APPELLATE CIVIL—FULL BENCH.

Before the Hon'ble Mr. A. H. L. Leach, Chief Justice, Mr. Justice Varadachariar and Mr. Justice Pandrang Row.

S. N. V. R. NARAYANAN CHETTI (PLAINTIFF), APPELLANT,

1937, December 2.

v.

S. PR. AL. PERIAPPAN *alias* RAMANATHAN CHETTI MINOR BY MOTHER AND GUARDIAN SIVAGAMI ACHI, AND TWO OTHERS (DEFENDANTS), RESPONDENTS.*

Court Fees Act (VII of 1870), sec. 7 (iv) (f)—Suit for accounts —Dismissal of—Plaintiff appealing against preliminary decree—Value of claim, if can be altered in appeal.

Held by the Full Bench: The appellant in an appeal against a decree dismissing a suit for an account cannot change his valuation where the subject-matter of the appeal is the same as in the trial Court.

The scheme of the Court Fees Act in this respect is to allow a plaintiff to value his relief at the figure he chooses, but it does not allow him to change that valuation. He is allowed to value for the purpose of the litigation and when he has done so his valuation governs the forum of trial and of appeal. An appellant may, however, abandon on appeal a portion of the relief claimed in the lower Court or say that he does not claim relief beyond the figure corresponding to the value of the stamp paid by him, but unless he does this he is bound by the valuation fixed by himself at the commencement of the litigation.

Faizullah Khan v. *Mauladad Khan*(1) explained and distinguished.

APPEAL against the decree of the Court of the Subordinate Judge of Sivaganga in Original Suit No. 61 of 1930 (Original Suit No. 68 of 1929, Sub-Court, Devakottah).

A. V. Viswanatha Sastri for appellant.—The appeal is against a decree dismissing a suit for taking accounts. According to section 7 (iv) (*f*) of the Court Fees Act, the plaintiff is

*Appeal No. 77 of 1933.

(1) (1929) I.L.R. 10 Lah. 737 (P.C.).

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entitled to put his own valuation in the plaint. That provision is applicable to appeals also. There is nothing in the statute to make the plaintiff put in appeal the same valuation as in the suit. [*Faizullah Khan* v. *Mauladad Khan*(1), *Ramiah* v. *Ramasami*(2), *Arunachalam Chetty* v. *Rangasawmy Pillai*(3), *C. K. Ummar* v. *C. K. Ali Ummar*(4), *Maung Nyi Maung* v. *The Mandalay Municipal Committee*(5) and *The Naranyanganj Central Co-operative Sale and Supply Society, Limited (in liquidation)* v. *Mafijuddin Ahmad*(6) were referred to.]

Government Pleader (*K. S. Krishnaswami Ayyangar*) for the Crown.—In a suit for accounts, if the defendant appeals he is required to adopt the valuation of the plaintiff in the trial Court. The same principle applies to the plaintiff also. There is nothing in the section to show that the position of the plaintiff is different from that of the defendant. [Schedule I, article I, of the Court Fees Act was referred to.] There is nothing in the statute which warrants the change of the valuation of the suit in respect of the same subject-matter. When once the valuation is fixed by the plaintiff it is final. Neither the plaintiff nor the defendant can change it. The valuation of the suit decides the forum of the trial Court and the Court of appeal. So the plaintiff, when once he fixes the valuation of the suit, should not be allowed to alter it at the stage of appeal. The practice of this High Court and of the other High Courts has been that when once the plaintiff has fixed the valuation, he is never permitted to depart from it. That practice should not be altered unless it is inconsistent with the provisions of section 7 (iv) (*f*) of the Court Fees Act. This is the principle which underlies Schedule I and the other provisions of the Court Fees Act except section 7 (iv). The valuation of the subject-matter should not vary from stage to stage. [Order VII, rule 2, Civil Procedure Code, and section 8 of the Suits Valuation Act were referred to.] *Kannayya Chetti* v. *Venkata Narasayya*(7). though a decision under the Suits Valuation Act, applies to the Court Fees Act also. The plaintiff is allowed to fix the valuation only once: having fixed a certain valuation he is not allowed to alter it at a later stage. A party cannot be allowed to approbate and reprobate regarding the same subject-matter. [*Mahendranarayan Ray Chaudhuri* v. *Janakinath Ray*(8),

(1) (1929) I.L.R. 10 Lah. 737 (P.C.). (2) (1912) 24 M.L.J. 233 (F.B.).
(3) (1914) I.L.R. 38 Mad. 922 (F.B.). (4) (1931) I.L.R. 9 Ran. 165 (F.B.).
(5) (1934) I.L.R. 12 Ran. 335. (6) (1934) I.L.R. 61 Cal. 796 (F.B.).
(7) (1916) I.L.R. 40 Mad. 1 (F.B.). (8) (1930) I.L.R. 58 Cal. 66.

Mutusawmy Jagavera Yettapa Naiker v. *Vencataswara Yettia*(1), *Alagappa Chetty* v. *Nachiappan*(2), *Lallubhai Pragji* v. *Bhimbhai Dajibhai*(3), *Arogya Udayan* v. *Appachi Rowthan*(4) and *M. E. Moolla & Sons, Ltd.* v. *Leon Shain Sway*(5) were referred to.] In *Faizullah Khan* v. *Mauladad Khan*(6) the appeal was from a final decree but in the present case the appeal is from a preliminary decree. There the appeal was valued at a higher figure than what was done in the trial Court. So that case is distinguishable from the present one. The words "shall state" in section 7 (iv) (*f*) mean shall state for the entire litigation. [*Samiya Mavali* v. *Minammal*(7), *Srinivasacharlu* v. *Perindevamma*(8) and *Delroos Banoo Begum* v. *Nawab Syud Ashgur Ally Khan*(9) were referred to.]

M. Patanjali Sastri and *N. G. Krishna Ayyangar* for respondents.

A. V. Viswanatha Sastri in reply.—The scope of the appeal is different from that of the plaint. The plaintiff can change the valuation even at the stage of appeal according to section 7 (iv) (*f*) of the Court Fees Act. The case of *Faizullah Khan* v. *Mauladad Khan*(6) supports my contention. The practice is different after the decision of the Privy Council in the above case. The words in section 7 (iv) (*f*) should be construed literally. So the plaintiff should be allowed to value the appeal also as he likes.

LEACH C.J.

The ORDER of the Court was delivered by LEACH C.J.—The question which we are called upon now to decide in this case is whether the memorandum of appeal has been properly stamped. The suit out of which the appeal arises was filed in the Court of the Subordinate Judge of Sivaganga for the taking of the accounts of a dissolved partnership. The plaintiff valued his relief at Rs. 16,500 and paid the court-fee of

(1) (1865) 10 M.I.A. 313.
(2) (1922) 43 M.L.J. 728.
(3) (1929) I.L.R. 53 Bom. 552.
(4) (1901) I.L.R. 25 Mad. 543.
(5) (1925) I.L.R. 4 Ran. 92, 94.
(6) (1929) I.L.R. 10 Lah. 737 (P.C.).
(7) (1899) I.L.R. 23 Mad. 490.
(8) (1915) I.L.R. 39 Mad. 725 (F.B.).
(9) (1875) 15 B.L.R. 167, 173.

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Rs. 1,004-15-0. The trial Court dismissed the suit on the ground that it was barred by the law of limitation. The plaintiff then appealed to this Court and in his memorandum of appeal valued the relief at Rs. 1,000, paying the corresponding court-fee of Rs. 112-7-0. In consequence of the decision of this Court in *In re Venkatanandam*(1), this valuation was accepted by the officer whose duty it was to check the stamping of the memorandum of appeal. But that case has recently been overruled by a Full Bench in *Dhanukodi, In re*(2). The respondents have in consequence contended that the appellant should value his relief in accordance with the figure at which it was valued in his plaint. The appellant contends that, notwithstanding the fact that *In re Venkatanandam*(1) has been overruled, the case is governed by *Faizullah Khan* v. *Mauladad Khan*(3), and that the memorandum of appeal is properly stamped.

The question resolves itself into this : Can the appellant in an appeal against a decree dismissing a suit for an account change his valuation, although the subject-matter of the appeal is the same as in the trial Court? Section 7 (iv) of the Court Fees Act requires a suit for accounts to be stamped "according to the value at which the relief is valued in the plaint or memorandum of appeal" and adds :

> "In all such suits the plaintiff shall state the amount at which he values the relief sought."

It is said that, as there is a reference in this clause to the memorandum of appeal, the appellant is allowed to value his relief on appeal at

(1) (1932) I.L.R. 56 Mad. 705. (2) I.L.R. [1938] Mad. 598 (F.B.).
(3) (1929) I.L.R. 10 Lah. 737 (P.C.).

whatever he likes, notwithstanding that he valued it in the trial Court at a higher figure, and that the correctness of this course is expressly recognised in *Faizullah Khan* v. *Mauladad Khan*(1).

It was held by a Full Bench of this Court in *Ramiah* v. *Ramasami*(2) and by another Full Bench in *Arunachalam Chetty* v. *Rangasawmy Pillai*(3) that a plaintiff in a suit of this nature is entitled to value his relief at what he likes, it being no objection to his valuation that it is an arbitrary one; and these decisions have not been challenged before us. We, therefore, start with this. The plaintiff may in his plaint value the relief at his own figure. But having made the valuation for the purposes of the litigation, can he reduce it when he comes to appeal? It has always been considered in this Court and in the other High Courts in India that he cannot. Until *In re Venkatanandam*(4) was decided, a plaintiff appealing against a decree dismissing a suit for an account was required in this Court to stamp his memorandum of appeal according to the full amount of the valuation in his plaint. Of course he could if he so desired waive some of the relief which he claimed in the trial Court and in this case he would stamp his memorandum of appeal accordingly.

The Court will not change a long established practice unless it is shown that the practice is opposed to law. Before we can hold that the practice which has been followed in this Court until the decision in *In re Venkatanandam*(4) and throughout in other Courts should be altered, it

(1) (1929) I.L.R. 10 Lah. 737 (P.C.). (2) (1912) 24 M.L.J. 233 (F.B.).
(3) (1914) I.L.R. 38 Mad. 922 (F.B.). (4) (1932) I.L.R. 56 Mad. 705.

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must be shown that the practice is inconsistent with the provisions of section 7 (iv) (*f*) of the Court Fees Act. It must be remembered that the valuation of the relief in the plaint decides the forum, for instance, whether the suit shall be filed in the District Munsif's Court or the Subordinate Judge's Court and the valuation affects the forum of the appeal. In this case, if the appellant had valued his relief in the plaint at Rs. 1,000, the figure at which he values it in the memorandum of appeal, the suit would have been filed in the District Munsif's Court, and the appeal would be to the District Court. As the result of valuing his relief in the plaint at Rs. 16,500, he has had the advantage of an appeal direct to this Court.

In *In re Dhanukodi*(1) the Court held that where a defendant appeals from a preliminary decree for accounts, he must value his relief according to the value stated in the plaint. If the appellant's contention here is correct, it would mean that he could value his memorandum at what he likes, but the defendants could not. It certainly could not have been the intention of the Legislature to make any distinction between the plaintiff and the defendant in this respect.

The doctrine that a party cannot approbate and reprobate has been applied to an application for leave to appeal to the Privy Council. In *Mahendranarayan Ray Chaudhuri* v. *Janakinath Ray*(2) RANKIN C.J. and GHOSE J. held that this doctrine applied to a case where a party appealed to the lower Court upon a valuation inconsistent with the valuation upon which he sought a certificate to enable him to appeal to His Majesty in

(1) I.L.R. [1938] Mad. 598 (F.B.). (2) (1930) I.L.R. 58 Cal. 66.

Council and that a party who sued or appealed in a Court which would have no jurisdiction if the value exceeded Rs. 10,000 would debar himself from claiming at a later stage to have the subject-matter of the suit in the Court of first instance treated for the purpose of an appeal to the Privy Council as exceeding Rs. 10,000. The principle governing this decision was stated by their Lordships of the Privy Council in *Mutusawmy Jagavera Yettapa Naiker* v. *Vencataswara Yettia*(1) and has been applied by this Court in *Alagappa Chetty* v. *Nachiappan*(2) and by the Bombay High Court in *Lallubhai Pragji* v. *Bhimbhai Dajibhai*(3). We see no reason why the doctrine referred to should not apply to a case like the present one.

In *Arogya Udayan* v. *Appachi Rowthan*(4) BENSON and BHASHYAM AYYANGAR JJ. held that a plaintiff could not change his valuation in the trial Court although he applied for leave to do so. This was a case in which the plaintiff had sued for an account. He obtained a preliminary decree and the account was taken, the result being that he was entitled to a larger sum than that claimed in his plaint and in respect of which he had paid court-fee. When the report of the commissioner who had taken the account was made, the plaintiff applied for leave to amend his plaint and leave was granted. The District Munsif then ordered that the plaint should be returned to the plaintiff for presentation in the proper Court. The Division Bench which heard the appeal held that this was wrong and that the suit had to remain in the

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(3) (1929) I.L.R. 53 Bom. 552. (4) (1901) I.L.R. 25 Mad. 543.

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District Munsif's Court for the purpose of the passing of the final decree.

Although there are all these indications that it was not the intention to allow a plaintiff to change his valuation on appeal, the learned Advocate for the appellant has argued, as I have already indicated, that the Judicial Committee has decided that he can. In *Faizullah Khan* v. *Mauladad Khan*(1) the plaintiff-appellants stamped their memorandum of appeal at a higher sum than that at which they stamped their plaint. They sued for an account valued at Rs. 3,000. Their claim was dismissed by the trial Court and a decree was passed against them for Rs. 19,991. On appeal they asked that the decree against them should be set aside and they valued their relief at Rs. 19,991, but they did not pay court-fee on their own claim for Rs. 3,000. The appellate Court allowed the appeal and remanded the case for re-trial, but, inasmuch as the appellants had not stamped their memorandum of appeal sufficiently to cover their own claim, ordered that they should not have a decree for any sum which might be found due to them and to that extent held that the appeal was barred by limitation. The Privy Council held that the memorandum of appeal had been sufficiently stamped. This was a case in which the appeal was from the final decree, and, therefore, their Lordships were not considering the question of an appeal from a preliminary decree. The question now before us was never under discussion. For these reasons, we are unable to agree that *Faizullah Khan* v. *Mauladad Khan*(1) declares that the practice of the High

(1) (1929) I.L.R. 10 Lah. 737 (P.C.).

Courts in India with regard to the stamping of appeals like the present appeal is contrary to law.

In our opinion the scheme of the Act in this respect is to allow a plaintiff to value his relief at the figure he chooses, but it does not allow him to change that valuation. He is allowed to value for the purpose of the litigation and when he has done so his valuation governs the forum of trial and of appeal. There is no objection to an appellant abandoning on appeal a portion of the relief claimed in the lower Court or saying that he does not claim relief beyond the figure corresponding to the value of the stamp, but unless he does this we are of opinion that he is bound by the valuation fixed by himself at the commencement of the litigation.

Accordingly we hold that the memorandum of appeal in this case has been insufficiently stamped and, if the appellant wishes to continue the appeal, he must value his relief here in accordance with his valuation in the Court below and pay the corresponding stamp fee. We will allow him time until 5th January 1938 in which to pay the additional court-fee. If the additional fee is paid by that date, the appeal will be placed in the ordinary list for hearing. If it is not paid by that date, the appeal will be rejected. It follows, of course, that if the appellant wishes to limit his relief on appeal to any figure less than Rs. 16,500, he can do so provided the memorandum of appeal is stamped sufficiently.

V.V.C.