

CIVIL RULE.

Before Suhrawardy and Chotzner JJ

SARADA SUNDARI BASU

v.

AKRAMANNESSA KHATUN.*

1924

Feb. 18.

Jurisdiction—Redemption suits—Competency of Court—Suits Valuation Act (VII of 1887), s. 8—Court Fees Act (VII of 1870), s. 7—Civil Procedure Code (Act V of 1908), O. XXXIV, rr. 7 and 8.

Where a suit for redemption was filed in the Court of the Munsif who proceeded by way of a preliminary issue to decide the question whether he had the pecuniary jurisdiction to try it, and upon the evidence led on both sides came to the conclusion that the debt due by plaintiffs to defendants was over Rs. 1,000 and consequently the suit was beyond his jurisdiction, the plaint being accordingly returned for presentation to the proper Court:—

Held, that the view of the learned Munsif was correct both in law and on principle.

Held, also, that in redemption suits jurisdiction would depend not on the amount as-ured but on the amount ultimately found to be due.

Kedar Singh v. Mutabadal Singh (1) and *Jellaldeen Marakayar v. Vijaswami* (2) dissented from.

Held, further, that competency meant jurisdiction, and the competency of a Court depended upon the nature of the suit and upon its own pecuniary jurisdiction. If the Court had no jurisdiction to try the suit, it had no jurisdiction to make the decree.

Golap Singh v. Indra Kumar Hajra (3) followed.

CIVIL RULE under section 151, Civil Procedure Code, obtained by Sarala Sundari Basu and another, the defendants.

The plaintiffs (opposite party) brought a suit for redemption on the allegations, *inter alia*, that the

*Civil Rule No. 29 of 1924, against the order of Narendra Nath Lahiri, Subordinate Judge of Backergunge, dated Sep. 17, 1923.

(1) (1908) I. L. R. 31 All. 44. (2) (1915) I. L. R. 39 Mad. 447.

(3) (1909) 9 C. L. J. 367, 375.

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plaintiff No. 1 and one Basiruddin Chowdhury, the deceased husband of plaintiff No. 1 and father of plaintiff No. 2, had executed a registered mortgage bond in favour of defendant No. 1 for Rs. 500, Rs. 350 being for renewal of an older bond executed by the aforesaid Basiruddin Chowdhury and on promise of paying the plaintiffs the balance of Rs. 150 in cash for purchase of some property. The plaintiffs' version was that in point of fact this further sum of Rs. 150 was never paid to plaintiffs and Basiruddin in cash, and that the plaintiffs had paid up towards this 2nd bond Rs. 542 in cash on various dates, that on the date of last payment it was settled that on plaintiffs paying Rs. 400 more the debt would be cleared in full and that in accordance with this contract Rs. 400 was tendered to the defendants which they did not accept. It was further stated that the terms of the bond were not explained to Basiruddin and the plaintiffs and he knew nothing about the stipulation for compound interest. The defendants while not admitting all these allegations of the plaintiffs stated that as a matter of fact Rs. 1,934 was due from the plaintiffs and the suit was therefore not triable by the Munsif in whose Court it had been instituted. The trial Court thereupon proceeded to decide this preliminary issue and after taking evidence thereon held that more than Rs. 1,000 being due to the plaintiffs this suit was beyond his pecuniary jurisdiction. He returned the plaint for presentation to the proper Court. On appeal by the plaintiffs this decision was reversed by the lower Appellate Court, whereupon the defendants moved the High Court and obtained this Rule.

Babu Suresh Chandra Tuluqdar, for the petitioners. The law has been affected by the passing of Act VII of 1887, section 8. The decisions in *Kedar Singh*

v. *Matabadal Singh* (1) and *Jellaldeen Marakayar v. Vijaswami* (2) lay down a principle which is in direct conflict with the statutory law. They ought not, therefore, to be relied upon. Redemption suits have been expressly excluded from the operation of section 8 of the Suits Valuation Act.

I rely on the decision in *Golap Singh v. Indra Kumar Hajra* (3). The mandatory effect of Order XXXIV, rules 7 and 8 of the Code of Civil Procedure also show that the construction of law put by the Subordinate Judge is wrong.

Babu Abinash Chandra Guha, for the opposite party. The point is concluded by authority. *Vile Kedar Singh's* (1) and *Jellaldeen's cases* (2). The law laid down in the earlier cases is not affected by the Suits Valuation Act. I also rely on the decision in *Rameswar Mahton v. Dilu Mahton* (4) where it was held that a Munsif had jurisdiction to ascertain the mesne profits notwithstanding that the amount of such mesne profits when added to the value of the suit might come to a sum in excess of the pecuniary jurisdiction of his Court.

Babu Suresh Chandra Taluqdar, in reply.

Cur. adv. vult.

SUHWARDY AND CHOTZNER JJ. This rule was obtained on grounds Nos. 4 and 6 of the petition which are as follows:—

“4. For that on a valid and correct construction of law on the subject the learned Subordinate Judge ought to have held that the suit was beyond the pecuniary jurisdiction of the learned Munsif.”

(1) (1908) I. L. R. 31 All. 44.

(3) (1909) 9 C. L. J. 367, 375, 377.

(2) (1915) I. L. R. 39 Mad. 447.

(4) (1894) I. L. R. 21 Calc. 550.

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“6. For that the learned Munsif having heard all the evidence and arrived at his own findings thereon, the learned Subordinate Judge has erred in law and acted without jurisdiction in not expressing his definite conclusions thereupon.”

The suit was one for redemption and the Munsif before whom it was instituted proceeded by way of a preliminary issue to decide the question whether he had the pecuniary jurisdiction to try it. Evidence was led on both sides and upon it he came to the conclusion that the debt due by plaintiff to defendant was over Rs. 1,000 and that consequently the suit was beyond his jurisdiction. He accordingly returned the plaint for presentation to the proper Court. Plaintiffs appealed and the learned Subordinate Judge reversed the order and remitted the case to the lower Court for trial on the merits.

He pointed out that a redemption suit comes under section 7, cl. ix of the Court Fees Act, and the plaint has to be stamped with court-fees payable on the principal sum assured. But section 8 of the Suits Valuation Act does not cover redemption suits so that valuation for the purpose of jurisdiction does not necessarily follow valuation for the purpose of court-fees. The Allahabad and Madras High Courts say that section 8 does not lay down that the valuation for the purposes of jurisdiction must necessarily be different from that for the purpose of court-fees.

The learned Judge further observed that he saw no practical difficulty from Order XXXIV, rules 7 and 8 of the Code of Civil Procedure because the Court would not direct the plaintiffs to pay a certain sum but only direct that if a certain sum was paid within a certain time plaintiffs would have a certain relief in respect of the mortgaged property and if they failed they would be debarred from getting it in future. If no payment

were made the mortgagee would be entitled to ask for the sale of the property but that would be no part of the decree though it could follow from the decree incidentally.

The learned Judge then proceeded to make some observations on the evidence recorded by the Munsif, adversely criticising his findings though not definitely disagreeing with them.

The learned vakil who has appeared in support of the Rule urges that the procedure adopted by the Court of appeal below was erroneous and that the learned Judge should have come to a definite finding on the evidence.

As regards the second contention we are of opinion that though the learned Judge may possibly have carried his criticisms a little too far, it was not his intention to consider the evidence except from the point of view of the Munsif's jurisdiction and he was careful to guard against the imputation of having prejudged the case by saying: "It is not my intention to thrust my views upon the Court which would have to try the case and the Court should try it uninfluenced by my observations."

We think, however, that as the facts stand, the learned Judge was in error in remitting the case to the Munsif for trial on the merits.

He has relied on the case of *Kedar Singh v. Matabadal Singh* (1) which follows earlier cases of that Court, as an authority for the proposition that the value for purposes of jurisdiction of a suit for redemption of a mortgage is the amount of the principal mortgage money and not the value of the property mortgaged, and that the law has not been affected by the passing of Act VII of 1887, section 8.

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That view was also taken by the Madras High Court in the case of *Jellaldeen Marakayar v. Vijaswami* (1).

It is said in these cases that section 8 of the Suits Valuation Act does not cover redemption suits so that valuation for the purposes of jurisdiction does not necessarily follow valuation for the purpose of court-fees, nor will valuation for the purpose of jurisdiction necessarily be different from that for the purpose of court-fees. Therefore the law as laid down in the earlier cases is unaffected by the Suits Valuation Act.

With great respect to the learned Judges who decided these cases we cannot but feel considerable doubt as to the correctness of these decisions. If the Legislature had not contemplated a change in the law it is not easy to understand why redemption suits should have been expressly excluded from the operation of section 8 of the Suits Valuation Act. The section does not say that the value determinable for the purposes of jurisdiction is the value determinable for the purpose of the initial payment of court-fees. We are therefore inclined to the view that jurisdiction will depend not on the amount assured but on the amount ultimately found to be due.

Our attention was drawn to the case of *Rameswar Mahton v. Dilu Mahton* (2) where it was held that in a suit for possession with mesne profits the Munsif had jurisdiction to ascertain the mesne profits and to give effect to the order made in the decree notwithstanding that the amount of such mesne profits when added to the value of the suit might come to a sum in excess of the pecuniary jurisdiction of his Court.

That case was considered and distinguished in *Golap Singh v. Indra Kumar Hajra* (3). At p. 377, it was pointed out that "the amount of mesne profits for

(1)(1915) I. L. R. 39 Mad. 447.

(2) (1894) I. L. R. 21 Calc. 550.

(3) (1909) 9 C. L. J. 367, 377.

“which the Munsif made a decree had accrued entirely after the institution of the suit and depended upon the length of time during which the defendant might manage to keep the plaintiff out of possession in spite of the decree in his favour.”

The decision on principle too which had been doubted in *Ijjatulla Bhuyan v. Chandra Mohan Banerjee* (1), was disapproved.

It is also pointed out (at p. 374) that the provision of the Suits Valuation Act only shows that for purposes of jurisdiction the value of the suit must be taken to be determined by the value determinable for the computation of court-fees. But this does not conclude the question whether a Court of restricted pecuniary jurisdiction is competent to make a decree in a suit for accounts valued at less than Rs. 1,000 for an amount in excess of Rs. 1,000 which is the pecuniary limit of its jurisdiction.

It may be conceded that a suit should be instituted in the Court of the lowest grade competent to try it (section 15, Code of Civil Procedure). Competency means jurisdiction, and the competency of a Court depends upon the nature of the suit and upon its own pecuniary jurisdiction. That jurisdiction must be determined with reference to the various Acts constituting the Courts and the question of valuation by reference to the Court Fees and Valuation Acts.

The jurisdiction of the Munsif here is limited to the trial of suits the value of which does not exceed Rs. 1,000. Now *prima facie* it is the plaintiff's claim which determines jurisdiction, and the jurisdiction continues whatever the event unless a different principle comes into operation to prevent such a result or to make the proceedings from the first abortive. It is precisely such a contingency which has arisen in the

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(1) (1907) I. L. R. 34 Calc. 954.

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present case. The evidence recorded by the learned Munsif satisfied him that the debt due by the plaintiffs on the bond was more than Rs. 1,000. He therefore held that the suit was beyond his pecuniary jurisdiction. In our judgment that view was correct both in law and on principle.

We are further of opinion that the learned Judge had failed to appreciate the mandatory effect of Order 34, rules 7 and 8. The Court must declare the amount due at the date of the decree and direct its payment within a certain time. If the money is not paid, the Court must on defendant's application under rule 8(4) pass a decree for the sale of the property. It is difficult to understand therefore how such an order would "be no part of the decree though it would follow "from the decree incidentally."

The substance of the matter is that if the Court has no jurisdiction to try the suit, it has no jurisdiction to make the decree. As explained in *Golap Singh's case* (1) cited above at page 375, "if a Court of "limited pecuniary jurisdiction took cognizance of a "suit in which the sum claimed was larger than the "amount over which the Court had jurisdiction any "judgment it might give would be void."

The result therefore is that the Rule is made absolute with costs, 2 gold mohurs, and the order of the lower Appellate Court discharged. The plaint will be returned to the plaintiff for presentation to a Court of competent jurisdiction.

Rule absolute.

G. S.

(1) (1909) 9 C. L. J. 367, 375, 377.