

CIVIL REVISION.

Before Guha and Bartley JJ.

SHAIENDRANATH KUNDU

1934

Nov. 26, 28.

v.

SURENDRANATH SARKAR.*

Court-fee—Correct mode of valuation of subject-matter for computation of court-fees—Lease of debattar property—Suit by shebâit for declaration and khâs possession—Court-fees Act (VII of 1870), s. 7 iv (c).

Where certain leases were sought to be avoided by the plaintiff as *shebâit* and it was necessary to pray for *khâs* possession of the demised *debattar* properties, as a prayer for mere declaration could not be considered sufficient under the law in such a case, and the leasehold properties were valued by the plaintiff at Rs. 2,000 on which *ad valorem* court-fees were paid, but the trial court directed the plaintiff to pay court-fees on Rs. 69,921-5 as., the value of the properties irrespective of the leases (as found by a commissioner), and, on plaintiff's default, rejected his plaint in consequence,

held that court-fees were leviable under section 7, sub-section iv and clause (c) of the Court-fees Act, as the suit instituted by the plaintiff was one to obtain a declaratory decree, where consequential relief was prayed for;

held, further, that the valuation, required to be put on the properties covered by the plaint before the court, was the valuation of the leasehold interests created by the different leases;

held, also, that the plaintiff was under the law entitled to put his own valuation on the lessee's interest—the subject-matter of the suit—as the leasehold was not capable of strictly accurate valuation and the annual rent reserved was only Rs. 75.

CIVIL REVISION under section 115 of the Code by the plaintiff.

The facts of the case and the arguments in the Rule appear sufficiently in the judgment.

Gunadacharan Sen and *Rakhalechandra Basu* for the petitioner.

*Civil Revision, No. 1118 of 1934, against the order of Neeradeshwar Banerji, Second Additional Subordinate Judge of 24-Parganas, dated May 28, 1934.

1934

Shaitendranath
Kundu

v.

Surendranath
Sarkar.

Jogeshchandra Ray and Sateendranath Ray
Chaudhuri for the opposite parties.

Cur. adv. vult.

The judgment of the Court was as follows :—

This Rule is directed against an order passed by the Second Additional Subordinate Judge, 24-*Par-ganás*, in Title Suit No. 12 of 1933, directing the plaintiff in the suit, a *shebâit*, to pay court-fees on the plaint on the value of the subject-matter of the suit. The plaintiff in the suit prayed for a declaration that certain leases executed in respect of *debattar* properties were illegal, invalid and inoperative; there was also prayer for *khâs* possession of the properties covered by the leases. The leasehold properties, which were the subject-matter of the suit, were valued by the plaintiff at Rs. 2,000 and *ad valorem* court-fees were paid on that amount. It appears that a commission was appointed for the purpose of ascertaining the value of the properties in suit irrespective of the leases and the valuation made by the commissioner was Rs. 69,921-5 as. The plaintiff was then directed by the learned judge to pay court-fees on the aforesaid sum of Rs. 69,921-5 as., the value of the subject-matter of the suit before the court.

A question was raised on the side of the opposite party in the Rule that the case was not one, in which the revisional jurisdiction of the Court could be allowed to be invoked in favour of the plaintiff-petitioner in this Court. We are not at all impressed with the view presented before us on behalf of the opposite party—that, because there was the right of appeal by the plaintiff in the suit, after his plaint has been rejected on not complying with the court's order in the matter of payment of deficit court-fees, this Court should not interfere in revision, if we were convinced that the order directing the payment of additional court-fees was not supportable under the law and was passed in the illegal exercise of jurisdiction by the court below.

In our judgment the order complained of is illegal. On a perusal of the plaint filed in court, there can be no doubt that court-fees in the case were leviable under section 7, sub-section iv and clause (c) of the Court-fees Act, as the suit instituted by the plaintiff was one to obtain a declaratory decree, where consequential relief was prayed for. Four leases specified in the plaint were sought to be avoided by the plaintiff as *shebâit*; and it was necessary to pray for possession of the properties covered by these leases, as a prayer for a declaration could not be considered to be sufficient under the law in cases of the present description. The question then was, what was the value of the subject-matter of the suit as mentioned in section 7, sub-section v of the Court-fees Act? The primary relief claimed in the suit was the cancellation of the leases in respect of the *debattar* properties, and possession was sought to be obtained by the plaintiff of the leaseholds created by the documents alleged by the plaintiff to be illegal, invalid and inoperative. In our opinion, there can be no question that the valuation, required to be put on the properties covered by the plaint before the court, was the valuation of the leasehold interests created by the different leases, and not the valuation of the properties irrespective of the leases. In the above view of the case, we are unable to agree with the court below in holding that the plaintiff in the suit, the petitioner in this Court, was required to pay *ad valorem* court-fees on the plaint filed by him, on the value of the properties in suit, which has been ascertained to be Rs. 69,921-5 as. irrespective of the leases in question. The subject-matter of the suit were the leaseholds created by documents alleged by the plaintiff to be invalid under the law, and the valuation put by the plaintiff on the subject-matter appears to be adequate, regard being had to the fact that the annual rent payable for *debshebâ* by the lessees in possession was only Rs. 75. The plaintiff was under the law entitled, in a case of the present description, to put his own valuation on the lessees'

1934

Shailendranath
Kundu
v.
Surendranath
Sarkar.

1934

*Shailendranath
Kundu*
v.
*Surendranath
Sarkar.*

interest, the subject-matter of the suit, as it cannot be said the leasehold was capable of strictly accurate valuation.

In the result, the Rule is made absolute. The orders of the court below passed on the 28th May, 1934 are set aside. The suit before the court will now be proceeded with on the plaint as filed in court. There is no order as to costs in the Rule.

Rule absolute.

G.S.