA
PARSHARA'M
v.
BHAGUBA'JI.