APPELLATE CIVIL.

Before Rankin C. J. and Mukerji J.

JALEKHA BIBI

v.

DANIS MUHAMMAD.*

1929
May 29.

Court-fees—Valuation of suits—Suspected under-valuation—Enquiry—Suits valuation charts—Court-fees Act (VII of 1870), ss. 9, 12 (ii).

In an appeal, the Judge refused to let the memorandum of appeal be filed, on suspected under-valuation of the suit and asked the plaintiffs to prove the correctness thereof before the appeal could be registered.

Held, on Second Appeal, that the learned Judge was in error in doing so and the proper procedure was an enquiry either by a commission or by the Judge himself.

Hari Ram v. *Akbar Husain* (1) followed.

Held, further, that such investigations should not be embarked upon without due reason.

Quœre. Advisability of using charts, kept in certain districts, for ascertaining the valuation of suits doubted.

SECOND APPEAL by the plaintiffs.

This suit was brought before the third Munsif at Comilla for recovery of possession of certain land, which the plaintiffs valued at Rs. 100. When the plaint was presented, the officer receiving it compared the valuation stated in the plaint with the valuation appearing on a chart of land values, which had been kept at the Munsif's office as a guide to the question of valuation. The matter was brought to the notice of the Munsif and he ordered the plaintiffs to increase the valuation to Rs. 150 and pay the deficit court-fee. That being done, the suit was tried and dismissed. On that, the plaintiffs appealed. Upon the memorandum being presented, the learned District Judge went into the question of valuation and asked the plaintiffs appellants to show the nature of the land by filing map and *khatiyan*. On the day fixed,

*Appeal from Appellate Decree, No. 1205 of 1927, against the decree of J. M. Pringle, District Judge of Tippera, dated Jan. 25, 1927, affirming the decree of Gopal Chandra Biswas, Munsif of Comilla, dated Nov. 24, 1926.

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the appellants produced a *kabala*, but without the map or *khatiyan*, as the land was said to be of new formation on the banks of the river Goomti. The District Judge ordered the appellants to pay court-fees on Rs. 300, the appellants failing to pay that, the appeal was dismissed.

Thereupon, this Second Appeal was filed.

Mr. Ramdayal De, for the appellants.

Mr. Nurul Huq Chaudhuri, for the respondents.

RANKIN C. J. In this case, the plaintiff brought his suit before the third Munsif at Comilla for possession of certain land exceeding 3 *kanis* in area. He valued the land at Rs. 100. When the matter came before the officer of the Munsif's Court dealing with the reception of plaints, that officer compared the valuation with the valuation appearing on a certain chart of land values, with which apparently the Munsif's office had been provided as a guide to the question whether plaints were being properly valued or not. This document is referred to as the Suits Valuation Chart. It is not a document which is in any way evidence, but it would appear to be a document with which the officers of the courts in Tippera are provided by way of administrative assistance in the discharge of their duties. The Munsif, on the matter being drawn to his attention, found that the valuation of Rs. 100 was low; but, on the ground that the land was said to be an accretion to the river Goomti and to be submerged, he ordered the plaintiff to increase the valuation to Rs. 150—and, on that being done and the deficit court-fee being paid, that plaint was duly registered. Thereafter, the case went to trial and the plaintiff's suit was dismissed—the Munsif holding that the plaintiff had not shown title to the land claimed. No question was raised by the defendant as to the sufficiency of the valuation. Thereupon, the plaintiff appealed to the learned District Judge of Tippera and, upon that appeal being presented, the learned District Judge appears

to have examined into the question of the valuation. The plaintiff valued the appeal, as he had valued his suit in the trial court at Rs. 150. The learned District Judge recorded the following order before he registered the memorandum of appeal: "Plaintiff-appellant must show nature of land, filing map and *khatiyan*. Ask lower court to explain valuation by 5th January, 1927." On the 5th of January, the judge recorded: "Read "lower court's explanation. Appellant explains "valuation with production of a *kabala* but without "the copies of map and *khatiyan*. The land is said to "be a new formation; but I have not been given the "help I asked for, namely, the map and *khatiyan*. I "do not think that the *kabala* of 1328 is a safe guide. "I raise the valuation to Rs. 300 and deficit fees must "be paid on that for both courts by 25th January, "1927." Again, on the 25th of January, the following order was recorded: "Appellant submitted "a further explanation; the court-fees have not been "paid. The appeal is dismissed." The plaintiff now appeals form this order of dismissal.

It may be as well to deal with this matter logically. One has to ask oneself what is the duty imposed by this fiscal legislation upon the plaintiff. The first thing is that, by section 6 of the Court-fees Act, it is provided that no document of any of the kinds specified as chargeable in the first or second schedule shall be filed, exhibited or recorded in any court of justice unless there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee. In the first Article of the first schedule, we find that memorandum of appeal not otherwise provided for in the Act is mentioned as one of the documents which are charged with payment of a court-fee and, in the second column of that Article, various amounts are specified. When the amount or value of the subject-matter in dispute does not exceed so much, then a certain fee is to be paid and when it does not exceed that figure but does not exceed a larger figure mentioned, then another fee is to be paid

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Having got so far, we find that the document cannot be filed or registered in default of payment of court-fee because it is a document on which a fee is to be paid according to the amount or value of the subject-matter in dispute. That takes us at once to section 7 of the Court-fees Act. Section 7 is a section which tells us, both with regard to plaint and also with regard to memorandum of appeal, how we are to arrive at the value of the subject-matter in dispute. It explains, in the case of suits for possession of land, as the present is, that the subject-matter is to be valued according to the market value and the fee is to be computed according to the market value. It is clear enough that it does not always happen that the matter in dispute is the same in the trial court as in the court of appeal—because sometimes the appeal is against a part only of the original claim. But, even so, in cases like the present, it is section 7 which determines the computation of the value of the matter in dispute for the purpose of court-fee. Having got so far, we know therefore, that a memorandum of appeal should not be filed or exhibited unless it contains a proper fee computed upon the market value of the subject-matter in dispute. There are many cases in which it is possible to say that the plaint or the memorandum of appeal is under-valued without having to take evidence or to consider extraneous facts. It may be that a claim for possession of land is valued, as though it were a mere declaration and there are all sorts of other ways in which, without going outside the plaint itself or the memorandum of appeal, it is possible to say that the value has been under-estimated; and, in all such cases, no doubt, it is the clear duty of the court to whom the document is presented to refuse to accept it until the proper fee has been paid. In cases, however, where the sufficiency of the fee depends upon the market value of certain property, it is impossible to tell, without travelling outside the plaint or the memorandum itself, whether the fee is sufficient or not. Now, the provisions of the law make a difference, as it seems to me, with regard to those

cases which I have last referred to because section 9 and the consequential sections are particular provisions in the Court-fees Act, which deal with this very class of cases—the class of cases, namely, where the sufficiency of the fee depends upon matters which require a certain amount of external investigation. Section 9 says that when the court sees reasons to think that the annual net profits or the market value of any such land as is mentioned in section 7, paragraphs *v* and *vi*, have or has been wrongly estimated, then the court may take certain steps. Now, in the ordinary way, a court to which a document such as a plaint or a memorandum of appeal is presented will not reject the document unless it has proof that the document is insufficiently stamped. Under Order VII, rule 11, Civil Procedure Code, it is provided that the plaint shall be rejected in the case where the relief claimed is under-valued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so. So, in such a case as is there contemplated, the court has to be satisfied that the relief is under-valued. When that is the case, it may require a further payment and, on the further payment not being made, it may reject the plaint.

In the present case, what happened was that the learned judge to whom the memorandum of appeal was presented was, to begin with, desirous of requiring the plaintiff to prove that the memorandum was sufficiently valued. He required the plaintiff to show the nature of the land by filing a map and *khatiyan*. He asked the lower court to explain its valuation. The appellant produced a *kabala*, which as evidence of value did not satisfy the learned judge. Because the appellant did not give evidence of the sufficiency or correctness of his valuation, the learned judge raised the valuation to Rs. 300, both for the purpose of memorandum of appeal and for the purpose of the plaint. The learned judge did that, it is clear, without there being any evidence before him at all on which he was entitled so to act.

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In my opinion, there is more than one mistake in the course adopted by the learned judge. If it is not clear from the plaint or the document itself that there has been an under-valuation, the reasonable course, whether one looks to the Code of Civil Procedure or to the Court-fees Act, is to register the plaint or the memorandum and take appropriate steps thereafter for enquiring into any matter that calls for enquiry. It is clear enough under Order VII of the Civil Procedure Code that the power to reject a plaint arise only upon it being seen that the plaint is under-valued. In my judgment, it never was intended in a case of this class that, before a plaint or a memorandum of appeal could be registered, the plaintiff should be called upon to give evidence on the question of value merely in order to get his document upon the file. In this case, the learned judge had no evidence at all as to the value of the land in dispute. He refused to let the memorandum of appeal be filed, not because he had come to a decision upon evidence that there had been an under-valuation, but because he tried to put upon the plaintiff a preliminary burden of proving to his satisfaction that the valuation was sufficent and the plaintff had failed to do so. Having done that, his next step was, being dissatisfied with the plaintiff's evidence, to act without evidence in holding that the valuation was insufficient. In my opinion, for cases of this class, which depend upon valuation, the particular and appropriate provisions of section 9 of the Court-fees Act should always be used. That, it will be observed, begins with the words, "If the court sees reason to think that the maket value of any land has been wrongly estimated." Now, for the purpose of these opening words, there is no illegality in any reference to chart or to a gazetteer or to anything else that will assist. This is not a question of judicial decision. The court merely sees reason to think that the suit is under-valued and that by itself will hurt nobody. But if the court wants this matter to be pursued—and it is a matter upon which evidence of external

facts is plainly necessary—the court must undertake the investigation in a judicial manner. Section 9 points out one manner. It says that the court may issue a commission to any proper person directing him to make a local or other investigation and to report to it. If that commission is issued and if a report is made, it is clear that then the learned judge has a judicial duty to come to a decision on the basis of the commissioner's report. Such a commission is a commission under the Civil Procedure Code and what the commissioner may do and what the duty of the learned judge is, is laid down quite clearly by the Civil Procedure Code. In the case of *Hari Ram* v. *Akbar Husain* (1) it has been pointed out by the learned judges that the mere fact that a court can issue a commission shows that the court can make itself a judicial enquiry if it is so minded. On the whole, I think that that proposition is sound, though the opening words of section 10 of the Court-fees Act are rather against it. If, therefore, the learned judge in this case, having admitted the memorandum of appeal, had taken steps under section 9 of the Court-fees Act, I would have been prepared to say that he was within his rights, if he had held this judicial enquiry either himself or by means of a commission. The learned judge held no such judicial enquiry. He did not purport to use the section which is expressly adapted to these cases of valuation of land. In my opinion, it is very necessary that these investigations should not be embarked upon without due reason. It will obviously be a hardship to the plaintiff that he should have an extra stage of litigation to go through before he can prosecute his suit. This Court has always discouraged—and I hope it always will discourage—the appointment of a commission under section 9 of the Court-fees Act, for the reason that it is very apt to be oppressive to the plaintiff. In particular, I would point out that, if a commission is ordered under this section—not at the instance of the plaintiff, there is no power to make the plaintiff

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deposit the costs of the commission. In the same way, if an investigation is undertaken by the judge himself, it is, in my judgment, entirely wrong to suppose that the plaintiff has first to give evndence to satisfy the court of the propriety of his valuation before he is entitled to get his plaint or memorandum registered. The proper course in these cases is to deal with the matter when the plaint or the memorandum has been filed. If the result of the enquiry is to the effect that the plaintiff's valuation is insufficient, then the plaintiff may be called upon to make the necessary deposit, and section 10 shows that the suit is at first to be stayed and if necessary later on dismissed. There is one other matter in this case that requires to be considered. The learned judge acted under section 12 of the Court-fees Act, that is to say, he not only rejected the memorandum of appeal unless Rs. 300 was the valuation put upon that, but he rejected the memorandum of appeal unless the fee upon Rs. 300 was paid upon the plaint. That he had only jurisdiction to do under the second half of section 12. In the first half of section 12, it is said that every question relating to valuation shall be decided by the court in which the plaint or memorandum, as the case may be, is filed, and that such decision shall be final as between the parties to the suit. This is modified by the second clause which says "Whenever "any such suit comes before a court of appeal, reference "or revision, if such court considers that the said "question has been wrongly decided to the detriment "of the revenue, it shall require the party to pay so "much additional fee as would have been payable "had the question been rightly decided." In this Court, the decision in the case of *Shama Soondary* v. *Hurro Soondary* (1) has been acted upon for over fifty years and I desire to say nothing whatever by way of disturbing the authority of that decision. The practice in the High Court is that where it is found that a document in the lower court was under-valued, the appeal in the High Court is admitted, provided

(1) (1881) I. L. R. 7 Calc. 348.

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that the proper stamp is paid upon the memorandum of appeal here. The question under the second half of section 12 as to making the party pay a greater sum as fee upon the document in the lower court is dealt with after the appeal has been admitted and registered, but before the appeal is allowed to be heard. The practice on that point has been laid down by my learned brothers Mr. Justice Mukerji and Mr. Justice Graham in the case of *Bidhu Bhusan Bakshi* v. *Kala Chand Roy* (1) which, in my opinion, deserves to be regarded as an authoritative statement of the practice of this Court and of the proper practice under section 12. The word "filed" in section 12 occurs only in the first half and not in the second half. and, even if there is room for the contention, that the phrase "Whenever any such suit comes before a court "of appeal" is satisfied when the memorandum is presented and before it has been accepted or registered, even so it is plainly much the better practice that these contentious questions as to documents in the lower courts should be dealt with when the memorandum of appeal has been accepted and registered and should not be dealt with as a condition of the acceptance or registration of the memorandum of appeal. In my opinion, the learned judge in this case, in refusing to permit this appeal to be filed unless the plaintiff paid further fees in respect of the document in the lower court, followed a practice which is not to be commended and which is of an extremely doubtful nature. In my judgment, this case has not been properly dealt with. The appeal must, therefore, be allowed and the case must be sent back to the District Court from which it comes and the learned judge must be directed to proceed according to law; that is to say, he is directed to admit and register the memorandum of appeal on the fee which has been paid and, after he has done that, if he has any uneasiness as to the revenue having received its proper dues, he may take appropriate action under the appropriate section, namely, section 9 of the

(1) (1926) 31 C. W. N. 1045.

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Court-fees Act by appointing a commissioner if he thinks fit or, as I have explained, by holding a judicial enquiry himself. When that is done, if it turns out that the plaintiff has over-valued his claim, he will get the benefit. If it turns out that the plaint is under-valued, the course prescribed by the statute will be followed.

I say nothing in this judgment as to the advisability of the practice of making out charts which are supposed to show minimum values of lands of different classes in different parts of the district. From what I have learnt of such charts in the case of two districts, I have the gravest doubt as to the advisability of such charts being employed—particularly when they are put together merely by persons appointed to that rather difficult task by the District Judge. That, however, is an administrative matter and I do not decide that such charts may not be used for the purpose of the opening words of section 9 of the Court-fees Act, but I would draw the attention of all District Judges and judicial officers to this that such charts cannot and must not be put upon the parties as though they were evidence in themselves and any judicial officer acting in a judicial matter upon such charts is acting without evidence before him.

The appeal, therefore, must be allowed with costs.

MUKERJI J. I agree.

N. G. *Appeal allowed.*