

1874.
July 1.
S. A. No. 372
of 1874.

was communicated to and ratified by him. He has therefore become in point of law the maker of the note and is entitled only to such defences upon the record as are available to such maker. That defence is fraud and partial failure of consideration. They are both based on the same allegation that the agent paid a debt, partially his principal's and partially his own, by the making of this note. The proof of this failure of a divisible and definite part of the consideration lay upon the defendant and the Civil Judge has found upon the conflict of evidence that it is not made out, the Special Appeal must therefore be dismissed.

Appellate Jurisdiction. (a)

Special Appeal No. 65 of 1874.

NARAINA PUTTER.....*Special Appellant.*

AYA PUTTER.....*Special Respondent.*

The plaintiff executed a document whereby he created a charge of Rs. 4,500 upon certain immovable property. In a suit to cancel the document upon the ground of fraud.

Held, that the plaintiff valued his relief at Rs. 4,500 and that the District Munsif had no jurisdiction to try the suit.

1874.
July 2.
S. A. No. 65
of 1874.

THIS was a Special Appeal against the decision of G. R. Sharpe, the District Judge of South Malabar, in Regular Appeal No. 437 of 1873, confirming the decree of the Court of the District Munsif of Temelprom, in Original Suit No. 274 of 1873.

The plaint stated that the suit was brought to cancel a document whereby a Karipanayom Karar right of 4,500 rupees was created on certain lands specified in the Schedule annexed to the plaint upon the ground that the plaintiff was induced to sign the document by the fraud and misrepresentation of the defendant, and that possession of the document was fraudulently obtained by the defendant from the plaintiff.

The plaint set forth that the property specified in the document was in the joint possession of the plaintiff and his daughter-in-law, that defendant, a nephew of the plaintiff,

(a) Present: Morgan, C. J., and Holloway, J.

represented to him that he would settle the difference which then existed between him (plaintiff) and his daughter-in-law if he executed a document, the contents whereof were not explained to him. Plaintiff complied, but on learning the truth laid his complaint before the Registrar and Magistrate but without effect.

1874.
July 2.
S. A. No. 65
of 1874.

The defendant contended that he obtained the document legally for adequate consideration, and that the District Munsif's Court had no jurisdiction to try the suit.

The following issues were settled:—

I.—Whether the suit was properly valued.

II.—Whether defendant obtained the document without plaintiff's full knowledge of the facts and through fraud.

The Judgment of the District Munsif upon the first issue was as follows:—

The questions for decision are (1) whether the suit ought to be valued, for the purpose of jurisdiction, upon the sum secured by the document sought to be cancelled or upon the land revenue payable upon the property, the subject of the transaction; and (2) whether institution fee ought to be paid or rupees 4,500.

With regard to the 1st question, land is the subject of the suit, for the document in question does not hold plaintiff personally responsible for the debt. I hold, therefore, that the suit was properly valued upon the revenue; and the value thus assessed falls within the pecuniary jurisdiction of this Court.

With regard to the 2nd question, plaintiff merely seeks for a declaration and wants no consequential relief; in such cases rupees 10 would be the proper institution fee; but plaintiff has paid more and does not wish for a refund of the difference.

I find the 1st issue for plaintiff.

The District Munsif also found the second issue for the plaintiff and decreed that the document was null and void and should be cancelled. Upon appeal to the District Court by the defendant the contention as to the jurisdiction of the

1874.
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of 1874.

District Munsif was not relied upon and the District Judge confirmed the decree of the District Munsif.

The defendant appealed specially to the High Court upon the following grounds:—

The District Munsif had not jurisdiction to try this suit.

The judgments of the Lower Courts do not set out sufficient evidence to justify the decrees given.

Rama Rau, for the special appellant, the defendant.

J.H. S. Branson, for the special respondent, the plaintiff.

The Court delivered the following

JUDGMENT:—We are of opinion that the amount at which plaintiff within the meaning of the Act has valued his relief in this suit is Rupees 4,500. He executed a document of legal validity, which created a charge of this amount, and when it is cancelled he, by the operation of the Court, became richer by that amount. We apprehend that such a consequence is relief of a very substantial description and very far from being a mere declaration. It is as much a suit to get rid of a charge as a suit for the redemption of a mortgage and with the distinction that in this case the plaintiff does not become richer by the amount for he pays off the charge and is economically where he was before, while in the present case he becomes richer by the removal of a burden legally created and manifestly to the extent of that burden. (Section 7, Clause 9).^(a)

It seems clear that the Munsif had no jurisdiction and this is an objection which could not be waived. On this ground we reverse the decrees of the lower Courts and dismiss the Original Suit with costs.

(a) Clause 9, Section 7 of the Court Fees Act (Act No. VII of 1870) is in these words:—

“In suits against a mortgagee for the recovery of the property mortgaged and in suits by a mortgagee to foreclose the mortgage or, where the mortgage is made by conditional sale, to have the sale declared absolute according to the principal money expressed to be secured by the instrument of mortgage.”
