CIVIL REVISION.

Before Bartley and Nasim Ali JJ.

1937

Dec. 13, 14.

ANATH NATH BANERJI

v.

SREE SREE KALIMÂTÂ THÂKURÂNI.*

Court-fee—Valuation of suit for declaration with permanent injunction—Court-fees Act (VII of 1870), s. 7, cl. iv(c); Sch. II, Art. 17, cl. vi.

Where two out of several reliefs in a suit were for a declaration that certain properties are *debattar*, for a perpetual injunction restraining the defendants from appropriating any income of the said properties and for withdrawing certain money from the bank, the plaintiff must value both the reliefs under s. 7, cl. iv (c) of the Court-fees Act. Schedule II, Art. 17, cl. vi, has no application in respect of the said two reliefs.

CIVIL RULE obtained by the defendants on the question of valuation.

A suit valued at Rs. 2,100 was brought for a declaration that certain properties are *debattar* properties, for a scheme of management and for a permanent injunction on the defendants. The prayers "*kha*" and "*gha*" in the plaint ran as follows :—

Kha. The properties described in schedule below be held and declared to be *debattar* properties of the plaintiff Sree Sree Kâlimâtâ Thâkurâni.

Gha. That an order for perpetual injunction be made against the *shebâits, pâlâdârs* (*shebâits* by rotation) and persons under their protection and favour and their agents and servants restraining them, so that Sree Sree Kâlimâtâ's various kinds of income and usufruct and money deposited in bank, *etc.*, may not be spent for the expenditure for prosecution of the present case or for any other work except for the *shebâ, pujâ* and daily ceremonies, *etc.* (of Kâlimâtâ).

The other material facts appear from the judgment.

Sarat Chandra Basak, Hira Lal Chakravarti, Subodh Chandra Basak, Rabindra Nath Bhattacharjya and *Asoke Nath Mukherjee* for the petitioners

*Civil Revisions, Nos. 1546 and 1547 of 1937, against the order of Sitesh Chandra Sen, First Subordinate Judge of 24-*Parganâs*, dated Aug. 30, 1937.

in Rule No. 1546. The prayers in respect of the declaration and for permanent injunction come under s. 7, cl. iv (*c*). More than Rs. 10,000 deposited at the Bhawanipur Bank is one of the properties in suit. The prayers relating to declaration that the properties in suit are *debattar* and for permanent injunction relate also to the aforesaid sum deposited at the Bhawanipur Bank. Hence the suit instituted, as valued at Rs. 2,100, is wrongly valued. *Jitendra Nath Ghosh* v. *Hiranmay Kumar Shaha* (1); *Santa Prasad Shaha* v. *Mrinalinee Shaha* (2). In this case objective standard is possible.

Sitaram Banerjee and *Diptendra Mohan Ghose* for the petitioners in Rule No. 1547 adopted the argument of Dr. Basak for the petitioner in other Rule.

Chandra Sekhar Sen, Prokash Chandra Pakrashi, Phani Bhusan Chakravarti and *Jitendranath Bagchi* for the plaintiff, opposite party. Regarding relief *kha*, the decision of the learned Judge is perfectly right. The prayer really comes under Art. 17. There is no prayer for consequential relief, which may be referable to this declaration, so as to attract the operation of s. 7, cl. iv (*c*). The injunction prayed for in the prayer *gha* refers only to the money lying in the bank and not to other properties.

NASIM ALI J. On January 16, 1937, the opposite party No. 1, Sree Sree Goddess *Kâlimâtâ* of Kalighat, through her next friend H. N. Haldar, instituted a suit in the first Court of the Subordinate Judge of 24-*Parganâs* against the petitioners and the other opposite parties in this Rule,—

(*i*) for a declaration that certain properties mentioned in the schedule appended to the plaint are *debattar* properties;

(*ii*) for framing a scheme for management of the *debattar* properties;

(1) I. L. R. [1937] 2 Cal. 501. (2) I. L. R. [1938] 1 Cal. 196.

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(*iii*) for perpetual injunction restraining the defendants from appropriating the income or any part thereof or withdrawing certain money deposited in bank;

(*iv*) for accounts;

(*v*) for removal of those *shebâits* of the plaintiff-petitioner from their office who will be found to have misappropriated the money belonging to the plaintiff.

The defendants filed written statements alleging *inter alia* that the suit was insufficiently valued both for the purposes of jurisdiction as well as Court-fees. On July 12, 1937, issues were framed in the suit, one of them, namely, issue No. 2, being as follows :—

"Has the suit been properly valued and the plaint properly stamped"?

The question of valuation and Court-fees was taken up for consideration by the learned Subordinate Judge on July 17, 1937, and was disposed of by him by an order dated August 30, 1937. By this order the learned Judge overruled the defendants' objection regarding the valuation and Court-fees. The present Rules are directed against this order.

The learned Subordinate Judge has held that the reliefs claimed in the present suit excepting the relief for accounts come under Sch. II, Art. 17, cl. vi of the Court-fees Act, and that the value of these reliefs for purposes of jurisdiction must be taken as the value put by the plaintiff in his plaint. As regards the relief for accounts he has taken its value as given in the plaint final for purposes of Court-fees and jurisdiction.

Dr. Basak appearing on behalf of the petitioners did not challenge before us the valuation of the relief about accounts given in the plaint for purposes of Court-fees and jurisdiction. He also conceded that but for the prayer for perpetual injunction the suit would have come under Sch. II, Art. 17, cls. i and vi. His contention, however, is that in view of the fact

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that in the plaint there is a prayer for perpetual injunction along with a prayer for a declaration the suit, so far it relates to these two reliefs, is a suit for a declaration with a consequential relief within the meaning of s. 7, cl. iv (*c*) of the Court-fees Act. This contention is well founded. The prayer for a declaration that the properties are *debattar* and the prayer for perpetual injunction restraining the defendants from doing certain things taken together amount to this that the plaintiff wants perpetual injunction as a consequential relief flowing from the declaration that the property is *debattar*. These two reliefs must, therefore, be taken to come not under Sch. II, Art. 17, cl. vi, but under s. 7, cl. iv (*c*). By the latter section, the plaintiff is to state in his plaint the amount at which he values the relief sought. This the plaintiff has done. The contention of the petitioner, however, in the present Rules is that in this case the plaintiff has put an arbitrary valuation and the valuation has been made too low in order to make the Court of the District Judge the forum of the appeal from the decisions in the suit. It is also contended by Dr. Basak that, as the plaintiff wants perpetual injunction restraining the defendants from withdrawing an amount lying in deposit in the Bhawanipur Bank exceeding Rs. 10,000 the valuation of the suit under s. 7, cl. iv (*c*) ought to have been more than Rs. 10,000. Under s. 8C of the Court-fees Act, the Court has power to revise the valuation and determine the correct valuation for the purposes of Court-fees if the Court is of opinion that the subject matter of any suit has been wrongly valued. The Court for that purpose may hold such enquiry as it thinks fit. The learned Subordinate Judge has refused to exercise his jurisdiction under s. 8C of the Court-fees Act apparently under the erroneous view that all the reliefs claimed in the suit excepting the relief for accounts come under Sch. II, Art. 17, cl. vi of the Act. His order that the suit has been properly valued both for the purposes of jurisdiction and Court-fees cannot therefore be sustained.

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The result, therefore, is that these two Rules are made absolute and the order complained of is set aside. The learned Subordinate Judge is directed :—

(*a*) to accept the valuation of prayer *chha* for the purposes of Court-fees as well as jurisdiction given in the plaint as final for the present;

(*b*) to treat the prayers *ga* and *jha* as incapable of valuation for the purposes of Court-fees;

(*c*) to treat the prayers *kha* and *gha* as prayers for a declaratory decree with a consequential relief;

(*d*) to determine whether the prayers *kha* and *gha* have been wrongly valued for the purposes of Court-fees;

(*e*) to revise the valuation and determine the correct valuation for the purposes of Court-fees under s. 8C of the Court-fees Act, if he finds that they have been wrongly valued;

(*f*) to determine the valuation of the suit for the purposes of jurisdiction according to law.

Costs in these two Rules will abide the result; hearing fee being assessed at three gold *mohurs*.

BARTLEY J. I agree.

Rule absolute.

N. C. C.