

## CIVIL REVISION.

Before M. C. Ghose J.

1937

June 22, 23, 24.

SANTA PRASAD SHAHA

v.

MRINALINEE SHAHA\*.

*Court-fee—Declaratory suit with consequential relief—Power of Court to revise valuation—Code of Civil Procedure (Act V of 1908), O. VII, r. 11—Court-fees Act (VII of 1870), ss. 7 iv(c), 8C.*

The valuation of the relief in a suit to set aside a deed of sale, mortgage bond or promissory note may be revised by the Court under s. 8C of the Court-fees Act with reference to the objective value of the document.

A promissory note has no objective value and the plaintiff may put any value on a suit to set aside such document. But the objective value of a mortgage bond or deed of sale is the market value of the property affected by it.

While the power given to the Court under O. VII, r. 11 of the Code of Civil Procedure was not meant to enlarge any taxing section but to ensure the proper application of the Court-fees Act and other Acts, s. 8C of the Court-fees Act confers wider powers on the Courts of revising the valuation and holding enquiry for the purpose, although in cases where there is no objective valuation it may not be possible to say that the plaintiff's valuation is wrong.

*Umatal Batul v. Nanji Koer* (1); *In re Kalipada Mukherji* (2) and *Narayanganj Central Co-operative Sale and Supply Society, Limited* (in liquidation) v. *Mafjuddin Ahmad* (3) referred to.

CIVIL RULE obtained by the defendant.

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

*Atul Chandra Gupta* and *Surendra Mohan Das* for the petitioner.

*Rajendra Chandra Guha* for the opposite party.

\*Civil Revision, No. 742 of 1937, against the order of Ashita Ranjan Mukherji, Third Munsif of Dacca, dated April 17, 1937.

(1) (1907)11 C. W. N. 705.

(2) (1930) I. L. R. 58 Cal. 281.

(3) (1934) I. L. R. 61 Cal. 796.

M. C. GHOSE J. This is an application under s. 115, Code of Civil Procedure, in the matter of a title suit in the Court of the Munsif at Dacca. The facts are that the plaintiff, opposite party No. 1. filed a suit in the Court of the Munsif at Dacca against the petitioner and another person, opposite party No. 2, for a declaration that three documents, namely, a registered deed of sale of certain immoveable property for Rs. 15,000, a registered mortgage bond for Rs. 10,000 and a promissory note for Rs. 4,000, which purported to be executed by the plaintiff and opposite party No. 2, were fraudulent, without consideration, vitiated by coercion and undue influence and inoperative against them and for setting aside and cancellation of the same. She stated that her suit was one for a declaration with consequential relief under s. 7, cl. iv (c) and valued it at Rs. 150. The defence of the petitioner was that the documents in question were genuine, that the consideration for the same was a previous existing debt of Rs. 30,000 by the petitioner's deceased husband and opposite party No. 2, that the subject-matter of the suit, being Rs. 29,000, was beyond the jurisdiction of the Munsif. The Court heard the parties on the preliminary point and came to the conclusion that, on the state of the law existing at present, it could not be said that the plaintiff had wrongly valued the subject-matter of the suit.

1937  
*Santa Prasad*  
*Shaha*  
 v.  
*Mrinalinee Shaha.*

It is urged in this Court that the learned Munsif failed to appreciate the effect of the newly added s. 8C of the Court-fees Act, that, on a proper consideration of that section, it should be held that the suit has been under-valued by the plaintiff and the Court ought to correct the valuation. Section 8C came into operation in 1935. Before that, the relevant section was in these terms: "The amount of fee payable under this Act in the suits next hereafter mentioned shall be computed as follows:—

iv(c) in suits to obtain a declaratory decree where consequential relief is prayed, according to the amount at which the relief sought is valued in the plaint.

1937  
 Santa Prasad  
 Shaha  
 v.  
 Mrinalinee Shaha.  
 M. C. Ghose J.

There is a section in the Code of Civil Procedure relating to the matter, namely, O. VII, r. 11, the relevant portion of which is follows :—

The plaint shall be rejected in the following cases :—

(b) 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.

In the case of *Umatul Batul v. Nanji Koer* (1), Mookerjee and Holmwood JJ. held that the Court had jurisdiction to ascertain whether the valuation made by the plaintiff was proper. In that case, there was a mortgage decree of Rs. 10,000 in respect of property of which the value was stated to be Rs. 80,000. The plaintiff sued for a declaration that the mortgage decree was fraudulent and for an injunction that the decree might never be executed and the suit was valued at Rs. 100. It was held on the facts that the suit must be valued at Rs. 10,000. The view taken in *Umatul Batul's* case (1) cited above was criticised by Rankin C. J. in the case of *In re Kalipada Mukherji* (2). It was observed that O. VII, r. 11 was mere procedure; it was not meant to enlarge any taxing section but only to ensure the proper application of the Court-fees Act and other Acts; that there was no such provision in the Court-fees Act itself; further, that in cases following under s. 7 iv (c), no real objective basis of valuation will in general be possible. Both the cases were considered in the Full Bench case of *The Narayanganj Central Co-operative Sale and Supply Society, Limited* (in liquidation) v. *Mafizuddin Ahmad* (3). In that case two questions were referred to the Full Bench :—

(i) whether in suits to obtain a declaratory decree or order consequential relief is prayed for, and in suits to obtain an injunction where Court finds the relief claimed is under-valued, it is entitled under

(1) (1907) 11 C. W. N. 705.

(2) (1930) I. L. R. 58 Cal. 281.

(3) (1934) I. L. R. 61 Cal. 796, 811.

O. VII, r. 11 of the Civil Procedure Code to require the plaintiff to correct the valuation stated by him in accordance with the provisions of s. 7 of the Court-fees Act?

1937  
 Santa Prasad  
 Shaha  
 v.  
 Mrinalinee Shaha.  
 M. C. Ghose J.

(ii) whether the case of *Umatul Batul v. Nanji Koer* (1) was correctly decided?

Mukerji J. in his judgment in the Full Bench case answered both the questions in the affirmative but observed as to question (i):—

But so long as there are no rules framed under s. 9 of the Suits Valuation Act (VII of 1887) the Court would have no standard before it, on which it may regard the plaintiff's valuation and under-valuation, and its powers of correction would have to be exercised on that footing.

As to question (ii) his Lordship observed:—

The case was correctly decided in so far as it laid down that it is within the power of the Court to revise the plaintiff's valuation; but the valuation made by the Court, though it may have not been unreasonable, was not a valuation made in accordance with a standard having the force of law.

Costello J. agreed with that judgment and observed:—

Having regard to the unsatisfactory position, which, in my opinion, exists in matters of this kind and, having regard to the necessity for the framing of some kind of rules which will serve as a criterion for valuing the suits, it seems to be highly desirable that the attention of the legislature should be called to this matter and the legislature ought to declare what they really meant to be done in cases such as in the present.

Jack J. observed:—

There may be cases in which the valuation is perfectly obvious on the face of it, and, in that case, it would be open to the Court to correct a clearly wrong valuation even before the framing of the rules.

The learned Munsif thought that the legislature, under s. 8C, gave the same power as the Court previously possessed under O. VII, r. 11(b) of the Code. In this, he was in error. In the Civil Procedure Code the words are to be taken as matters of procedure, but the new s. 8C, which was enacted by the legislature after the Full Bench case, is as follows:—

If the Court is of opinion that the subject matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

1937  
*Santa Prasad*  
*Shaha*  
 v.  
*Mrinalinee Shaha.*  
*M. C. Ghose J.*

This being a section in the taxing statute, it is the duty of the Court when the defendant pleads that the suit has been wrongly valued by the plaintiff to hold a necessary enquiry and come to a decision after necessary enquiry whether the suit has been wrongly valued. It is true where there is no objective valuation, it is not possible to say that the plaintiff's valuation is wrong but every case must be judged on its own facts. In the present case, the plaintiff has sued to set aside three documents. Take the last one of them, the promissory note of Rs. 4,000. As there is no objective value of a promissory note, the plaintiff may put any value. Suppose, the defendant obtains a decree of Rs. 4,000 upon the promissory note and the plaintiff has no assets whatsoever, the decree will be worthless. The value of the decree will be the value of what can be realised from the assets of the debtor. This was the fact in the Full Bench case of *The Narayanganj Central Co-operative Sale and Supply Society, (in liquidation) v. Mafjuddin Ahmad* (1), where the plaintiff sought for a declaration that a decree of Rs. 11,000 against him was inoperative and he valued the suit at Rs. 49. The Court held that the value would depend upon the assets of the plaintiff.

But in the case of the mortgage deed of Rs. 10,000 there is an objective value, namely, the immoveable property which is the subject of the mortgage. If it be found on enquiry that the market value of the immoveable property is Rs. 10,000 or more, then clearly the value of the declaration sought by the plaintiff is Rs. 10,000. If the market value of the property be less than Rs. 10,000, then the value of the declaration would be the market value of the immoveable property. Similarly, with respect to the deed of sale of the immoveable property at Rs. 15,000, if the property transferred by this document has a market value of

(1) (1934) I. L. R. 61 Cal. 796.

Rs. 15,000 then the value of the declaration sought by the plaintiff is clearly Rs. 15,000. If the market value of the immovable property covered by the deed of sale be less than Rs. 15,000, the value of the suit will be the market value. In these two cases the Court can come to a conclusion even though no rules have been framed under s. 9 of the Suits Valuation Act.

1937  
*Santa Prasad*  
*Shaha*  
 v.  
*Mrinalinee Shaha.*  
*M. C. Ghose J.*

The Rule is made absolute and the trial Court is directed to make an enquiry on the lines stated above as to the correct valuation of the suit and if it finds that the value is such that it cannot try the suit, it will return the plaint for filing it in the proper Court. The petitioner will get his costs of this Court, hearing fee two gold mohurs.

*Rule absolute.*

A. A.