

Vasudeva Vs. Madhava and ors.

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Court : Chennai

Decided On : Sep-29-1892

Reported in : (1893)ILR16Mad326

Judge : Muttusami Ayyar and ;Wilkinson, JJ.

Appellant : Vasudeva

Respondent : Madhava and ors.

Judgement :

1. Two preliminary objections are taken to the hearing of this appeal: (i) that the appeal has not been properly stamped and (ii) that the appeal lies to the District Court and not to the High Court.

2. The appeal is from a decree for the redemption of one-fourth of the property in the schedule on payment of one-fourth of the mortgage-debt. The Subordinate Judge held that 15 1/4 padipads claimed by defendants Nos. 3 to 18 as their jenm were not liable to the mortgage-debt and belonged to the defendants Nos. 3 to 18. He decreed redemption of one-fourth part of the remainder of the property mortgaged. Plaintiff appeals on the ground that the decision of the Subordinate Judge so far as it relates to the 15 1/4 padipads was erroneous. Instead of valuing the appeal as required by Section 7, Clause 9 of the Court Fees Act at one-fourth of the mortgage-debt, he has fixed an arbitrary value of Rs. 200 on the 15 1/2 padipads and paid Rs. 15 only. No explanation is given why this arbitrary value

was fixed. The proper stamp duty payable is Rs. 110 and the appellant must pay the difference.

3. With reference to the second objection, we have no doubt that the appeal does lie to the District Court and not to the High Court. Under Section 13 of the Civil Courts Act, this Court has appellate jurisdiction in cases heard by a Subordinate Judge only when the amount or subject-matter of the suit exceeds Rs. 5,000. In the present suit the value of the subject-matter is Rs. 1,625 the one-fourth of the mortgage-debt. Our attention is drawn by appellant's pleader to Section 11 of Act VII of 1889, and it is argued that the entire mortgage-debt, which was taken by the Subordinate Judge to be the value of the suit for the purpose of jurisdiction, must be taken as the value which regulates the appeal. That Section only applies to cases in which the objection taken on appeal refers to the improper valuation of a suit by a Court of First Instance or of appeal for jurisdictional purposes. It does not apply to a case like the present, in which we have to determine what was the real value of the subject-matter in the Subordinate Court. That was one-fourth of the mortgage-debt and not the whole debt. The erroneous view taken by the Subordinate Judge is not rendered binding upon us by Section 11, because we are not now deciding whether or not he had jurisdiction, but whether an appeal lies to this Court. The case *Vyadinatha v. Subramanya* I.L.R. 8 Mad. 235 has no reference to a suit for redemption of a mortgage.

4. The appeal lies to the District Court. We order therefore that, on payment of the deficient stamp duty, the appeal be returned for presentation in the proper Court. If the deficient stamp duty be not paid within one month from this date, the appeal will stand dismissed.

5. The respondents are entitled to their costs in this Court.