

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

OMRAO MIRZA (PLAINTIFF) v. M. JONES (DEFENDANT.)*

1884
March 26.

Mahomedan Law—Wakf—Endowment—Valuation of Suit—Removal of Trustee—Court-fees' Act, Act VII of 1870, s. 7, cl. (3), and sub-clause (f); and clauses 3 and 6 of Art. 17, Schedule II.

In a suit for the removal of the defendant from the management of certain trust funds on the ground of misconduct, the plaintiff stamped his plaint with a Court-fee stamp of Rs. 10, and valued the suit at Rs. 7,000 "for the purpose of jurisdiction."

Held, that the Rs. 7,000 must be taken, under the circumstances, to be the plaintiff's interest in the subject-matter of the suit, and that the Court-fee must be estimated upon that sum.

Delroos Banoo Begum v. Ashgur Ali Khan (1) followed.

THE question which arose in this case was as to the proper Court-fee payable on the institution of the suit. The plaint stated as follows:—"The value of the *wakf* which the plaintiff seeks in this suit cannot be ascertained by any money value. Consequently, this suit is brought on payment of a Court-fee of Rs. 10; and this suit is approximately valued at the sum of Rs. 7,000 for the purposes of jurisdiction." The facts of the case and the argument made use of on both sides are fully set forth in the judgment appealed from, which is as follows:—

"Eliza Jones, deceased, the widow of the late Nawab Maharujuddawla of the Oudh family, by her last Will and testament, dated the 14th November 1852, made over Government securities to the value of five lacs of rupees to her brother and two sisters or their last survivor, on condition that they should never dispose of them; that the interest on three lacs of rupees should be expended on the necessary expenses connected with her tomb and the tomb of her husband, and that with the interest of two lacs of rupees they should enable pilgrims to go to Mecca, &c., and that after the death of her heirs, the Government should carry out the above trusts.

"The defendant is the last surviving sister of the said testatrix and has been managing the trust for some time. The plaintiff, as one of the near-

* Appeal from Original Decree No. 328 of 1882, against the decree of Baboo Nafur Chunder Bhutto, Rai Bahadur, First Subordinate Judge of 24-Pergunnahs, dated 12th of August 1882.

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est relations and next heir of the testatrix, charges the defendant with waste and misconduct of omission, commission and misappropriation of the said sum of money, and asks for the following relief in this suit, namely:—

“(क) To enquire how the defendant has been using and spending the said Government securities of five lacs of rupees or the interest thereon.

“(ख) If on such enquiry it be found that she is not performing the religious duties with the said interest as required or according to the injunctions contained in that Will, then to appoint another proper person (in her stead), or to make over the said Government securities to the Government, so that the religious duties intended by the testatrix may be fulfilled.

“(ग) To compel the defendant to make good any portion of the said sum, or the Government securities that will be found to have been misappropriated by the defendant, and to make over the same either to the person appointed by the Court or to the Government, as the case may be.

“(घ) To prepare a scheme, if necessary, to give full effect to the provisions of the said Will.

“(ङ) To order the defendant to pay the plaintiff all the costs of this suit.

“(च) And to pass such just and proper order as may be required by the circumstances of the case, so that the intentions of the testatrix as regards the religious duties may be properly carried out.

“The plaintiff values such a suit at Rs. 7,000 only, and affixed a Court-fee of Rs. 10 only on the plaint. That valuation is clearly for purposes of jurisdiction, and has nothing to do with the amount of Court-fees to be levied. The defendant, amongst other objections, urges that the Will has been under-valued, and that the proper Court-fee stamp has not been affixed on the plaint. It is evident that this point must be settled before any other question can be gone into.

“After hearing Counsel on both sides, I am of opinion that the case does not fall within the sub-articles III and VI, article 17, schedule II of the Court-fees Act. At very first sight it is apparent that sub-article III does not apply, for no declaration whatever, such as a declaration of the validity or invalidity of the Will or any of its provisions or even interpretation of any of its provisions, is prayed for. It may be that the case may require interpretation of some of the provisions of the Will for the purpose of seeing whether any of the prayers can be granted; but that is not what is “prayed for.” Besides, if in suits of this kind any consequential relief is conceivable, such relief is expressly and directly prayed for in prayers (ख) and (ग) in which the plaintiff seeks for the removal of the defendant from the office of manager, trustee or *mutwali*, and appointment of another in her stead, or for the transfer of the *waqf* or trust property to the hands of the Government, and the realization from the defendant of any sum found to

have been misappropriated by her. As regards the provision of sub-article VI, the subject-matter in this suit is not such that its "money value" cannot possibly be estimated. The whole sum of five lacs of rupees, together with interest which has accrued thereon, is the subject-matter of this suit, for under prayer (b) it is asked that the whole of that amount may be transferred to another person or to Government. Again, in prayer (c) an account of the original sum and receipts and disbursements of the interest is sought for. Now, for accounts there is an express provision in sub-clause, (f), clause IV, s. 7 of the Court-fees Act. Sub-article VI of article 17 in sch. II of the Act does not apply to the suit at all, because for its application two conditions are necessary, namely (1) the impossibility of estimation of the money value of the subject-matter; (2) a want of a provision expressly applicable to the case. But there is a provision elsewhere directly applicable to cases of accounts, &c., and hence sub-article VI does not apply.

"So far as the taking of accounts is concerned, the plaintiff had undoubtedly the right to exercise his own discretion in valuing the relief sought for under the last two paragraphs of clause IV of s. 7. But under the last paragraph, the Court has yet power to see whether such discretion or option has been properly exercised or not under s. 54 of the present Procedure Code, which corresponds to s. 31 of Act VIII of 1859 therein referred to. Section 3 of the present Code makes s. 54 applicable. If this were, however, a suit for accounts only, I might take Rs. 7,000 as the value of the relief, though that value has been given for purposes of jurisdiction only, and that too apparently under no principle whatever.

"But it appears to me that this is a suit for "moveable property other than money, where the subject-matter has a market value" within the meaning of clause III, s. 7; for Government securities indisputably come under that category, and their transfer to other hands is expressly sought for in prayer (c). It is said that so far as the plaintiff is concerned, the subject-matter of the suit has no value at all, for he has no interest therein, nor does he claim any interest of his own. That may be the case; but if he has any right to bring such a suit, he stands in the same position as one who sues in his own right and for his own private benefit or in some representative character, such as the guardian of a minor, so far as Court-fees are concerned. The law does not say that the relief must be a personal relief to the plaintiff. . . . I hold therefore that inasmuch as the Court may have in order that the whole amount of Government securities worth Rs. 5,00,000 be taken away from the defendant and made over either to the plaintiff or some one else or to the Government according to the case and the prayers in this plaint, this is a suit "for moveable property other than money when the subject-matter has a marketable value." This suit must be valued at Rs 5,00,000,

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and stamp-fees paid according to that value. The prayer for accounts is merged in the general prayer for the whole of the subject-matter. Plaintiff to value the suit and pay the Court-fees accordingly in the course of two months."

Before the expiration of the time allowed by the Subordinate Judge for payment of the additional fee, the plaintiff obtained a rule in the High Court under s. 622 of the Code of Civil Procedure, calling on the defendant to show cause why the order of the Subordinate Judge should not be quashed; but on the 18th of July 1882 this rule was discharged on the ground that the proper course for the plaintiff to adopt was to wait until his plaint should be rejected by the Subordinate Judge under s. 54 cl. (a) of the Code of Civil Procedure. On the 12th of August 1882 the plaint was rejected, and thereupon the plaintiff preferred this appeal on the following grounds:—

- (1) That the Court below ought to have held that the plaint falls within clause 3 or clause 6 of Art. 17 of Schedule II of the Court-fees' Act, and was therefore properly stamped;
- (2) that the Court below has misconceived the true nature of the suit, and has erred in supposing that the inquiries which the plaint asks for in any way alter the character of the same;
- (3) that the Court below ought to have held that this was only a declaratory suit, where no consequential relief was asked for;
- (4) that the Court below has erroneously supposed that the suit asks for the appointment of your petitioner as trustee;
- (5) that the Court below is wrong to hold that the sub-clause (f) of s. 7 of the Court-fees Act is applicable to any portion of the suit;
- (6) that the Subordinate Judge has erred in holding that the suit falls within cl. 3, s. 7 of the Court-fees Act, and that the plaint should have been stamped with Court-fee payable for Rs. 5,00,000.

Baboo Chunder Madhub Ghose and Baboo Korunasindhu Mookerji for the appellant.

Mr. Hill and Munshi Serajul Islam for the respondent.

The following judgments were delivered:—

PRINSEP, J.—The matter raised in this appeal relates to the assessment of Court-fees on the plaint. The suit, as we under-

stand it, is a suit for removal of the defendant from the management of certain trust funds on proof of his misconduct. The Subordinate Judge has held that the Court-fees payable should be assessed on the value of the trust property—that being, in his opinion, the subject-matter of the suit.

It appears to us that the subject-matter in this suit is not the *corpus* of the trust property, but the right to retain the control over it. Under such circumstances, the suit would ordinarily fall within Sch. II, Art. 17, cl. 6 of the Court-fees Act. But in the present matter we have the fact that the plaintiff has valued the subject-matter of suit for the purposes of jurisdiction, as he states, at Rs. 7,000. We regard this value as not being merely for the purposes of jurisdiction, but also as affording a basis for the assessment of Court fees. We accept the principle laid down in the case of *Delroos Banoo Begum v. Ashgur Ali Khan* (1).

But the circumstances of that case are very different from those of the case now before us, so far as we can gather the facts from the papers printed in the paper-book. In the case of *Delroos Banoo Begum v. Ashgur Ali Khan* (1) it would seem that the *mutwali* was in receipt of certain emoluments derived from a specific share of the income of the *wagf* property; whereas it is not stated in the case before us that the manager is in receipt of any such emolument. Taking, however, the sum of Rs. 7,000, stated in the plaint, we think that the Court-fees should be assessed at least on that amount. The case will be returned to the Court of the Subordinate Judge who will proceed with the trial provided that the plaintiff deposits the proper amount of Court-fees within fourteen days from this date.

O'KINNEALY J.—I concur in the decision arrived at by my learned brother, for I think the case falls within the principle laid down in the case of *Delroos Banoo Begum v. Ashgur Ali Khan* (1). At page 187 of the report in delivering the judgment of the Court, GLOVER, J., said: "The plaintiffs ask for distinct and important consequential relief; they ask not only that the defendant may be declared to have wasted the endowment and thereby to have betrayed her trust, but also that she may be

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turned out of her *mutwaliship*, and they, the plaintiffs, be appointed in her room. The plaintiffs say "that what they claim does not admit of being properly estimated by a money-value; but this is not so. Under the *tantiatnama* the *mutwalis* were to receive six twenty-eighths of the produce of the estate, a very considerable sum; and the plaintiffs' claim to this share as an appurtenance to the office of *mutwali* was easily to be estimated in money. I am of opinion that the plaint ought to have been engrossed on a stamp of proper value." By this I understand the Court was of opinion that the suit should be valued according to the interest of the plaintiff in the subject-matter of the suit, and in this case the plaintiff has valued it at Rs. 7,000.

Appeal allowed.

CRIMINAL REFERENCE.

Before Mr. Justice Tottenham and Mr. Justice Norris.

QUEEN EMPRESS v. BATESAR MANDAL.*

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False statement before a Registrar—Prosecution under the Registration Act (III of 1877), s. 82, cl. (a) and s. 83—ss. 72 and 73.

Where the accused was tried for intentionally making a false statement in the course of certain proceedings taken before a Registrar: *Held*, that even assuming that such proceedings were taken under s. 72 of the Registration Act, and not as they should have been under s. 73, the appearance of the accused before the Registrar and his taking no objection to the form of the proceedings will cure the irregularity for the purposes of a criminal trial under the provisions of the Registration Act. Nor under similar circumstances will the want of verification of a petition of appeal on the part of the applicant, as provided by s. 73 of the Act, oust the jurisdiction of the Criminal Court.

Reg v. James Berry (1); *The Queen v. Thomas Fletcher* (2); *Turner v. Post Master General* (3); *The Queen v. Hughes* (4); *The Queen v. Smith* (5) followed.

* Criminal Reference No. 17, and letter No. 20, from F. Cowley, Esq. Sessions Judge of Purneah, dated the 25th February 1884.

- (1) 28 L. J. (M. C.) 86; 8 Cox C. C., 121.
- (2) L. R. 1 C. C. R., 320.
- (3) 5 B. and S., 756.
- (4) L. R., 4 Q. B. D., 614; 14 Cox C. C., 285.
- (5) L. R. 1 Q. C. R., 110; 11 Cox C. C., 10.