

REFERENCE UNDER COURT-FEES ACT.

Before Rankin C. J.

In re KALIPADA MUKHERJI.*

1930

April 11, 28.

Court-fee—Suit to set aside court sale—Such suit if a declaratory suit—Cumulative fee—Valuation—Court's power to value or to revise valuation—Appeal—Court-fees Act (VII of 1870), ss. 7 iv (c), 12 (2), 17 ; Sch. II, Art. 17—Suits Valuation Act (VII of 1887), ss. 4, 8, 9—Code of Civil Procedure (Act V of 1908), s. 24 ; O. VII, r. 11.

Court-fee on a suit to set aside a sale in execution with an ancillary prayer for a permanent injunction is not expressly or specifically provided for in the Court-fees Act.

It is doubtful whether such a suit can be said to be a suit for a declaration, but under the Court-fees Act it has apparently been so considered, and, as such, the plaint has to be stamped in accordance with section 7 iv (c) of that Act.

Such a case is clearly outside the provisions of section 17 of the Court-fees Act, which deals with cumulative fees, and the plaintiff has the right and duty to put down one single and entire sum as representing the value of the total relief sought. The litigant is not intended to pay in respect of the same thing over and over again because of the need for consequential relief.

The Court-fees Act in sub-section iv of section 7 deals with claims which do not yield themselves readily to any statement of money value, and the plaintiff is entitled in such a suit to put his own valuation subject to sections 4 and 9 of the Suits Valuation Act.

Phul Kumari v. Ghanshyam Misra (1) referred to.

Section 8 of the Suits Valuation Act and section 24 of the Code of Civil Procedure have to be considered in relation to the class of cases specified in clause (c) of sub-section iv of section 7 of the Court-fees Act.

The meaning of section 8 of the Suits Valuation Act is that the value for purposes of jurisdiction shall follow the value to be given for purposes of Court-fee, not *vice versa*.

Where in such a suit, the plaintiff never made a proper valuation of the relief sought, but erroneously dealt with his claim for a declaration under Article 17 of Schedule II of the Court-fees Act, which applies only to a suit for a declaratory decree where no consequential relief is prayed, and then valued his claim to consequential relief independently as a claim for an injunction under clause (d) of sub-section iv of section 7 of the Act, the plaint should be returned to him for proper valuation.

Obiter. Where such a suit is found to be incorrectly valued, the court should not put a valuation of its own on the relief sought in the suit, but should return the plaint to the plaintiff, under Order VII, rule 11, of the Code of Civil Procedure, for his own valuation in accordance with law.

*Reference under section 5 of the Court-fees Act by the Registrar, dated March 31, 1930.

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Umatal Batul v. Nanji Koer (1) dissented from.

Official Trustee of Bengal v. Gobardhan Guchait (2) and *In the matter of Gooptu Estates Limited* (3) relied on.

Sunderbai v. Collector of Belgaum (4) referred to.

REFERENCE under section 5 of the Court-fees Act by the Registrar, Appellate Side, in a First Appeal.

The facts appear sufficiently in the judgment.

Panchanan Ghosh, Hiralal Ganguli and *Nirmalkumar Sen* for the appellants.

The Senior Government Pleader, Saratchandra Basak, and the *Assistant Government Pleader, Nasim Ali*, for the revenue authorities.

Cur. adv. vult.

RANKIN C. J. In Suit No. 135 of 1926, certain mortgagees sued to enforce by sale a mortgage granted by the present plaintiff appellant for Rs. 40,000 and interest over property, which the plaintiff now values at Rs. 1,20,000. A *puisne* mortgagee was impleaded as defendant. In the end, the property was sold to respondent No. 1 in the present appeal for Rs. 58,500. The amount due upon the first mortgage is not stated, but the Registrar of this Court has been informed that it amounted to some Rs. 60,000. The sale was confirmed and a sale certificate issued. On the auction purchaser seeking an order for possession thereunder, the plaintiff objected and his objection was dismissed.

Alleging that an extension of time to deposit the balance of the purchase money was fraudulently obtained from the execution court by the auction purchaser and that the auction purchaser was merely a *benâmdar* for the *puisne* mortgagee defendant, the plaintiff brought the present suit, asking for a declaration that he still retains his equity of redemption and that the sale was illegal and inoperative and for an injunction restraining the auction purchaser and *puisne* mortgagee from taking

(1) (1907) 11 C. W. N. 705.

(2) (1928) 33 C. W. N. 231.

(3) (1929) I. L. R. 57 Calc. 910.

(4) (1918) I. L. R. 43 Bom. 376 ;
L. R. 46 I. A. 15.

possession of the mortgaged property, which is still in plaintiff's possession. The suit was brought on 5th July, 1929, before the Subordinate Judge.

Paragraph 19 of the plaint was as follows:—

For determining the jurisdiction of the court and court-fees, the suit for declaration of rights, *etc.*, in respect of the disputed property, being laid at Rs. 1,20,000 the value of the disputed property, the plaintiff brings this case on payment of a court-fee of Rs. 20 for declaration and a court-fee of Rs. 3-2 annas on Rs. 50, at which the suit is valued for issue of an injunction.

No objection on the score of jurisdiction or of sufficiency of court-fee was taken in the trial court, which (on 25th January, 1930) heard and dismissed the suit on the merits.

Thereupon, a memorandum of appeal was presented to this Court, headed "Suit valued at "Rs. 1,20,000. Suit for a declaration and for an "injunction valued at Rs. 50," and stamped with Rs. 23-12 by way of court-fee.

The sufficiency of this court-fee having been objected to by the office, I am dealing with the matter under section 5 of the Court-fees Act upon a Reference by the Registrar.

The suit is in substance a suit to set aside a sale in execution with an ancillary prayer for a permanent injunction, which would have been better omitted. It is somewhat curious that nowhere in the Court-fees Act is there any express or specific mention of a suit to set aside a court sale. If there had been any fee prescribed for such a suit or any principle of valuation laid down therefor, I should have made the plaintiff pay court-fee in accordance therewith and, on the authority of *Phul Kumari's* case (1), refused to charge him anything more. But I can find no such provision and the suit is, in form, a suit for a declaration and for an injunction by way of consequential relief. I have some doubt whether a decree setting aside a sale is really and only a declaration, but, under the Court-fees Act, it has apparently been so considered and, in the present case, the plaintiff asked expressly for a declaration.

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This being so, I am of opinion that the plaint had to be stamped in accordance with section 7 iv (c) of the Court-fees Act, 1870. The suit being "to obtain a declaratory decree or order where consequential relief is prayed," court-fee was payable "according to the amount at which the relief sought is valued in the plaint or memorandum of appeal." The case is clearly outside the provisions of section 17 of the Act and, in my opinion, the plaintiff had the right and duty to put down one single and entire sum as representing the value of the total relief sought by him in the suit. I have observed decisions of other High Courts, which seem to mean that so much is to be put down for the declaration and so much for each consequential relief prayed for, but this is, in my opinion, a plain perversion of the Act. Cumulative fees are dealt with by section 17 and the litigant is not intended to pay in respect of the same thing over and over again because of the need for consequential relief. The Act in sub-section iv is dealing with claims which do not yield themselves readily to any statement of money value and in leaving the matter to the plaintiff's valuation, subject to sections 4 and 9 of the Suits Valuation Act, it proceeds just as much upon a considered policy as it does when, by Article 17 of Schedule II of the Act, it charges certain classes of suits with a fee which is irrespective of value. [*Phul Kumari v. Ghanshyam Misra* (1).]

The 8th section of the Suits Valuation Act and the 24th section of the Civil Procedure Code have to be considered in relation to the class of case specified in clause (c) of sub-section iv of section 7 of the Court-fees Act. The district court or the High Court can always transfer a case to a court more suitable than the court in which it is brought, but, subject thereto, the jurisdiction of the trial and appellate courts will depend in the cases dealt with by sub-section iv upon the plaintiff's valuation [*Sunderbai v. The Collector of Belgaum* (2).]

(1) (1907) I. L. R. 35 Calc. 202.

(2) (1918) I. L. R. 43 Bom. 376 ;
L. R. 46 I. A. 15.

In the present case, it is clear that the plaintiff valued his suit in a manner contrary to the statute. He dealt with his claim for a declaration under Article 17 of Schedule II, which applies only to a suit for a declaratory decree where no consequential relief is prayed and then he valued his claim to consequential relief independently as a claim for an injunction under clause (d) of sub-section iv of section 7 of the Act. He coupled this, contrary to section 8 of the Suits Valuation Act, with an independent valuation of Rs. 1,20,000 for purposes of jurisdiction. The plaint should have been returned to him for proper valuation under clause (d) of sub-section iv of section 7. He never has valued "the relief sought" within the proper meaning of clause (d).

Now that he has presented an appeal, the question is as to the proper course to be adopted. The Stamp Reporter thought that the appeal should be valued for court-fee on either Rs. 58,500 (the auction price) or Rs. 1,20,000 the plaintiff's value of the property. The Registrar suggests that Rs. 1,20,000 less Rs. 60,000, due on the mortgage, would be the proper figure. The Senior Government Pleader argues that Rs. 1,20,000, as the plaintiff's own valuation for purposes of jurisdiction, should be the figure taken for court-fee and refers me to *Balkrishna Narayan Samant v. Jankibai kom Sitaram Vithal Samant* (1), *Manni Lal v. Radhe Gopalji* (2) and *Raj Krishna Dey v. Bipin Behari Dey* (3). It seems clear that, whatever figure be adopted, it must under section 12 of the Court-fees Act be made applicable both to the suit and to the appeal.

Now I must reject altogether the suggestion that it would be reasonable in this case to require the appellant to pay court-fees on Rs. 1,20,000. That figure, according to him, is the unencumbered value of the mortgaged property. Because, in a way which is entirely misconceived, he has given that as the value of the suit for purposes of jurisdiction, claiming at

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(1) (1919) I. L. R. 44 Bom. 331.

(2) (1925) I. L. R. 47 All. 501, 504.

(3) (1912) I. L. R. 40 Calc. 245.

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the same time to assess court-fee in an entirely different way, he cannot be said directly or indirectly to have valued the relief sought at that figure. He has claimed to be exempt from valuing his claim to a declaration and he has valued his claim to an injunction at Rs. 50. The meaning of section 8 of the Suits Valuation Act is that the value for purpose of jurisdiction shall follow the value to be given for purposes of court-fee, not *vice versa*. To charge him with court-fee on Rs. 1,20,000 would be an irrational and illogical procedure and the cases cited do not, in my opinion, justify such action in the present case. The Bombay decision seems to be reasonable enough and the Calcutta case depends upon the view that the court can revise the plaintiff's valuation. But whether they be right or wrong I need not for this purpose consider.

The next question is whether, from the plaint and memorandum of appeal, the court can put a valuation of its own on the relief sought. In *Umatul Batul v. Nanji Koer* (1), it was held that the court can revise the plaintiff's valuation, if it is capricious and arbitrary, but, in recent cases, *The Official Trustee Bengal v. Gobardhan Guchait* (2), and *In the matter of Gooptu Estates, Limited* (3), this view has not been taken. As at present advised I incline to think that the true view is that adopted in the last mentioned case. If we take the statute book, as we find it to-day, then, while Order VII, rule 11 clearly applies to cases coming within sub-section iv of section 7 of the Court-fees Act, it is very difficult indeed to take the phrases "where the relief claimed is undervalued" and "where the relief claimed is properly valued"—both quite general phrases applicable to all classes of suits—as trenching upon the right of the plaintiff to pay court-fee on the footing of his own valuation of the relief sought. Order VII, rule 11 is mere procedure; it is not meant to enlarge any taxing section, but only to ensure the proper application of the Court-fees Act and other

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(2) (1928) 33 C. W. N. 231.

(3) (1929) I. L. R. 57 Calc. 910.

Acts. It was thought in *Umatul's case* (1) that the previous history of these enactments warranted the conclusion that the plaintiff's valuation can be corrected by the court.

I quite appreciate that it may be said of the subsequent cases that the argument of Mr. Justice Mookerjee has not been grappled with and I think it also true to note that the Privy Council in the case of *Sunderbai v. The Collector of Belgaum* (2) had not this exact point before it; but there are great difficulties in the view taken in *Umatul's case* (1). At the time the decision was given, there was a large body of authority the other way. It is clear from the Court-fees Act that there is no provision in that Act itself for the revision of the plaintiff's valuation in such cases as the present. The provision in the Civil Procedure Code is certainly a provision which is intended to apply to a case under sub-section iv of section 7. The present case is a very good example of the necessity of that. Here is a case within sub-section iv of section 7 of the Court-fees Act and yet no valuation is given for one claim, and the whole case is dealt with on a principle which is erroneous altogether. Such a case as that must be amenable to the jurisdiction of the court under Order VII, rule 11, Code of Civil Procedure, and there are many reasons which show that that rule is applicable to all classes of suits. But it is another thing altogether to say that, because the words used are "if the plaintiff's claim is undervalued," they mean that the court in the special class of cases, where the plaintiff is allowed to put his own valuation, has a right to revise the valuation. I do not think that Mr. Justice Mookerjee, in coming to the conclusion to which he did in *Umatul's case* (1), gave sufficient weight to the circumstances that the cases dealt with in sub-section iv are cases where no real objective basis of valuation will in general be possible. They are cases which are not easily valued and in many cases not capable of being valued in money terms on any precise principle.

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It does not strike me as being at all incredible that, with regard to that limited class of cases, the legislature should have thought it right to give to the plaintiff a certain amount of option as to the value, which is to be put upon the claim, especially as I find that in certain cases the legislature has thought fit to allow people to pay a small fixed court-fee in respect of the relief claimed. However that may be, I am sitting here as a Taxing Judge and I do not think that it is advisable that, in the capacity in which I am really representing the interest of revenue, I should undertake, unless I am obliged, to pronounce finally upon matters, which have produced differences of opinion between Divisional Benches. In the present case, the plaintiff has at no time made a valuation of the relief sought, as he should have done under section 7 of the Court-fees Act. On the face of the plaint and the memorandum of appeal, I do not think there are sufficient materials for the court to make a valuation for itself, even if it has the power. In any case, if the plaintiff originally had a right to value, and if he has not done so, there is every advantage, in my judgment, in applying the Act in the way which the Act contemplates. It appears to me, therefore, that the fairest thing will be to require the plaintiff to value his relief in this memorandum of appeal properly. I may observe that this case was tried by a Subordinate Judge at Alipore, and I find, looking at the name of the gentleman and the time, that, if the plaintiff had not put this high valuation for purposes of jurisdiction, but had put a valuation under Rs. 2,000, the case would have been tried by a Munsif. It is quite clear that the plaintiff cannot now put his valuation at less than Rs. 2,000. The plaintiff will have, however, liberty by a petition and within one fortnight from to-day to value the relief sought in this appeal properly and in the plaint properly,—the two things being exactly the same. But the figure, at which he values it, is not to be less than Rs. 2,000, in view of the fact that he has represented the value for purposes of jurisdiction to

be a figure which has resulted in the case being already tried by a Subordinate Judge. It will be open to the plaintiff to value it at less than Rs. 5,000 or at more than Rs. 5,000 and, according as he does that or not, he will have an appeal to the High Court or somewhere else. In any event, whether he has an appeal to the High Court or another court, it will be the duty of that court to see that not only does he pay the proper court-fee upon the memorandum of appeal, but also that under clause (2) of section 12, he is made to pay the proper court-fee upon the plaint in the trial court. That appears to me to be the reasonable way of dealing with this case. The actual form of the order will be an order under Order VII, rule 11, Code of Civil Procedure, requiring the appellant to value the relief within a fortnight from to-day and to amend his valuation by lodging a proper petition to that effect and stamping the memorandum of appeal in accordance therewith. When that has been done, the procedure no doubt will be for the appeal to be registered and any action necessary to be taken under section 12 will be taken thereon.

Reference accepted in modified form

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