

Before Mr. Justice Banerji and Mr. Justice Aikman.

WAJIH-UD-DIN (DEFENDANT) v. WALIULLAH (PLAINTIFF) AND  
KUDRAT-UL-LAH AND OTHERS (DEFENDANTS).\*

1902  
April 8.

Act No. XII of 1887 (*Bengal Civil Courts Act*), section 24—Act No. I of 1887 (*General Clauses Act*), section 3, clause (13)—*Valuation of suit*—*Appeal*—*Suit for partition*.

In a suit for partition of the share of one only out of several co-sharers in immovable property, the proper valuation of the suit for purposes of jurisdiction is the value of the share sought to be separated from rest of the property, and not the value of the entire property out of which the share is to be taken.

In the suit out of which this appeal arose, the plaintiff as a member of a Muhammadan family claimed partition of his share of certain property which he alleged to be the joint property of the family. The relief asked for by the plaintiff in his plaint, was thus stated:—"That according to the *sihams* mentioned in paragraph 6 of the plaint the under-mentioned property may be caused to be partitioned by preparation of lots, and the *sihams* of each party being separated, the plaintiff may be put in separate possession of his lot." In the plaint, the entire property was valued at Rs. 7,082, and the share of the plaintiff at Rs. 2,178. The Court of first instance (Subordinate Judge of Agra) passed a decree directing partition of the plaintiff's share in the family property and declaring the shares to which the other members of the family were entitled. Against this decree one of the defendants, Wajih-ud-din, appealed to the High Court.

Babu *Jogindro Nath Chaudhri* and Pandit *Sundar Lal*, for the appellant.

Mr. *D. N. Banerji* and Maulvi *Ghulam Mujtaba*, for the respondent.

BANERJI and AIKMAN, JJ.—A preliminary objection has been taken to the hearing of this appeal on behalf of the respondent to the effect that an appeal from the decree of the Court below lay, not to this Court, but to the Court of the District Judge. In our opinion this objection must prevail. Under section 21 of Act No. XII of 1887 an appeal from the decree of a Subordinate Judge lies to the High Court, where the value of

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\* First Appeal No. 129 of 1899 from a decree of Munshi Rajnath Prasad, Subordinate Judge of Agra, dated the 25th of April, 1899.

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the suit exceeds Rs. 5,000. Where it does not exceed that amount the appeal lies to the District Judge. Under the General Clauses Act No. I of 1887, section 3, clause (13), value with reference to a suit means the amount or value of the subject-matter of the suit. Now the question is, what was the value of the subject-matter of the present suit? The suit was one for partition of what the plaintiff claimed to be his share in the property of a deceased Muhammadan. He valued his share at Rs. 2,178. The value of the whole property exceeded Rs. 5,000. It is contended on behalf of the appellant that the value of the whole property must be deemed to be the value of the subject-matter of the suit. We do not think so. What the plaintiff claimed was that his own share should be partitioned, and that he should be put into separate possession of it. No doubt he stated in the plaint that the partition should be made by the preparation of lots and separation of the shares of each party. The separation of the shares of parties other than the plaintiff himself was only ancillary to the partition of the plaintiff's share. The claim as framed does not necessarily mean partition *inter se* among the defendants. That was a matter with which the plaintiff had no concern. This suit cannot, therefore, be regarded as a suit in which the plaintiff asked the Court to make a partition, not only of the share of the plaintiff himself, but of the shares of the defendants *inter se*. In that view it is not necessary for us to decide whether, if the suit had been of the description last mentioned, the value of the whole property would be the value of the subject-matter of the suit. In the present instance we hold that the subject-matter of the suit is the plaintiff's share, and that alone. The value of that share being below Rs. 5,000 no appeal lay to this Court. We allow the preliminary objection, and direct that the memorandum of appeal be returned for presentation to the proper Court. The respondents will get their costs incurred in this Court.

*Appeal dismissed.*