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is open to him in law such as fraud or misrepresentation ; but such a claim would depend on different evidence, and would be entirely of a different character to the present suit. No fraud or misrepresentation was alleged in the plaint, and the only ground on which the plaintiff sought relief was that after he purchased the property he discovered that other persons were entitled to it. Therefore the decision of the District Judge is right and the appeal must be dismissed with costs.

COYAJEE, J. :—I agree.

*Appeal dismissed.*

R. R.

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## APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.*

1922.

January 12.

ANNA NARAYAN PAVGI (ORIGINAL PLAINTIFF), APPELLANT v. THE MADHYAMA STHITITILA PARASPARA SAHAKARI MANDALI (ORIGINAL DEFENDANTS), RESPONDENTS<sup>o</sup>.

*Court Fees Act (VII of 1870), Schedule I, Article 1, Schedule II, Article 17—Memorandum of appeal—Court-fee stamp—Suit on promissory note—Decree against one defendant—Appeal for a decree against remaining defendants—Valuation of claim in appeal.*

In a suit to recover the amount due on promissory notes from several defendants, the plaintiff obtained a decree against one of them. The plaintiff having appealed to obtain a decree against the remaining defendants, a question arose as to the valuation of the claim in appeal for purposes of Court-fee:—

*Held*, that the claim in the appeal should be valued at the amount for which the remaining defendants are sought to be made liable.

*Ramasami v. Subbusami*<sup>(1)</sup>, followed.

<sup>o</sup> Second Appeal No. 694 of 1920.

(1) (1890) 13 Mad. 508.

SECOND appeal from the decision of G. D. French, District Judge of Poona, confirming the decree passed by G. M. Pandit, First Class Subordinate Judge at Poona.

Defendant No. 1, as manager of a partnership, passed several promissory notes in favour of the plaintiff. The plaintiff sued to recover the amount due on the promissory notes from the ten defendants who were partners in the firm.

The trial Court passed a decree for Rs. 4,617-4-0 against defendant No. 1 alone and dismissed the suit as against the remaining nine defendants.

The plaintiff appealed to the District Court to make the remaining defendants amenable to his claim, and valued his claim in appeal at Rs. 4,617-4-0. The appeal was unsuccessful.

The plaintiff appealed to the High Court against the remaining defendants, and valued his claim in appeal at Rs. 130.

A question arose whether the claim was properly valued for purposes of Court-fee.

*G. N. Thakor* and *D. C. Virkar*, for the appellant.

*G. B. Chitale*, for respondent No. 2.

*N. V. Gokhale*, for respondent No. 3.

*D. A. Tuljapurkar*, for respondent No. 4.

*K. V. Joshi*, for respondent No. 7.

*P. B. Shingne*, for respondent No. 9.

*S. Y. Abhyankar*, for respondent No. 10.

MACLEOD, C. J.:—The plaintiff filed this suit against ten defendants to recover a sum of Rs. 4,617-4-0. A decree was passed against the first defendant only by the trial Court, and an appeal against that decree was dismissed by the District Judge. The plaintiff has now filed a Second appeal against that decree, and

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claims to value his appeal as if he was suing merely for a declaration, namely, that the decree passed by the trial Court was binding against the other defendants also. This contention seems to have found favour with the Taxing Officer, who relied upon the decision in *Zinnatunnessa Khatun v. Girindra Nath Mukerjee*<sup>(1)</sup>, which has nothing whatever to do with the point raised by the appellant in this case. There the suit was filed originally for a declaration that a certain decree was ineffectual and inoperative against the plaintiffs.

In this case there is a money suit against a large number of defendants, and the plaintiff having only got a decree against one of them, seeks to get a decree against the remaining defendants. The only order, therefore, that this Court could pass, if the appellant is successful, would be that the remaining defendants should pay the amount claimed to the plaintiff.

The same question came up for decision before the High Court of Madras in *Ramasami v. Subbusami*<sup>(2)</sup>. There the suit was filed upon a hypothecation bond executed by the first defendant. The son adopted by the deceased husband of the first defendant was made a party, and he claimed that the debt was not binding on him. The first Court passed a decree against both the defendants. In appeal, the second defendant was exonerated. The plaintiff preferred a Second appeal against the second defendant as sole respondent and affixed to the memorandum of appeal a ten rupees stamp as if a declaratory decree was sought. The judgment was as follows :—

"The appeal is substantially to establish the plaintiffs' right to render the hypothecated property belonging to the second defendant liable to be sold in satisfaction of the debt claimed in the suit. The Court fees payable must, therefore, be calculated on this amount."

<sup>(1)</sup> (1903) 30 Cal. 788.

<sup>(2)</sup> (1890) 13 Mad. 508.

It is, therefore, clear that the decision of the Taxing Officer was wrong, and the appellant cannot, by saying that he is asking for a declaration that the decree passed against the first defendant is binding against the other defendants, get rid of the fact that he is asking this Court to pass a money decree against the other defendants. The appeal, therefore, has been wrongly valued, and it may be noted that when the First appeal was filed to the District Court, it was not valued on this basis, but was valued on the original claim. The appellant, therefore, must repay the Court-fee which was refunded. A week's time is allowed for making this payment.

*Order accordingly.*

R. R.

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## APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.*

HOLLEPPA KALLAPPA MAYAPPANAVAR (ORIGINAL DEFENDANT No. 4),  
APPELLANT *v.* IRAPPA GIRI MALLAPPA BADIGER AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS\*.

1922.

*January 16.*

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*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 10 A—Sale or mortgage—Oral evidence—Scope of the section.*

The provisions of section 10 A of the Dekkhan Agriculturists' Relief Act are not limited to suits of the description mentioned in clauses (x), (y) or (z) of section 3 of the Act, but apply to all suits to which an agriculturist is a party and in which there is in issue some transaction entered into by such agriculturist or the person, if any, through whom he claims, which are of such a nature that the rights and liabilities of the parties thereunder are triable wholly or in part under Chapter III of the Act.

SECOND appeal from the decision of D. A. Idgunji, Assistant Judge of Belgaum, confirming the decree passed by R. G. Shirali, Subordinate Judge at Athni.

\*Second Appeal No. 741 of 1920.

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*v.*  
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SHTHITILA  
PARASPARA  
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