APPELLATE CIVIL

Before Cuming and Graham JJ.

BADARANNESSA CHAUDHURANI

v.

RAMCHANDRAMALA DAS.*

1929

April 10.

Court-fee—Valuation—Chart—Appeal court, powers of—Evidence to prove value—Court-fees Act (VII of 1870), ss. 7 v (c), 9, 10 ii, 12—Code of Civil Procedure (Act V of 1908), O. XLI, rr. 3, 17, 18.

A court of appeal should not ask the trial court to explain how the valuation of the suit had been arrived at and under what provision of the law the court-fees had been assessed.

It is illegal for a District Judge to send round to the subordinate courts in the district a chart in which the valuation is set out of the various classes of lands in the district. The issue of such a chart is a serious interference with judicial discretion of those courts and is utterly unwarranted by any provision of the Act.

If the court of appeal is of opinion that the value of the suit has been wrongly assessed, the court can proceed under section 9 of the Court-fees Act, and issue a commission to any proper person, directing him to make such local or other investigation, as may be necessary, and to report thereon to the court,

There is no provision whatever in the Court-fees Act under which the court can call on a party to prove that the court-fee is what he, *the party, alleges* it to be, and, on his failure to do so, to dismiss his appeal for non-prosecution.

SECOND APPEAL by Srimati Badarannessa Chaudhurani, defendant.

The District Judge had issued a chart, in which the valuation was set forth of the various classes of lands in the district. The appeal court asked the trial court to explain how the valuation of the suit had been arrived at. The appellant was given time to produce the map and *khatian* to prove that the valuation of the suit in the trial court was correct, and, on his failure to do so, the lower appellate court rejected his memorandum of appeal, stating that he had not been prosecuting the appeal properly. Thereupon, he preferred this Second Appeal to the High Court.

*Appeal from Appellate Decree, No. 512 of 1927, against the decision of J. M. Pringle, District Judge of Tippera, dated Oct. 4, 1926, affirming the decision of Jatindra Kumar Basu, Munsif of Comilla, dated Jun. 23, 1926.

Mr. Chandrashekhar Sen, for the appellant.

Mr. Nagendrachandra Chaudhuri, for the respondents.

CUMING J. The facts of the case, out of which this appeal has arisen, are briefly these. The plaintiffs in the suit brought a suit in which they claimed that a certain *jote* was held under them by the defendants and not by them under the *pro forma* defendants. In the trial court, the suit was valued at Rs. 200 and this valuation was accepted both by the trial court and the parties. The appeal to the lower appellate court was valued at the same amount.

The office made a note on the memorandum of appeal as follows :—

"This is a suit for establishment of the plaintiff's *taluka* right over the "disputed land and for declaration of getting rent from the second party "defendant. *Ad valorem* fee has been paid on valuation of Rs. 200 in both the "courts."

The learned District Judge then made a note asking the lower court to explain how the valuation was arrived at and under what section the court-fees were assessed. The learned Judge says that section 7 *v* (*c*) would seem to apply and he asked both parties to produce a copy of the *raiyati khatian* in question by the 17th August, 1926. It is difficult to understand why the lower appellate court should have asked the trial court for its explanation. The valuation had been accepted by the lower court and both the parties and presumably was correct. Be that as it may, the trial court replied as follows :—

"The suit in question was instituted in the local Munsif's 6th court on the "13th August, 1923, and was registered in that court, that is, before the chart "for the guidance of valuation of suit land was issued. This court received "the suit on transfer and, as the defendant did not raise any objection as to "the value of the suit, no question on the point arose for my consideration."

The chart referred to in the explanation requires explanation. We are informed that the District Judge has sent round to the subordinate courts in the district a chart in which the valuation is set out of the various classes of lands in the district. The propriety of the issue of a chart of this character is very

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questionable. The Court-fees Act provides that the court may, if it question the valuation, issue a commission for such local investigation as is necessary. But it makes no provision for a chart of this kind, and for the district court to issue a chart of this kind to the subordinate courts seems to me to be a serious interference with those courts' judicial discretion and entirely unwarranted by any provision of the Act.

After the receipt of this explanation by the lower appellate court, the appellant prayed for 10 days' time to produce the map and the *khatian*. There is a note by the lower appellate court that there was no appearance on behalf of the plaintiff-respondents. On the 4th October, the appellant prayed for further time to produce the map and the *khatian*. The learned Judge refused to grant further time, stating that the appellant could have brought the map and the *khatian* long ago and that he was not prosecuting the appeal properly and that the memorandum of appeal was, therefore, rejected. Against this order, the appellant has appealed to this court.

The order passed by the learned Judge is clearly an illegal order and must be set aside. It has not been suggested to us by the parties that there is any section, either in the Civil Procedure Code or in the Court-fees Act, within which it can possibly fall. It certainly does not come under Order XLI, rule 3 or Order XLI, rule 17 or 18 of the Code of Civil Procedure. It has been suggested to us by the learned advocate for the respondents that it falls under section 12 of the Court-fees Act. It clearly does not. Section 12 only provides that whenever any such suit comes before a court of appeal, reference or revision, if such court considers that the question of valuation of a suit has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided and the provisions of section 10,

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paragraph (*ii*) shall apply. In this case the court did not decide that the question relating to valuation for the purpose of assessing court-fees had been wrongly decided, nor did it require the appellant to pay additional court-fees under the section. Clearly, therefore, the appeal was not dismissed on the ground that the appellant failed to pay additional court-fees when called on to do so by the appellate court.

It is difficult to see under what procedure or under what section of the Court-fees Act the appellant was called upon to produce evidence as to the value of his land. The only section which seems to deal with this point is section 9 of the Court-fees Act. This section applies to the court of first instance primarily, but there is no reason to think why it should not apply also to a court of appeal. Section 9 provides :—

"If the court sees reason to think that the annual nett profits or the market "value of any such land, house or garden as is mentioned in section 7, para-"graphs *v* and *vi* have or has been wrongly estimated, the court may, for "the purpose of computing the fee payable in any suit therein mentioned, "issue a commission to any proper person directing him to make such "local or other investigation as may be necessary, and to report thereon to "the court."

If, therefore, the court is of opinion that the value has been wrongly assessed, the court can proceed under that section and assess the value in the manner provided in that section. In these matters, the court must proceed strictly according to law and not in the arbitrary and illegal way this case reveals. It is not in the power of the court to call upon the appellant to produce evidence to substantiate the value, which he has assessed upon the property in question. There is no provision whatever in the Court-fees Act under which the court can call on a party to prove that the court-fee is what he, the party, alleges it to be and, on his failure to do so, to dismiss his appeal for, non-prosecution.

The order of the District Judge is clearly wrong and is set aside and he will take up the appeal from the stage at which he passed his order. There will be no order as to costs in this appeal.

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GRAHAM J. I agree that the appeal must be allowed on the ground that the order appealed against is without jurisdiction and is not in accordance with any section either of the Code of Civil Procedure or in the Court-fees Act. The proper procedure for the learned Judge to adopt was under sub-section ii of section 12 of the Court-fees Act. But that procedure has not been followed. I concur in the order which my learned brother has made.

G.S. *Appeal allowed; case remanded.*

APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and C. C. Ghose J.

SAILENDRAKRISHNA RAY
v.
RASHMOHAN SAHA*.

1929

April 11.

Insolvency—Discovery of insolvent's property—"Creditor who has proved his debt"—Presidency Towns Insolvency Act (III of 1909), s. 36.

The phrase "creditor who has proved his debt" in section 36 of the Presidency Towns Insolvency Act (III of 1909) means a creditor who has done all that the Act requires him to do in the matter and does not necessarily imply that his proof has been admitted by the Official Assignee.

Re Abdul Samad (1) disapproved.

APPEAL from an order of Pearson J.

This was an application on the part of Sailendrakrishna Ray and others, insolvents, asking for an order made by the Registrar in Insolvency for examination of certain witnesses under section 36 of the Presidency Towns Insolvency Act to be rescinded on the ground that the creditor obtaining such order had no *locus standi*. The learned Judge sitting in Insolvency dismissed the application. Thereupon the present appeal was filed.

*Insolvency Appeal, No. 1 of 1929, in Case No. 90 of 1921

(1) (1922) 26 C. W. N. 744.