

APPELLATE CIVIL.

1914

May, 26.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

JAGESHRA (PLAINTIFF) v DURGA PRASAD SINGH AND OTHERS
(DEFENDANTS).*

Act No. VII of 1870 (Court Fees Act), section 7, clause iv—Court fee—Suit for declaration and consequential relief—Valuation for purposes of court fee.

A prior mortgagee brought a suit upon his mortgage and obtained a final decree for sale to realize Rs. 6,818-12-5. A puisne mortgagee of part of the property covered by this decree, who had not been made a party to the prior mortgagee's suit, subsequently brought a suit against the prior mortgagee asking, first, for a declaration that the defendant was not entitled to bring to sale in execution of his decree the property comprised in the plaintiff's mortgage, and, secondly, for an injunction restraining the defendant from bringing the said property to sale. The first relief was valued at the amount of the defendant's decree, namely, Rs. 6,818-12-5, and a court fee of Rs. 10 was paid in respect of it. The second relief was valued at Rs. 100 only and a court fee of Rs. 7-8-0 was paid.

Held that the plaintiff was bound to pay an *ad valorem* fee on the amount at which the suit was valued, namely, on Rs. 6,818-12-5.

THIS was a reference made by the taxing officer of the Court in respect of the court fee payable by the plaintiff appellant in a pending first appeal in respect of both the plaint and the memorandum of appeal. The facts which gave rise to the reference are thus stated in the taxing officer's order :—

"The plaintiff is the subsequent mortgagee of certain property under a mortgage deed, dated the 22nd of January, 1900, executed by defendant No. 3, who had previously mortgaged the same property along with other property to defendant No. 2 under three mortgage deeds, dated the 10th of June, 1895, the 3rd of October, 1895, and the 21st of December, 1896. Defendant No. 1, alleging himself to be the owner of the amount due on those mortgage deeds obtained on the 15th of July, 1910, a decree under order XXXIV, rule 4, of the Code of Civil Procedure in the court of the Subordinate Judge of Benares. Subsequently, on the 3rd of August, 1912, he obtained in the same court a final decree under order XXXIV, rule 5, of the Code of Civil Procedure.

"The plaintiff alleged that she was not made a party to the suit brought by defendant No. 1 and prayed for the following two reliefs :—(1) It may be declared by the court that defendant No. 1 has no right to bring to sale the property mortgaged to the plaintiff detailed in the plaint in execution of the final decree obtained by defendant No. 1 on the 3rd of August, 1912, and that the said decree is not binding upon the plaintiff. (2) An injunction may be issued to defendant No. 1 prohibiting him from taking out execution of the final decree against the property mentioned in the plaint. Relief (1) was valued at

* Stamp reference in F. A. No. 204 of 1913.

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Rs. 6,818-12-5, the amount of the decree sought to be set aside, and a fixed fee of Rs. 10 was paid thereon under article 17, clause iii, schedule II, of the Court Fees Act. The second relief was valued at Rs. 100, and an *ad valorem* court fee of Rs. 7-8 was paid thereon. In the defence set up by defendant No. 1 it was contended that the court fee on the relief No. 2 was insufficient, and that the value of that relief should be fixed at an amount equal to the amount of the final decree passed on the 3rd of August, 1912. The court below framed an issue as follows :—'Is the suit for an injunction properly valued; if not, what amount is payable as additional court fee?' The court below, following a full Bench ruling of this Court *Jogal Kishor v. Tale Singh* (1), held that the court must accept the valuation put by the plaintiff upon such relief under section 7, article iv, clause (d) of the Court Fees Act. The court, therefore, held that the plaint was sufficiently stamped. Against that decree, the plaintiff's suit having been dismissed on other grounds, the plaintiff has preferred this appeal paying a court fee of Rs. 17-8, on the plaint. The stamp reporter contends in a full report that an *ad valorem* court fee of Rs. 355 is payable both in the lower court and in this Court, and that there is, therefore, a deficiency of Rs. 675 which must be made good by the plaintiff appellant, Rs. 337-8 in this Court, and Rs. 337-8 for the lower court. The learned counsel for the plaintiff appellant does not admit the correctness of the report, and states that the lower court's decision as regards the valuation of the plaint was correct. He also contends that if any further action has to be taken under section 12 of the Court Fees Act, it must be taken by the Bench hearing the appeal. As in this case there is a deficiency for the lower court this course will be taken in accordance with the provisions of the Court Fees Act. As regards the point at issue, the whole question was dealt with by me in my report, dated the 14th of May, 1913, in F. A. No. 187 of 1912, *The Secretary of State for India in Council v. Kanhi Lal*. As, however, in that appeal the objection raised to the office report was subsequently withdrawn, the question was not decided. In *Musammal Bibi Umatal Batul v. Musammal Nanji Koer* (2) it was held that the proper valuation of such relief by way of injunction was not necessarily the amount at which the plaintiff valued the relief, but that, if it is established that the valuation is improper, it is open to the court to determine such question and to take action under order VII, rule 11, of the Code of Civil Procedure. This ruling is, however, at variance with the Full Bench ruling of this Court referred to above, but, as mentioned by me in my report of the 4th of May, 1913, in F. A. No. 187 of 1912, I based my reason for believing that there is a deficiency of court fee in this case both in this Court and the lower court on another ground. The rulings on which I rely are :—*Harji Sanker Dutt v. Kali Kumar Patra* (3) and *Raj Krishna Dey v. Bipin Behari Dey* (4). In the appeal before this Court the valuation of the suit for purposes of jurisdiction is Rs. 6,916-12, and it appears to me that under section 8 of the Suits Valuation Act, No. VII of 1887, where it is laid down that in a suit under section 7, clause iv, of the Court Fees Act the value as determinable for the computation of court fees and the value for purposes of jurisdiction shall be the same and court fee must be paid

(1) (1882) I. L. R., 4 All. 320.

(3) 1905 I. L. R., 32 Cal., 794.

(2) (1907) 11 C. W. N., 705.

(4) (1912) I. L. R., 40 Cal., 245.

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on Rs. 6,918-12 both in the lower court and in this Court, being the valuation put by the plaintiff for purposes of jurisdiction. I may add that the Suits Valuation Act came into operation five years after the full Bench ruling of this Court mentioned above was passed. Lay before the Bench hearing the appeal for orders."

Babu *Picari Lal Banerji*, for the appellant.

The question that arises in this case is whether the plaintiff was or was not entitled to value for the purposes of court fees his relief at Rs. 100 as he did. Under the provisions of the Court Fees Act in a suit for an injunction where consequential relief is asked for the valuation for the purpose of court fees will be the valuation which the plaintiff put upon the relief in the plaint, and it was settled law in this Court that it was open to the plaintiff to put any valuation he liked on the relief. The Full Bench case *Jogal Kishor v. Tale Singh* (1) is decisive on the point. The provisions of the Suits Valuation Act relied upon by the taxing officer do not in any way nullify the effect of the full Bench ruling. All that that section provides is that the valuation for the purpose of jurisdiction in certain class of cases shall be the same as valuation for the purpose of court fees, which latter is to be determined according to the provisions of the Court Fees Act. In other words, the valuation for the purpose of court fees is to be determined first according to the rules provided for in the Court Fees Act, and when such valuation is so determined the same figure is to be put down as the valuation for jurisdictional purposes. What has to be determined first is the valuation for the purpose of court fees. As to that the plaintiff is the sole judge, and when once the plaintiff has determined that, the valuation for jurisdictional purposes follows as a matter of course. This section of the Suits Valuation Act does not provide that the valuation for jurisdictional purpose is to be determined first and that for the court fees after, but provides just the reverse.

Mr. *A. E. Ryves*, for the Board of Revenue, was not called upon to reply.

TUDBALL, J.—This is a question as to the amount of court fee which the plaintiff appellant is bound to pay both upon the memorandum of appeal in this Court and on her plaint in the court

below. The plaintiff is the subsequent mortgagee of certain property. A final decree for sale was obtained by a prior mortgagee of certain property including that which had been mortgaged to the plaintiff. To that suit the plaintiff was not a party. She has now brought a suit against the prior mortgagee and has asked for the following two reliefs; first, that it may be declared by the court that the defendant No. 1 has no right to bring to sale the property mortgaged to the plaintiff, detailed in the plaint, in execution of a final decree obtained on the 3rd of August, 1912, and that the said decree is not binding upon the plaintiff; secondly, that an injunction may be issued to the defendant No. 1 prohibiting him from taking out execution of the final decree against the property mentioned in the plaint. The first relief was valued by the plaintiff in her plaint at Rs. 6,818-12, the amount of the decree sought to be set aside. The second relief was valued at Rs. 100. On the first relief the plaintiff paid a court fee of only Rs. 10, which is the court fee payable on a relief asking for a simple declaration. On the second relief she paid a court fee of Rs. 7-8. According to the report of the stamp officer an *ad valorem* court fee was payable by the plaintiff both in the court below and in this Court on the total sum of Rs. 6,918-12, the value placed upon the reliefs by the plaintiff herself. It seems to me that there is no doubt whatsoever in this matter in view of the clear language of section 7, clause iv, of the Court Fees Act. The plaintiff's suit is really one to obtain a declaratory decree, where consequential relief is prayed. According to the terms of the section she must pay an *ad valorem* court fee according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. The section says:—"In all such suits the plaintiff shall state the amount at which he values the relief sought." In the present case the plaintiff has clearly valued the two reliefs at Rs. 6,918-12, and an *ad valorem* court fee is payable on that amount both for the court below and in this Court.

The question as to whether or not the plaintiff can put an arbitrary and fictitious valuation on the relief which he seeks, does not in my opinion arise in the present case at all, and it is really unnecessary to express an opinion on it. All I can say is that I have considerable doubt as to whether he is entitled to put

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on it a fictitious value and not the correct and proper value which is known to him.

The plaintiff will have to pay court fees for the court below and for this Court in accordance with the calculation in the stamp officer's report.

RICHARDS, C. J.—I concur. It is quite clear that under the provisions of section 7, clause iv, the plaintiff has to pay an *ad valorem* court fee according to the amount at which the relief sought is valued. In the present case the relief sought is valued at Rs. 6,918-12. Mr. *Piari Lal Banerji* in the course of his argument seemed to suggest that it was an oversight on the part of the plaintiff in valuing the relief at the amounts she did, and that it would have been quite open to her to have valued it at a much smaller sum. He seemed to me almost to suggest that we might treat the plaint as if a nominal valuation had been the value stated instead of Rs. 6,000 odd. I cannot at all agree to any such contention. Section 7 says that the *ad valorem* court fee shall be paid "according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. In all such suits the plaintiff shall state the amount at which he values the relief sought." It seems to me that the proper meaning to be attached to the latter words is that the plaintiff shall truly state the amount at which he values the relief sought, and that it cannot mean that a plaintiff is entitled to put in a fictitious value when the relief is capable of valuation. That this is not a mere matter of form becomes apparent when one considers that the valuation affects the jurisdiction and decides the court by which the case is to be tried. Obviously a defendant has a right that a case of great importance in which a large amount is involved should go before the tribunal in the first instance to which such cases ought ordinarily to go and not to any inferior court. I agree in the order proposed by my learned colleague.

By THE COURT.—We allow the plaintiff appellant two months to make good the deficiency for the court below and for this Court, namely, Rs. 675.