

APPELLATE CIVIL.

Before Edgley J.

NALINI NATH MALLIK THAKUR

v.

RADHA SHYAM MARWARI.*

1939

Dec. 14, 21;

1940

Jan. 12.

Court-fee—*Suit to set aside decree*—*Valuation*—*Objective standard*—*Power of Court*—*Court-fees Act (VII of 1870), ss. 7 iv, cls. (c), (d); 8 B; 8 C.*

In suits to set aside a decree, it cannot be said that there is no objective standard for valuing the relief claimed in the case, as such objective standard must be taken to be the value of the plaintiff's property which he would stand to lose if the decree against him is put into execution.

Narayanganj Central Co-operative Sale and Supply Society, Limited (in liquidation) v. Mafjuddin Ahmad (1) distinguished.

Jitendra Nath Ghosh v. Hiranmay Kumar Shaha (2) referred to.

If the value of the decree sought to be set aside exceeds the value of the plaintiff's assets, the valuation should be based on the valuation of the assets, or, if the assets are of greater value than the decree, the valuation should be based upon the value of the decree.

Phul Kumari v. Ghanshyam Misra (3) relied on.

Umatul Batul v. Nanji Koer (4) explained.

When once the Court has formed the opinion that the plaintiff's estimate is wrong, it becomes the duty of the Court to estimate a correct and reasonable valuation of the relief claimed and to see whether the provisions of s. 8C of the Court-fees Act should be invoked for the purpose of revising the plaintiff's valuation.

COURT-FEE matter arising in an appeal from appellate decree.

The facts of the case and the arguments on the question of court-fee are sufficiently stated in the judgment.

Hiralal Chakravarti and Rabindra Nath Bhattacharya for the appellant.

*Court-fee matter in Appeal for Appellate Decree, No. 32 of 1938.

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

(3) (1907) I.L.R. 35 Cal. 202 ;

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

L.R. 35 I.A. 22.

(4) (1907) 11 C.W.N. 705.

1940

Nalini Nath
Mallik Thakur

v.

Radha Shyam
Marwari.

Gopendra Nath Das and *Lala Hemanta Kumar*
for the respondent.

*The Assistant Government Pleader, Ramaprasad
Mukhopadhyaya* for the Crown.

Cur. adv. vult.

EDGLEY J. In the suit out of which this appeal arises the plaintiffs sued the defendants for a declaration to the effect that a certain decree obtained against them was void by reason of collusion and fraud and they also asked for an injunction restraining the defendant No. 1, Nalini Nath Mallik Thakur, from executing this decree. The value of the decree in question is Rs. 2,354, but in the Courts below the relief claimed by the plaintiffs was valued at Rs. 49 only under s. 7iv(c) and (d) of the Court-fees Act. On this point, the trial Court held that, in the absence of rules under s. 9 of the Suits Valuation Act at the time of the institution of a suit of this nature, even although the Court finds that the relief claimed is under-valued, there is no standard according to which the relief claimed can be properly valued, so the Court's power of correction cannot be exercised. Having regard to the facts of the case, out of which this appeal arises, it would appear *prima facie* that the relief claimed has been under-valued and the question, therefore, arises whether the parties concerned should be required under s. 12 of the Court-fees Act to deposit the deficit court-fees due from them or whether the case should be remitted to the trial Court for an enquiry under s. 8C of the Act.

The main argument put forward in support of the decision of the trial Court as regards the valuation of the suit is that there is no objective standard of valuation in the absence of any rules under s. 9 of the Suits Valuation Act and that, in these circumstances, the case must be governed by the principles

laid down in the case of *Narayanganj Central Co-operative Sale and Supply Society, Limited* (in liquidation) v. *Mafjuddin Ahmad* (1). It is contended that, although that decision has reference to s. 7iv of the Court-fees Act as it stood before the Act was amended in 1935, the amendment to the section, by which it has been made subject to the provisions of s. 8C, has not effected any real modification of the law. It is, therefore, argued that the circumstances in which the Court is empowered to revise the plaintiffs' valuation must be strictly limited to the grounds contemplated in the decision in the case cited above and that, in view of those principles, the plaintiffs were justified in placing their own valuation upon the relief claimed by them in this suit. In this connection, particular reliance is placed upon some observations of Mukerji J. who delivered the leading judgment in the case of *Narayanganj Central Co-operative Sale and Supply Society, Limited* (in liquidation) v. *Mafjuddin Ahmad* (1), in which the learned Judge observes :—

Though it is true that, in suits of various descriptions, no absolute standard at all would be possible, yet it cannot be disputed that reasonable standards may with safety be laid down giving the plaintiff all legitimate option that he may be reasonably entitled to and proceeding on the lines indicated by the legislature in such standards as they themselves have laid down. But I am clearly of opinion that, until such standards are laid down by appropriate rules framed under s. 9 of the Suits Valuation Act (VII of 1887), it would not be possible for the Court to exercise this power except in those classes of cases falling under the clause in which the valuation made by the plaintiff is illegal, palpably absurd, manifestly illogical or arithmetically wrong.

It appears from the decision in the case cited above that a point, which carried considerable weight with the learned Judges, was the fact that, in the case of many suits which fall within s. 7iv of the Court-fees Act, "no real objective standard of valuation would be possible or, even if possible, would "be altogether satisfactory". At the same time, it must be remembered that, at that time, there was no procedure in existence, in the absence of rules under s. 9 of the Suits Valuation Act, under which the

1940

*Nalini Nath
Mallik Thakur*
v.
*Radha Shyam
Marwari.*
—
Edgley J.

1940

*Nalini Nath
Mallik Thakur*
v.
*Radha Shyam
Marwari.*
—
Edgley J.

relief sought in these cases could be valued. This defect has now been supplied. The relief claimed in this class of suits must obviously have some value to the plaintiff and, in view of the provisions of ss. 8B and 8C of the amended Court-fees Act, it is clear that, if the Court considers that the plaintiff has under-estimated this value, it is the duty of the Court "to revise the valuation and determine the "correct valuation" and, if necessary, hold such enquiry as it thinks fit for this purpose. In other words, as pointed out by S. K. Ghose J. in the case of *Jitendra Nath Ghosh v. Hiranmay Kumar Shaha* (1), the effect of the new 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 standard of valuation forthcoming.

Although a satisfactory valuation may not be possible in the majority of these cases, when once the Court has formed the opinion that the plaintiff's estimate is wrong, it becomes the duty of the Court to estimate a correct and reasonable valuation of the relief claimed and it follows that it will be for the Court to decide on the merits of each particular case whether the provisions of s. 8C of the Act should be invoked for the purpose of revising the plaintiff's valuation. If the relief claimed is impossible to value, the Court is, of course, not in a position to say that such relief has been wrongly valued and there is consequently no scope for the operation of s. 8C of the Court-fees Act, but, in a suit where it is sought to set aside a decree, such valuation although difficult is not impossible. The view which seems to have been adopted in the case of *Narayan-ganj Central Co-operative Sale and Supply Society, Limited* (in liquidation) v. *Mafjuddin Ahmad* (2), on the basis of certain observations of the Judicial Committee in the case of *Phul Kumari v. Ghan-shyam Misra* (3), was that the value of such a decree

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

(2) (1934) I.L.R. 61 Cal. 796.

(3) (1907) I.L.R. 35 Cal. 202; L.R. 35 I.A. 22.

to the plaintiff must be the value of the assets that could be realised from the judgment-debtor's estate if the decree were put into execution. It would follow, therefore, that, if the value of the decree exceeds the value of the assets, the valuation should be based on the valuation of the assets, or, if the assets are of greater value than the decree, the valuation should be based upon the value of the decree.

1940

*Naimi Nath
Mallik Thakur
v.
Radha Shyam
Marwar,*
Edgley J.

It might at first sight appear that a different view was adopted in the case of *Umatul Batul v. Nanji Koer* (1), in which it was held that the value of the relief sought in a similar suit was the sum sought to be realised under the decree, but, in that suit, the value of the property to be sold was Rs. 80,000 while the value of the decree was only Rs. 10,000 and there seems to have been no doubt that, if the decree had been put into execution, the full amount thereof would have been realised from the judgment-debtor's estate. In the present case, however, we have no materials before us from which an estimate can be made of the extent to which it may be possible for the decree-holder to satisfy his decree from the plaintiffs' assets and it is, therefore, necessary that the approximate value of these assets should be determined by means of an enquiry under s. 8C of the Court-fees Act. *Prima facie* the value of the relief claimed by the plaintiffs would be the value of the decree and the onus would clearly lie on them to show that this relief should be valued at some smaller amount. If, in the course of the enquiry, the assets of the plaintiffs are found to exceed the value of the decree, the relief claimed should be valued at the amount of the decree and, if they are of a smaller value than the amount of the decree, the value of the relief will be the market-value of the assets.

In view of what I have stated above, it cannot be said that there is no objective standard for valuing the relief claimed in this case as such objective

1940

*Nalini Nath
Malik Thakur*

v.

*Radha Shyam
Marwari.*

Edgley J.

standard must be taken to be the value of the plaintiffs' property which they would stand to lose if the decree against them is put into execution. It, therefore, follows *prima facie* that the question of valuation in this case has been wrongly decided to the detriment of the revenue.

The exact amount of the deficit Court-fees which will be payable in all the Courts concerned cannot be determined without a proper enquiry under s. 8C of the Court-fees Act. The case is, therefore, remitted to the trial Court and the records of this case are forwarded to that Court for the purpose of enabling that Court to hold such an enquiry and determine the correct valuation of the relief claimed by the plaintiffs.

In the meantime, this appeal will remain pending on the file of this Court and the costs of this hearing will be assessed on the receipt of the report of the trial Court.

Case remanded on issue of court-fee.

A. A.