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IN RE
BULAKIDAS.

v. *Tikha Moodoi*⁽¹⁾, and that a Magistrate ought to cancel his order, or rather to treat it as determined, if the wife failing to comply with the decree for restitution refuses to live with her husband—*In re Kalidas Mansukram*⁽²⁾.

The Magistrate in this case has not found whether or not the opponent persists in refusing to live with the applicant. All he says is that the applicant has not executed the decree which he obtained for restitution of conjugal rights or sought to obtain possession of his wife. This is beside the case. The Magistrate must find whether the wife has obeyed the decree; if she has not, then she would not be entitled to a maintenance order.

We reverse the order of the Magistrate and remand the case for a rehearing.

(²) (1870) 13 Cal. W. R., 52 Cr. Rulings. (³) Criminal Revision, No. 119 of 1878.

APPELLATE CIVIL.

Before Mr. Justice Parsons, Chief Justice (Acting), and Mr. Justice Ranado.

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October 5.

DADA BHAU KITTUR (ORIGINAL PLAINTIFF), APPELLANT, v. NAGESH RAMCHANDRA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Valuation—Court Fees Act (VII of 1870), Sec. 7, Cl. 10 (a), Cl. 4 (c), (d); Sec. 12—Class to which a suit belongs—Decision as to such class—Appeal—Practice.

An appeal lies against a decision as to the class to which a suit belongs although it does not lie against a decision as to the valuation of the suit in that class. A decision of the lower Court, holding that a suit is one for specific performance of a contract of sale and to be valued according to the amount of the consideration-money, is appealable.

SECOND appeal from the decision of F. C. O. Beaman, District Judge of Belgaum, confirming an order passed by Ráo Bahádur G. V. Limaye, First Class Subordinate Judge.

The plaintiff brought this suit praying for a declaration that a certain purchase made in the name of the first defendant was a benámi transaction for him (the plaintiff) and for an order that the defendants should execute a conveyance of the property to him. The consideration money for the purchase was Rs. 1,265. The Subordinate Judge held that the suit was one for specific

* Second Appeal, No. 227 of 1898.

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performance and fell under clause x (a) of section 7 of the Court Fees Act (VII of 1870) and that the plaint should be stamped according to the amount of consideration (Rs. 1,265), and he dismissed the suit, as the plaintiff failed to pay this amount.

The plaintiff appealed, contending that the suit was not one for specific performance and did not fall under clause x (a) of section 7, but within clause iv, sub-section (c) or (d), and had, therefore, been wrongly dismissed.

The Judge in appeal held, however, that the question was one of valuation, and that under section 12 of the Court Fees Act (VII of 1870) the decision of the lower Court was final, and he dismissed the appeal. He said:—

“The Judge below decided that the valuation was incorrect, and the terms of his order bring the case under section 12 of the Court Fees Act (VII of 1870). That section gives finality to the decision of the Judge below, and I must, therefore, dismiss this appeal, though I do not agree with the principle on which the learned Judge apparently valued the claim.”

The plaintiff preferred a second appeal.

Sadushiv R. Bakhle appeared for the appellant (plaintiff):—The lower appeal Court dismissed the plaintiff's appeal, holding that the question was one of valuation and fell within section 12 of the Court Fees Act (VII of 1870), which makes the lower Court's decision final. But the case does not fall under section 12. The question here is not a question “relating to valuation” within the meaning of that section. The question is as to the clause under which valuation is to be made. It has been held that the question as to the application of a particular section is distinct from the question of making the valuation after determining the section. It is only in the latter case that section 12 of the Court Fees Act makes the decision final: see *Abaji Parashram v. Ramchandra Bhimaji*⁽¹⁾; *Vithal Krishna v. Balkrishna Janardan*⁽²⁾. Such appeals have been entertained—*Ohunia v. Ramdial*⁽³⁾; *Annamalai Chetti v. Cloete*⁽⁴⁾; *Sardarsingji v. Ganpatsingji*⁽⁵⁾; *Sardarsingji v. Ganpatsingji*⁽⁶⁾.

There was no appearance for the respondents.

(1) P. J., 1885, p. 34.

(2) (1886) 10 B.m., 610.

(3) (1877) 1 All., 360.

(4) (1881) 4 Mad., 204.

(5) (1889) 14 Bom., 395.

(6) (1892) 17 Bom., 56.

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PARSONS, C. J. (ACTING):—The District Judge refused to hear the appeal presented to him on the ground that the valuation made by the Subordinate Judge was final under section 12 of the Court Fees Act. The facts are these:—The plaintiff sued for a declaration that the purchase in the name of the first defendant was a benāmi transaction and for an order that the defendants should execute a conveyance to him. The Subordinate Judge held that this was a suit for specific performance falling under clause x (a) of section 7 of the Court Fees Act, and that the plaint should be stamped according to the amount of the consideration money for the purchase, which was Rs. 1,265, and dismissed the suit on the plaintiff failing to pay this amount. Plaintiff appealed on the ground that his suit fell under clause iv (c) or (d) and had been wrongly dismissed.

The dismissal order was clearly appealable, and the District Judge ought to have entertained the appeal. There was no question of valuation raised in it, for the only valuation made, *viz.*, the value of the consideration, was admitted, but the order was contested on the ground that the Subordinate Judge was wrong in holding that the suit fell within a certain class of cases as defined in the Court Fees Act; in other words, it was contended that the Subordinate Judge was wrong, in law, in holding that the suit was one for specific performance, since it was one for a declaratory decree where consequential relief was prayed.

The distinction between cases in which the valuation of property is in dispute and cases in which the application of the law is questioned is clearly drawn in *Abaji Parashram v. Ramchandra Bhimaji*⁽¹⁾. It is not so clearly expressed in the Full Bench case of *Vithal Krishna v. Balakrishna Janardan*⁽²⁾, but the principle therein laid down that “on the question of whether or not any particular suit was one admitting of valuation by the Judge an appeal lies” depends upon the same distinction, *viz.*, that a decision has to be come to, first, as to the class under which a suit falls, and secondly, upon its valuation in that class, and that an appeal lies from the former. In *Kashinath Narayan v. Govinda Piraji*⁽³⁾, the decision should have been made to rest

(1) P. J., 1885, p. 34.

(2) (1886) 10 Bom., 610.

(3) (1890) 15 Bom., 81.

not upon valuation, but upon the improper inclusion of the suit within the class of cases to which section 17 was applicable. So, too, in *Sardarsingji v. Ganpatsingji*⁽¹⁾, the Court entertained the appeal because the lower Court had held that the suit fell under clause ii when it really fell under clause iv of section 7. In *Chunia v. Ramdial*⁽²⁾ there was no question of valuation, but the appeal was entertained so as to “determine whether this suit is one in which specific relief is sought or not, so as to determine under what class of cases it falls for the purpose of the Court Fees Act.” In *Annamalai Chetti v. Cloete*⁽³⁾ an appeal was held to lie from the decision of a Court in respect of the class in which a suit ranks. In the present case, the order of the Subordinate Judge is questioned on the same ground, and we are of opinion that on that point an appeal lies.

We reverse the decree of the lower appellate Court, and remand the appeal for trial on the merits. Costs to abide the result.

RANADE, J.:—In this case the suit was brought for a declaration that the appellant-plaintiff was the owner of the land, and that the deed of sale in regard to it was taken in defendant's name as benamidár for the plaintiff. There was a further prayer to the effect that defendant should be required to pass a deed of conveyance to plaintiff. The claim was valued at 50 rupees, and Court fees were paid accordingly. The Court of first instance held that the valuation should be according to the amount for which the sale-deed was passed. The plaintiff failed to pay the additional fees, and his suit was dismissed. In appeal, the District Judge held that no appeal lay to him, as the decision of the Court of first instance was final under section 12 of the Court Fees Act.

There can be no doubt that the lower appellate Court was clearly wrong in dismissing the appeal before it on the ground of the alleged finality of the order made under section 12. There were, no doubt, earlier rulings which might lead to such an inference—*Narayan Madhavrao v. The Collector of Thana*⁽⁴⁾ and *Manohar Ganesh v. Bawa Ramcharandas*⁽⁵⁾; but the whole subject was carefully considered in *Vithal Krishna v. Bulkrishna*

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(1892) 17 Bom., 56.

(3) (1881) 4 M&L, 204.

(1877) 1 All., 360.

(1) (1877) 2 Bom., 145.

(5) (1877) 2 Bom., 219.

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Janardan⁽¹⁾, and it was laid down that an appeal lies against the decision of the question whether any particular suit was one admitting of valuation by the Judge; but if a valuation made by him is within his proper functions, its essential elements cannot be examined into in appeal. This ruling was followed by this Court in *Sardarsingji v. Ganpatsingji*⁽²⁾ and *Sardarsingji v. Ganpatsingji*⁽³⁾. The Calcutta High Court has taken this same view in *Ajoodhya Pershad v. Gunga Pershad*⁽⁴⁾, *Rajkrishna Banerjee v. Bama Soonduree Dasse*⁽⁵⁾ and *Gunga Monee Chowdhrao v. Gopal Chunder Roy*⁽⁶⁾. The Allahabad High Court has taken a different view of the section in *Balkaran Rai v. Gobind Nath Tewari*⁽⁷⁾, but the Madras High Court has preferred to follow in *Kanavan v. Komappan*⁽⁸⁾ the Calcutta ruling in *Ajoodhya Pershad v. Gunga Pershad*.

The Bombay decision noticed above leaves no doubt on the point that the decision of the question of law as to whether a particular suit falls within section 7, clause 4 (c) and (d), or whether it is a suit for which *ad valorem* duty should be paid, is appealable.

For these reasons, I would reverse the decision of the lower appellate Court, and remand the appeal to the District Court to be disposed of according to law.

Decree reversed and case remanded.

(1) (1886) 10 Bom., 610.

(2) (1889) 14 Bom., 395.

(3) (1892) 17 Bom., 56.

(4) (1880) 6 Cal., 240.

(5) (1875) 23 Cal., W. R., 296.

(6) (1873) 19 Cal., W. R., 24.

(7) (1890) 12 All., 129.

(8) (1890) 14 Mad., 169.

CRIMINAL REVISION.

Before Mr. Justice Parsons, Chief Justice (Acting), and Mr. Justice Ranade.

*IN RE JIVANJI ADAMJI.**

Criminal Procedure Code (Act V of 1898), Sec. 557—Pleader—Appointment of a pleader to act as Presidency Magistrate—Appointment not forbidden by the Code.

The appointment of a pleader to act as a Magistrate is not forbidden by section 557 or any other provision of the Code of Criminal Procedure (Act V 1898).

* Criminal Application for Revision, No. 245.

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