

1893
 JAGAN NATH
 PRASAD
 v.
 BELKA RAM.

applies not only where there is rent in arrear due from the cultivator to his landlord, but also where rent is accruing due in respect of the period during which the produce was being grown. We dismiss the appeal with costs.

Appeal dismissed.

1893
 May 19.

Before Mr. Justice Knox and Mr. Justice Burditt.

SHEO DENI RAM AND ANOTHER (DEFENDANTS) v. TULSHI RAM AND OTHERS
 (PLAINTIFFS).*

Act VII of 1870 (Court fees' Act) s. 7—Act VII of 1887 (Suits Valuation Act) ss. 4, 10—Adoption—Suit to set aside an adoption—Valuation of suit.

The value for the purposes of jurisdiction of a suit to set aside an adoption is not the value of the property which may possibly change hands if the adoption be set aside, but the value put upon his plaint by the plaintiff. *Keshava Sanabhaga v. Lakshmi Narayana*, (1) dissented from.

The plaintiffs in the suit out of which this appeal arose, being respectively the father, the two minor brothers, and the paternal uncle of the principal defendant, sued one Sheo Deni Ram and his adoptive mother, the widow of one Kali Charan, a paternal uncle of Sheo Deni Ram, to set aside a deed, which purported to effect the adoption of Sheo Deni Ram by Kali Charan. In the plaint the relief for the purposes of jurisdiction was valued at Rs. 600. The defendants *inter alia* pleaded that, inasmuch as the property to which, if the adoption was held to be valid, Sheo Deni Ram would be entitled to succeed upon the death of Kali Charan, was of considerably greater value than Rs 1,000, the Court, that of a Munsif, had no jurisdiction to try the suit. The Court, however, overruled this objection and gave the plaintiffs a decree on the merits. The plaintiffs appealed to the Subordinate Judge, taking in that Court the same objection as to jurisdiction which they had raised in the Court of first instance, but the Subordinate Judge, agreeing with the findings of the Munsif, dismissed the appeal. The plaintiffs then appealed to the High Court.

* Second appeal No. 207 of 1891, from a decree of Pandit B. insidhar, Subordinate Judge of Ghazipur, dated the 13th December 1890, confirming a decree of Bahu Girdhari Lal, Munsif of Ballia, dated the 6th September 1890.

(1) L. L. B., 6 Mad., 192.

The facts of this case sufficiently appear from the judgment of the Court.

Munshi *Govind Prasad* and Munshi *Jwala Prasad*, for the appellants.

Mr. *Abdul Majid* and Pandit *Sundar Lal*, for the respondents.

KNOX and BURKITT, J J.—The main question for decision in this second appeal is whether the Court of first instance had or had not jurisdiction to try the suit out of which this appeal arose. The suit was one in which the respondents, who were plaintiffs, prayed that a certain deed of adoption might be invalidated, and in their plaint they expressly stated that the value of the relief for the purpose of jurisdiction was Rs. 600. It is contended by the appellants that the property at stake, if this deed of adoption be declared invalid, amounts in value to more than Rs. 5,000, and, relying upon the precedent in *Keshava Sanabhaga v. Lakshmi Narayana* (1), they urge that the Court of first instance had no jurisdiction to entertain this suit. Up to the present time no rules have in these Provinces been framed for the determination of the value of land or interest in land, suits relating to which would fall under the Court Fees' Acts, 1870, s. 7., paragraphs 5 and 6 and paragraph 10, clause (d).

This being the case, according to s. 4 of Act No. VII of 1887, the only restriction placed upon valuation by that Act is not in force and does not apply, and we are left without any guide. We are not prepared to follow the precedent just quoted in suits of this kind. We are disposed to hold that it is for a plaintiff to put his own valuation on the relief which he claims. We do not see why we should import into a suit, which only asks for a declaration, that a certain deed is invalid, the consideration that, at some future time, the plaintiff or the defendant may or may not enter into or be entitled to claim some property by virtue of the decree which may be passed in that suit. Independently of this view, we are of opinion that this is a case, which is fully covered by the provisions contained in s. 11 of the Suits Valuation Act of 1887,

(1) I. L. R., 6 Mad. 192.

1898

SHEO DENI
RAM
v.
TULSHI RAM.

and if there has been an undervaluation, which we think there has not been, that undervaluation has not prejudicially affected the disposal of the suit or appeal on its merits. The first plea taken in appeal fails. The findings of fact by the lower appellate Court are fatal to the fourth plea, and these were the only two pleas argued before us. The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

Before Sir John Pidge, Kt., Chief Justice, and Mr. Justice Aikman.

1893
May 23.

BEHARI LAL AND ANOTHER (PLAINTIFFS) v. KODU RAM (DEFENDANT)*

Execution of decree—Attachment as joint family property of property in fact partitioned—Joint suit by holders of two shares to have their shares declared not liable to attachment—Misjoinder of causes of action—Civil Procedure Code, ss. 26, 31, 45, 53, 578.

A decree-holder in execution of a decree against one G. L. attached a house as belonging to G. L. and his two sons forming a joint Hindu family. The sons objected that the house had previously been partitioned and was held by them and their father in separate shares, but their objection was disallowed. They then brought a joint suit for a declaration that their respective portions of the house were not liable to attachment in execution of a decree against their father. No objection was taken to the frame of that suit, and the Court of first instance gave the plaintiffs a decree on the finding that partition had in fact taken place prior to the suit in which the defendant, judgment-creditor, had obtained his decree. On appeal by the judgment-creditor, the lower appellate Court dismissed the suit entirely, on the ground of misjoinder of causes of action. The plaintiffs appealed to the High Court.

Held on these facts that the plaintiffs should have been allowed to amend their plaint by striking out the name of one of them, and that under the circumstances s. 578 of the Code of Civil Procedure would apply.

The facts of this case are sufficiently stated in the judgment of the Court.

Munshi *Jwala Prasad*, for the appellants.

Kunwar *Parmanand*, for the respondent.

*First appeal No. 193 of 1891 from a decree of R. Scott, Esquire, District Judge of Banda, dated the 21st January 1891, reversing a decree of Munshi Mañho Lal, Subordinate Judge of Banda, dated the 19th November 1890.