

MISCELLANEOUS CIVIL.

Before Mr. Justice Ashworth.

1926
December, 17.

BHAGWAN PURI AND OTHERS (DEFENDANTS) v. SECRETARY OF STATE FOR INDIA IN COUNCIL (PLAINTIFF).*

Act No. VII of 1870 (*Court Fees Act*), section 7, clause (v) (c)
—*Court fee—Suit for possession of land not paying revenue—Suit overvalued by plaintiff—Defendant not debarred from filing an appeal on a correct valuation.*

Where a plaintiff in a suit for possession overvalues the property claimed and the suit is decided by a higher forum than that by which it would otherwise have been tried, and is decreed, the defendant appellant can, nevertheless, confine the court fee on his appeal to the amount required by the valuation of the subject-matter according to law. He is not estopped by having had the advantage of the original suit being tried by a higher forum. An appellant, if he has paid a sufficient court fee, is not bound by his incorrect statement of value. He may be allowed to correct it.

THIS was a reference under section 5 of the Court Fees Act, 1870. The Taxing Officer's report was as follows:—

This appeal arises out of a suit by the plaintiff for recovery of some plots of land, which he has valued at Rs. 3,60,000.

The suit was decreed by the lower court and the defendants have preferred this appeal at the same valuation. The court fee paid by the plaintiff was *ad valorem* and amounted to Rs. 2,425. This, it is held by the Stamp Reporter, is the correct fee, while that paid by the appellants in this Court, Rs. 1,425, is deficient by Rs. 1,000.

Counsel for the appellants has objected to the office report and claims that the land in suit falls

* Stamp Reference in First Appeal No. 139 of 1923.

under the classification of section 7, clause (v) (c) of the Court Fees Act.

The land in suit consists of plots within the municipal limits of the Hardwar Union. According to paragraph 2 of the plaint the said Board, without the authority of Government, had been accepting rent at Rs 40 per mensem for about twelve years previous to the institution of the suit from the Juna Akhara, who had used the land for an enclosure for the huts of mahants and pilgrims. The land pays no revenue and the plaintiff (the Secretary of State) disregarding the rent taken for its use, valued it for purposes of jurisdiction and court fee, presumably at its market value, Rs. 3,00,000, as if it fell within the classification of section 7, clause (v) (e).

On behalf of the appellants it is contended that this valuation was wrong and should have been based on the "nett profits" that had arisen from the land, i.e., Rs. 40 per mensem, amounting to Rs. 7,200 (fifteen times those profits) and that the court fee should have been Rs. 365.

Of the right of the plaintiff to put his own valuation on the suit and to pay the necessary court fee to entitle him to bring that suit before the highest forum available there can be little doubt. It is to be decided whether the defendants appellants, who availed themselves of that forum without making any objection to the valuation, can in appeal object that the valuation was too high and demand to pay a lower fee. It is to be noted that, until objection was raised in this office, the original valuation of Rs. 3,00,000 was accepted, though a deficient court fee was paid.

I consider that the case should be laid before the Hon'ble Taxing Judge for decision of the issue raised

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above and also for decision whether, if the lower valuation is accepted for the appeal in this Court, the defendants appellants may be permitted at this stage to correct their valuation in the memorandum of appeal.

Dr. *Surendra Nath Sen* and Pandit *Narmadeshwar Prasad Upadhyaya*, for the appellants.

Mr. *G. W. Dillon*, for the respondent.

ASHWORTH, J. :—The question referred to me by the Taxing Officer under section 5 of the Court Fees Act, 1870, is as follows. The Secretary of State brought a suit for possession of certain land against the defendants appellants. The plaint was valued for court fee according to the estimated market value of land, i.e., Rs. 3,00,000. The suit was decreed. The defendants in their appeal stated the value of the land to be Rs. 3,00,000 but paid a court fee of Rs. 1,425, instead of Rs. 2,425, which was the proper court fee on the said valuation. Before the Taxing Officer the appellants' contention was that the land not being subject to revenue should have been valued under section 7 (v) at fifteen times the net profit arising from the land during the year next before the date of presenting the plaint and not according to the market value, and that the plaintiff had paid an excessive court fee. The Taxing Officer, while apparently admitting that the appellant is correct as to the valuation required by law, has stated that the plaintiff could put his own valuation on the suit and so pay the necessary court fee to entitle him to bring that suit before the highest forum available. It seems to me, however, that the plaintiff's estimate of the value of the land, if contrary to the market value according to rule, cannot be allowed to operate to the prejudice of the defendant at any stage of the suit.

It appears plain, therefore, to me that the defendant can object to the valuation since it is now in his interest to do so.

2. It is, however, suggested by the Taxing Officer that the defendants appellants are estopped from objecting to that valuation because they availed themselves of the highest forum when the original suit was tried. I know of no rule of law that would create such an estoppel, and it is difficult to hold that the decision of the suit *against* them by a higher forum was any advantage to them. I hold that the defendants appellants were entitled to stamp their appeal with a stamp based on the valuation of the land arrived at by correct application of the rule.

3. Another question, however, arises. The defendants appellants in their petition of appeal stated that the value of the appeal was Rs. 3,00,000. Can they now be permitted to say that the value is less? I consider that they can, and for the following reasons. The stated value of the appeal would not prevent their being called upon to pay a court fee on a higher valuation if that valuation were wrong. In the same way I do not see why they should not be allowed to correct their valuation when they are asked to pay a higher court fee than is due on the value correctly assessed according to law.

4. Apparently the appellants need only have paid the court fee of Rs. 365 according to the proper valuation of the land. They have, in fact, paid Rs. 1,425. They have not asked for any refund, and in my opinion the court fee should be accepted as sufficient.

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