

## CIVIL REVISION.

Before S. K. Ghose and R. C. Mitter JJ.

JITENDRA NATH GHOSH

v.

HIRANMAY KUMAR SHAHA.\*

1937

April 22, 23.

*Court-fees—Valuation—Suit for declaration with alternative reliefs.—Court's power to revise valuation—Court-fees Act (VII of 1870) as amended by Ben. Act VII of 1935, ss. 7 iv, 8A to 8F, 17—Suits Valuation Act (VII of 1887), s. 9.*

By reason of the amending Act (Ben. VII of 1935), s. 7, para. iv, is made subject to the provisions of ss. 8C and 17(2) of the Court-fees Act, and the Court's powers under the new ss. 8A to 8F and s. 17 of the Act are much wider and more specific than those under ss. 9 and 10 now repealed. The Court has now power to revise the valuation not only in respect of the market value or annual nett profits as under the old ss. 9 and 10, but in every case including cases under s. 7, para. iv, although in some cases, in which not more than one relief is sought, it may be difficult of practical application, where no objective standard of valuation is forthcoming owing to the non-existence of rules framed under s. 9 of the Suits Valuation Act.

*Shailendranath Kundu v. Surendranath Sarkar* (1); *Ganga Dei v. Sukhdeo Prasad* (2); *Tula Ram v. Dwarka Das* (3) and *Radha Kanta Saha v. Debendra Narayan Saha* (4) distinguished.

*Umatal Batul v. Nanji Koer* (5) and *Narayanganj Central Co-operative Sale and Supply Society, Limited* (in liquidation) *v. Mafjuddin Ahmad* (6) referred to.

In re *Kalipada Mukherji* (7) explained.

CIVIL RULE obtained by the plaintiff.

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

*Surajit Chandra Lahiri* for the petitioner.

\*Civil Revision, No. 1077 of 1936, against the order of Neelendra Nath Basu, Subordinate Judge of Nadia, dated July 20, 1936.

(1) (1934) I. L. R. 62 Cal. 417.

(4) (1922) I. L. R. 49 Cal. 880.

(2) (1924) I. L. R. 47 All. 78.

(5) (1907) 11 C. W. N. 705.

(3) (1928) I. L. R. 50 All. 610.

(6) (1934) I. L. R. 61 Cal. 796.

(7) (1930) I. L. R. 58 Cal. 281.

1937  
*Jitendra Nath Ghosh*  
 v.  
*Hiranmay Kumar Shaha.*

*Senior Government Pleader, Sarat Chandra Basak, and the Assistant Government Pleader, Rama Prasad Mukhopadhyaya* for the Secretary of State for India in Council.

*Soureendra Narayan Ghosh* for the opposite party.

*Cur. adv. vult.*

GHOSE J. This Rule raises a question of valuation for the purposes of assessment of Court-fees and it has arisen under the following circumstances. The plaintiff petitioner instituted a suit in the Court of the Subordinate Judge of Nadia against the defendants opposite parties alleging *inter alia* that he is entitled to a contingent interest under the will of one Parasu Ram Mustafi. He died in 1879 leaving two widows, Soudaminee and Shibanee, both of whom have since died. Soudaminee left a daughter Kshirod Mohinee who died in 1908. Kshirod Mohinee left two sons, of whom plaintiff is the sole survivor. It is alleged in the plaint that one Hari Pada Saha, deceased, who was husband of defendant No. 2 and father of defendant No. 1, was a monthly tenant-at-will of the disputed house and garden of the late Parasu Ram Mustafi. It is alleged that he caused a fictitious deed of sale to be executed by Kshirod Mohinee and her sons, that is the petitioner and his deceased brother, on *Fālgun* 23, 1298 B.S. and another sale deed to be executed by Shibanee on *Srāban* 13, 1300 B.S. It may be added here that according to the will Soudaminee was to have ten annas share and Shibanee the remaining six annas share in the properties of the testator. On those material allegations, the plaintiff brought the suit asking for reliefs which are specified in twelve prayers. Of these, only the following are material for the present petition. He asked that the contingent interest of himself the plaintiff under the will might be declared and that it might be declared that the document executed by Kshirod Mohinee and Soudaminee and any other

document on the strength of which the defendants claim possession are fraudulent, collusive and in-operative. He further asked that *khâs* possession might be decreed upon a declaration that the plaintiff's right had accrued after the death of Shibanee, that he might be entitled to recover mesne profits, that a permanent injunction might be granted against the defendants restraining them from alienating the disputed properties and committing other acts of malfeasance, and lastly that if the Court held that the tenancy-at-will created in favour of the late Hari Pada Saha by Shibanee had not been determined and consequently the plaintiff was not entitled to recover *khâs* possession it might be declared that the plaintiff was entitled to realise from the defendants monthly rent payable by them. Upon this plaint the plaintiff petitioner paid *ad valorem* Court-fees upon Rs. 2,500 on the following basis.

- (a) Rs. 2,400 being the value of the properties as stated in the *kabâlâs* in favour of Hari Pada Saha.
- (b) Rs. 50, value of the injunction.
- (c) Rs. 50, value of the mesne profits.

To this an objection was raised in the lower Court that the valuation was not correct. The plaintiff claimed to be allowed to put his valuation under s. 7, para. iv, cl. (c) of the Court-fees Act on the ground that the suit was a declaratory one with prayers for consequential reliefs. It was contended for the other side in the lower Court that this description of the suit was not correct, that the suit was not merely a declaratory one, but that it was a suit for declaration of plaintiff's title and for recovery of possession as also for recovery of mesne profits and for injunction. The learned Judge has given effect to this objection, holding that the plaintiff claims title as reversionary heir and claims

1937

Jitendra Nath  
 Ghosh  
 v.  
 Hiranmay Kumar  
 Shaha.  
 Ghose J.

1937

*Jitendra Nath**Ghosh*

v.

*Hiranmay Kumar**Shaha.**Ghose J.*

recovery of possession and mesne profits, the declaration in respect of the *kabâlâs* being merely ancillary. So he has decided that the suit comes under s. 7v of the Court-fees Act and the valuation must be in accordance with the market value of the properties. This he has held to be Rs. 7,250. Against that decision the present Rule has been obtained.

The contention which was made in the lower Court is repeated here, namely, that the plaintiff is entitled to fix the valuation as under s. 7, para. iv (c) and not under para. v. So far as this contention is concerned it depends upon whether the suit is merely a declaratory one, the other reliefs asked for being in the nature of consequential reliefs. Now with regard to the two *kabâlâs* it is suggested that the test is whether it is necessary that the declaration asked for should be made in order that the plaintiff might be allowed to have the other reliefs. With regard to one of the *kabâlâs* which relates to the six annas share of the properties, it is pointed out that the plaintiff was not a party and, therefore, it is not necessary that that *kabâlâ* should be declared void as against him. But with regard to the other *kabâlâ* which relates to the ten annas share of the properties, it is pointed out that the plaintiff is a party along with his deceased brother and mother. It is alleged in the plaint that the plaintiff was a minor at the time, that he was not entitled to sell, his title not having arisen at the time of the *kabâlâs*, and that the document was executed under undue influence. In so far as the allegation as to minority is concerned it is contended by Dr. Basak that on that ground it is not necessary that this *kabâlâ* also should be declared void as against the petitioner. We do not think, however, that this contention can be accepted having regard to the fact that the plaintiff is a party to the document. Therefore, the view must be accepted that it is necessary that the declaration as asked for with regard to this *kabâlâ* should be made before

the plaintiff can be entitled to have the other reliefs. That being the position it cannot be said that the suit is not one for declaration.

But Dr. Basak for the opposite party contends that, in any view of the matter, the decision of the Court below must be accepted having regard to the provisions of the Court-fees Amendment Act (Bengal Act VII of 1935). The learned advocate for the petitioner in this Court has objected that this Act should not be relied on, as it was not referred to in the lower Court. The Act, however, was published in the "Calcutta Gazette" on May 16, 1935, and the suit was instituted on some date subsequent to that. Therefore, in any case, the Act is applicable and the opposite party is entitled to rely on its provisions. It is pointed out, in the first place, that, by reason of the amending Act, s. 7, para. iv, is made subject to the provisions of s. 8C, which provides for an enquiry as to valuation of suits, and further there is s. 17, sub-s. (2) of the amending Act which provides :—

Where more reliefs than one based on the same cause of action are sought either jointly or in the alternative the fee shall be paid according to the value of the relief in respect of which the largest fee is payable.

For the petitioner reliance is placed on the cases of *Shailendranath Kundu v. Surendranath Sarkar* (1); *Ganga Dei v. Sukhdeo Prasad* (2); *Tula Ram v. Dwarka Das* (3) and *Radha Kanta Saha v. Debendra Narayan Saha* (4). In all these cases the question as to valuation depended on whether it should be made under para. iv or para. v of s. 7. In the case of *Umatul Batul v. Nanji Koer* (5) it was held that, although it is for the plaintiff to state the amount on which he valued the reliefs, it is open to the Court, if the question is raised as to the true valuation, to determine such a question. In the case of *Kalipada Mukherji* (6) I do not understand that Rankin C. J.

1937

*Jitendra Nath*  
*Ghosh*  
v.  
*Hiranmay Kumar*  
*Shaha.*  
*Ghose J.*

(1) (1934) I. L. R. 62 Cal. 417.

(4) (1922) I. L. R. 49 Cal. 880.

(2) (1924) I. L. R. 47 All. 78.

(5) (1907) 11 C. W. N. 705.

(3) (1928) I. L. R. 50 All. 610.

(6) (1930) I. L. R. 58 Cal. 281.

1937

*Jitendra Nath  
Ghosh*  
v.  
*Hiranmay Kumar  
Shaha.*  
*Ghose J.*

really dissented from that proposition. What he pointed out was that, in spite of the Court's power it was not always practicable for the Court to revise the valuation, in a case where there was no "real objective basis of valuation", as would be afforded by rules if framed under the Suits Valuation Act. Both these principles were affirmed in the case of *Narayanganj Central Co-operative Sale and Supply Society, Limited (in liquidation) v. Mafjuddin Ahmad* (1) where it is held that the Courts have the power to revise the plaintiff's valuation in suits falling under para. iv by virtue of O. VII, r. 11 of the Code of Civil Procedure, but, in the absence of rules framed under s. 9 of the Suits Valuation Act, the Court would have no standard whereon to fix the value. The law as it stands before the Bengal Amending Act is summed up in the judgment of Mukerji J. He pointed out that the Court's power, in the case of under-valuation, is laid down in O. VII, r. 11, which is procedural, while nothing as to such correction is stated in the taxing Act itself, namely, the Court-fees Act (VII of 1870) and so he had to read the two enactments together. This omission in the taxing Act is now supplied by the Bengal Amending Act, ss. 8A to 8F, which provide for an enquiry as to valuation of suits and a certain procedure. Mukerji J. points out at p. 808 that :—

In cases of suits falling within sub-s. iv of s. 7, there must be, having regard to their very nature, a certain amount of option in the plaintiff, because the value of the relief he claims therein would depend not on its intrinsic value, but on its value so far as he is concerned. I also agree that in many such suits, no real objective standard would be possible or, even if possible, would be altogether satisfactory.

In *Kalipada Mukherji's* case (2) the plaintiff asked for a declaration and also for a consequential relief, but instead of valuing the suit for a single sum at his own option he valued it in parts. It was held that the value was not in accordance with the law and so it should be corrected by adopting the procedure under

(1) (1934) I. L. R. 61 Cal. 796. (2) (1930) I. L. R. 58 Cal. 281.

O. VII, r. 11 of the Code of Civil Procedure. Now, in the present case, the plaintiff himself has asked for more than one relief based on the same cause of action and has valued them separately. The result of this is to bring into play the provisions of sub-s. (2) of s. 17 and so the direction should be that the fee shall be paid according to the value of the relief in respect of which the largest fee is payable. The conclusion, therefore, is that the valuation must be on the basis of the value of the properties in respect of which possession is asked for. This value the plaintiff has himself put at Rs. 2,400 being the value as stated in the *kabālas* in favour of Hari Pada Saha. This is a matter which the Court is entitled to enquire into and it cannot be said, so far as this item is concerned, that injury to the plaintiff is not known or that there is no objective basis of valuation. The plaintiff himself fixed the value on the basis of the *kabālas* which at once raises the question of market-value. Once the matter comes to that, then, whether it lies under para. iv or under para. v of s. 7, the Court is entitled to hold an enquiry. It may be observed that, under the new ss. 8A to 8F, the Court's powers are much wider and more specific than those under ss. 9 and 10, which are repealed by the amending Act. Under ss. 9 and 10, the Court has power to revise the valuation only in respect of the market-value or the annual nett profits. But under s. 8B, the Court is not only empowered, but enjoined, in every case, before proceeding to deliver judgment, to record a finding whether a sufficient Court-fee has been paid. Under s. 8C, the Court is empowered to hold an enquiry as to valuation, and included in the Court's powers to follow a special procedure which is laid down is the power to call for evidence, s. 8E. It seems to me that the effect of those provisions is, to some extent, to remove the disadvantage under which the Court laboured by reason of the non-existence of rules framed under the Suits Valuation Act, though it may be that the advance is little where there is no objective

1937  
 Jitendra Nath  
 Ghosh  
 v.  
 Hiranmay Kumar  
 Shaha.  
 Ghose J.

1937

*Jitendra Nath  
Ghosh*

v.

*Hiranmay Kumar  
Shaha.**Ghose J.*

standard of valuation forthcoming. But in the present case that objection does not hold and there is no point in saying that the lower Court never thought of these new provisions of the amending Act, for the Court did hold any enquiry and it was undoubtedly within its powers in fixing the value at Rs. 7,250. The decision, therefore, does not call for interference.

The Rule must, therefore, stand discharged. We make no order as to costs.

The deficit Court-fees as directed by the Court below must be paid within one month from the date of the arrival of the record in that Court.

MITTER J. I agree.

A. A.

*Rule discharged.*