APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921. August 22.

BAI MEHERBAI NANABHAI BANAJI (ORIGINAL PLAINTIFF), APPLICANT *v.* MRS. R. R. DADINA (ORIGINAL DEFENDANT), OPPONENT*.

Pleader's fees—Taxation—Suit in ejectment—Fees calculated on the amount of the value of the house—Court-Fees Act (VII of 1870), section 7, clause XI, sub-clause (cc)—Bombay Pleaders Act (Bombay Act XVII of 1920), Third Schedule.

The plaintiff sued in the Court of a First Class Subordinate Judge to eject the defendant, who was her tenant, from her house. The claim for Court fee purposes was valued at Rs. 1,080 (the amount of rent for one year) and for purposes of jurisdiction it was valued at Rs. 15,000, the value of the house. The suit was decreed in the trial Court. The defendant appealed to the High Court, valuing her claim at Rs. 1,080 both for Court fee purposes and for Pleader's fees. The appeal was unsuccessful. A question having arisen how the pleader's fees should be assessed:—

Held, that the pleaders' fees should be assessed on the value of the house.

Per MACLEOD, C. J.:—"It may be a matter for future consideration whether the Third Schedule to the Bombay Pleaders Act XVII of 1920 should not be altered so as to provide for the calculation of pleaders' fees in suits by landlords against tenants for immediate possession of the immoveable property in the tenant's occupation."

TAXATION of pleader's fees.

The plaintiff sued in the Court of the First Class Subordinate Judge at Thana to eject her tenant the defendant from her bungalow at Bandra. The claim in the suit was valued for Court fee purposes at Rs. 1,080 (the amount of rent for one year's period) and for purposes of jurisdiction at Rs. 15,000 (the value of the bungalow). The suit was decreed; and the pleader's fees were assessed at Rs. 30.

The defendant appealed; but the appeal was unsuccessful. In the appeal, the claim was valued at Rs. 1,080 both for Court fees and pleader's fees.

* Civil Application No. 553 of 1921.

A question then arose how the pleader's fees were to be taxed in appeal.

The Taxing Officer decided that the fees should be assessed on Rs. 1,080.

The plaintiff applied to the Court.

G. N. Thakore, for the applicant :—I submit that the view taken by the Taxing Officer that the claim in appeal was correctly valued at Rs. 1,080 is erroneous. If Rs. 1,080 be taken as the valuation for jurisdiction as well as for Court fees then the appeal did not lie to the High Court. The appellant-opponent having preferred an appeal to the High Court must be taken to have accepted the valuation in the plaint, namely, Rs. 15,000. This valuation was also not disputed in the lower Court. It must be taken as the basis for assessing pleader's fees. Under section 52 of Regulation II of 1827 the pleader's fees must be taxed on the amount sued for. The expression "amount sued for" would include the subject-matter of the suit. Here the bungalow in suit is the subject-matter of which the accepted valuation is Rs. 15,000. I rely on the principle laid down in *Bai Meherbai* v. *Maganchand*[1].

J. G. Rele, for the opponent :—I submit that the suit being in ejectment for the purposes of Court fees it was valued at one year's rent Rs. 1,080 under section 7, clause III (*cc*) of the Court Fees Act, 1870 and under the Suits Valuation Act, section 8, the value as determinable for the computation of Court fees and the value for the purposes of jurisdiction shall be the same. The claim for pleader's fees was also taken the same as the claim for jurisdiction, namely, Rs. 1,080. This valuation of pleader's fees was accepted by the applicant at the time of the hearing of the appeal and

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she is now estopped from contending that the valuation was improper. No question of jurisdiction also was raised.

Secondly, I submit that the Taxing Officer was right in holding that the subject matter of the suit was not the bungalow. The title of the bungalow was not disputed by my client. The only question involved in the suit was whether the landlord had reasonable and *bona fide* cause in ejecting my client from the bungalow in suit. The subject-matter in suit ought, therefore, to be taken as the claim for one year's rent and it is on this basis that the pleader's fees ought to be assessed. If otherwise, it would involve a great hardship on the tenant, e. g., suppose the value of the property is one lac and the tenant pays only Rs. 100 as rent per month, he shall have to pay pleader's fee on one lac.

Thirdly, the principle laid down in *Bai Meherbai* v. *Maganchand*[1] cannot be applied to the present case. There the suit was for setting aside a sale-deed and for *receiving possession of property on the ground that the plaintiff was owner*. Here no question of ownership is involved, the title of the landlord being undisputed. The actual value of the property never came in dispute and it, therefore, cannot form the subject-matter of the suit in ejectment.

Thakor, in reply.

MACLEOD, C. J.:—This was a suit by a landlord to eject a tenant from a house occupied by the tenant. It was, therefore, a suit for possession of a house and but for the amendment of the Court-Fees Act in 1905, the Court fees would have been payable on the value of the house. Consequently the value of the house would

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decide the jurisdiction and it would follow that the pleader's fees would be payable on the value of the house.

Now that in a suit for recovery of immoveable property from a tenant the Court fees are payable according to the amount of rent of the property in the suit payable for the year next before the date of the presentation of the plaint, it follows that the Court fees are payable only on the amount of the annual rent, and the amount of the annual rent would decide also the question of jurisdiction. But it does not necessarily follow that the pleader's fees which were payable under the Act which was in force when this suit was filed, would not be fixed according to the decision in *Bai Meherbai* v. *Maganchand*[1] by the value of the house. It cannot be disputed that the subject-matter in dispute was the house and it is difficult to separate possession of the house and the house itself unless a distinction is made specifically by rule. Therefore, we think that the decision of the Taxing Officer is wrong and that the pleader's fees must be calculated on the amount at which the claim was valued when the suit was filed for the purpose of jurisdiction, which was practically recognised as correct by the appellant-defendant when the first appeal was presented to this Court. It may be a matter for future consideration whether the Third Schedule to the Bombay Pleaders Act XVII of 1920 should not be altered so as to provide for the calculation of pleader's fees in suits by landlords against tenants for immediate possession of the immoveable property in the tenant's occupation.

SHAH, J. :—I agree.

Order accordingly.

R. R.

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