

## APPELLATE CIVIL.

*Before D. Chatterjee and Walmsley JJ.*

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GANESH BHAGAT

June 18.

*v.*

SARADA PRASAD MUKERJEE.\*

*Court-fee—Plaint—Valuation of Suit—Court Fees Act (VII of 1870)  
s. 7, sub-s. (4) cl (c).*

In a suit for a declaration that a decree for over 22,000 was bad and might be set aside, the plaintiffs, who were interested only in three annas share of the property which was valued at Rs 9,000, were required to pay court-fee for the whole of the decretal amount :—

*Held*, that the plaintiffs must value their suit according to the extent of their claim and the court-fee need therefore be paid only upon that amount.

*Phul Kumari v. Ghanshyam Misra* (1) and *Harihar Prasad Singh v. Shyam Lal Singh* (2) referred to.

APPEAL by Ganesh Bhagat, the plaintiff.

This appeal arose out of an order of the Subordinate Judge of Bhagalpore rejecting a plaint as being insufficiently stamped. The suit was for a declaration that a decree obtained by the defendant for over Rs. 22,000 against themselves and their relations was bad so far as they were concerned since they had neither taken the loan nor were in any way benefited by it and were not even represented in the suit and that their share in the family property, which was three annas and was valued at Rs. 9,000, was improperly sold in execution of that decree.

\* Appeal from original Decree, No. 430 of 1912, against the decree of D. N. Dey, Subordinate Judge of Bhagalpore, dated Nov. 27, 1912.

(1) (1907) I. L. R. 35 Calc. 202.      (2) (1913) I. L. R. 40 Calc. 615.

They paid court-fee upon ten times the Government revenue. They were willing to pay court-fee upon 9,000, the value of three annas share of the property sold under the mortgage decree. The Subordinate Judge, however, held that they were not entitled to maintain the suit upon that court-fee and ordered that they should pay court-fee upon the whole of the decretal amount which was over Rs. 22,000.

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*Babu Mohini Mohan Chatterjee and Babu Probodh Chandra Dutt*, for the appellants.

*Babu Naresh Chandra Sinha and Babu Kalidas Sirkar*, for the respondents.

D. CHATTERJEE AND WALMSLEY JJ. This is an appeal against an order of the Subordinate Judge of Bhagalpore rejecting a plaint as being insufficiently stamped. The suit of the plaintiffs was for a declaration that a decree for over Rs. 22,000 obtained by the defendant against themselves and their relations was bad so far as they were concerned as they never took the loan, were not benefited by the loan and were not properly represented in the suit and that their share in the family property which was three annas and valued at Rs. 9,000 had been improperly sold in execution of that decree. They paid court-fee on their plaint upon ten times the Government revenue. They were, however, willing to pay court-fee upon Rs. 9,000 the value of their three annas share of the property sold under the mortgage decree. The learned Subordinate Judge, however, thought that they were not entitled to maintain the suit upon that court-fee and must pay court-fee upon the whole amount of the decree which was over Rs. 22,000.

It has been contended before us that the learned Judge is wrong, and on the ground that the loss to the

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plaintiffs must be the index to the value of the action so far as the plaintiffs are concerned. If the plaintiffs' loss on account of the decree was small they would not be bound to value their suit according to the decree. In support of this contention, the learned vakil for the appellants has relied upon the remarks of the Privy Council in the case of *Phil Kumari v. Ghanshyam Misra* (1) where their Lordships are reported to have said: "The value of the action must mean the value to the plaintiff. But the value of the property might quite well be Rs. 1,000, while the execution debt was Rs. 10,000. It is only if the execution debt is less than the value of the property that its amount affects the value of the suit." This case was, no doubt, a case under Section 283 of the Code of Civil Procedure and it was held that it came under sub-section (1) of the Art. 17 of Schedule II, of the Court-Fees Act, namely, a suit to alter or set aside a summary decision or order of a Civil Court not established by Letters Patent. In the portion which we have quoted above, their Lordships explain the meaning of the words 'value of the action' as meaning the value to the plaintiff; and to that extent it may be a guide for the decision of this case.

On the other hand, the learned vakil for the respondent has drawn our attention to the case of *Harihar Prasad Singh v. Shyam Lal Singh* (2) That was a case to some extent analogous to the present case. In that case, in execution of a decree for Rs. 2,794 a property worth Rs. 7,000 had been sold and their Lordships held that the plaintiff must value his suit according to the value of the decree. The value of the decree in that case was less than the value of the property and the judgment was in accordance with what their Lordships of the Privy Council said

(1) (1907) I. L. R. 35 Calc. 202. (2) (1913) I. L. R. 40 Calc. 615

in the case of *Phul Kumari v. Ghanshyam Misra* (1) namely, "it is only if the execution debt is less than the value of the property that its amount affects the value of the suit." In that case the court-fee was directed to be paid upon the value of the decree which was less than the value of the property which the plaintiff wanted to recover.

In this case, however, the loss that the plaintiffs have suffered is the loss of their property which is valued at Rs. 9,000. The value of the action to them, therefore, is Rs. 9,000, and the prayer in the plaint that the decree may be set aside to the extent of the share of the plaintiffs which has been added to the plaint does not indicate that the plaintiffs were increasing the value of the action so far as they were concerned. Taking their share as three annas, the share of the decree so far as they would be affected would be much less than Rs. 9,000. As the plaintiffs, however, valued their loss at Rs. 9,000, we think that the court-fee must be paid upon that according to section 7, sub-section (4) clause (c), and that the plaintiffs must value their plaint accordingly.

The order, therefore, requiring the plaintiffs to pay court-fee on Rs. 22,876-7-6 is wrong and must be set aside, and the case sent back to the lower Court to be dealt with in accordance with law. The plaintiffs must have their costs of this appeal.

The plaintiffs will be allowed to pay court-fees within eight weeks from this date.

Let the record be sent down without delay.

S. K. B.

*Appeal allowed: case remanded.*

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