

Fulchand Vs. Bai Ichha

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Court : Mumbai

Decided On : Jul-13-1887

Reported in : (1888)ILR12Bom98

Judge : Charles Sargent, C.J. and ;Nanabhai Haridas, J.

Appellant : Fulchand

Respondent : Bai Ichha

Judgement :

Charles Sargent, C.J.

1. This appeal raises a question as to the proper construction of Section 11 of Act VII of 1870. It has been contended that, as the plaintiff has not paid the proper fee on the sum of Rs. 3,349-14-3, the amount of the mesne profits as found in his favour, he cannot execute the rest of the decree, which relates to the delivery of the documents lodged in Court and of possession of the house, It is said that the 'decree,' the execution of which is prohibited by the section until the proper Court fee is paid, is the whole decree, and not such part of it as relates merely to the mesne profits. The language of Section 17, which deals with multifarious suits, shows that, for the purposes of the stamp revenue, such suits are deemed to be a collection of distinct suits relating to the several causes of action combined in them. And we think that in applying Section 11 to such suits, we ought, in order to give an harmonious construction to the Act as a whole, to construe the term 'suit in

that section as confined to that part of the suit in question which relates to mesne profits. Strictly speaking, a suit on several causes of action, including mesne profits, is not a suit for mesne profits,) which, according to its ordinary and more obvious meaning, would be understood as one exclusively for mesne profits. Moreover, as the Act is a fiscal Act, it is to be construed in favour of the subject. And any other view of Section 11 would certainly be a harsh one, and not to be accepted in the absence of a very clear expression of such intention on the part of the Legislature. The decision in *In re Manohar G. Tambekar* I.L.R., 4 Bom., 26 on the analogous question raised by Article 5 of Schedule I proceeds on the same view of the Act.

2. We must, therefore, discharge the order of the Subordinate Judge and as counsel for the defendant admits that he has no objection to urge, on the merits, to the execution of the decree, order that the documents lodged in Court be delivered to the plaintiff, and that possession be given to him of the house mentioned in the darkhast

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