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declared that Ram Phal was a tout although they also indicated that their conclusion was based on the strength of general repute. We think that the words "on the strength of general repute" merely indicate the basis of the resolution declaring him to be a tout and do not destroy its effectiveness.

If a resolution is based on general repute the court may attach less weight to it, but it cannot be said that such a resolution is legally inadmissible in evidence and cannot be taken into consideration by the court.

We are accordingly unable to interfere with the order passed in the case. The application is dismissed with costs.

MISCELLANEOUS CIVIL.

Before Mr. Justice King.

1931 *July,* 17.

CHHATARPALI AND OTHERS (PLAINTIFFS) *v.* KALAP DEI AND OTHERS (DEFENDANTS).*

Court Fees Act (VII of 1870), section 7(iv) (c)—Suit for declaration of title and appointment of receiver—Consequential relief—Omission to value consequential relief—Valuation for jurisdiction—In appeal plaintiff cannot put lower valuation—Suits Valuation Act (VII of 1887), section 8—Valuation for court fee and valuation for jurisdiction.

Suit by next reversioners for a declaration of their title as such, for a declaration that certain alienations and other transactions by the widow in possession were not binding on them, and for the appointment of a receiver in respect of a specified portion of the property. The value of this portion was Rs. 3,280. It was alleged that the widow was committing waste, but no declaration to that effect was sought. The plaintiffs valued the suit at Rs. 12,000 for the purposes of jurisdiction, but a fixed court fee of Rs. 10 was paid on each of the aforesaid reliefs. No objection was taken to the sufficiency of court fees in the trial court. The plaintiffs, having lost their suit, appealed to the High Court and there an objection was raised that the court fee was insufficient. *Held* that—

*Stamp Reference in First Appeal No. 431 of 1928.

The relief with respect to the appointment of a receiver was a relief consequential upon the granting of the first relief asked for, namely the declaration of the plaintiffs' title as next reversioners, and the case came under section 7(iv) (*c*) of the Court Fees Act.

The plaintiffs had omitted to value the consequential relief, and if the question were raised in the trial court the plaintiffs would be entitled to put their own valuation upon the relief sought, and such valuation would determine both the court fee and the jurisdiction. The language of section 8 of the Suits Valuation Act indicates that the value should first be determined for computation of the court fee in accordance with the Court Fees Act, and when such value has been determined it will govern the value for the purposes of jurisdiction also.

But as the plaintiffs had not put any valuation on the consequential relief and had put a high valuation on the suit for purposes of jurisdiction, and, no question having been raised, they obtained an adjudication from a court of superior grade, they could not be permitted at that stage to put a low or nominal valuation on the consequential relief, and should pay court fee *ad valorem* on the valuation of the suit for purposes of jurisdiction. In the present case, however, the appointment of a receiver was prayed for in respect of a portion only of the estate which formed the subject matter of the suit, and therefore the plaintiffs should pay *ad valorem* court fee on the value of that portion of the property.

Dr. *M. Wali-ullah*, for the appellants.

KING, J. :—This is a reference under section 5 of the Court Fees Act of 1870. The plaintiffs alleged that they were the next reversioners of Moti Rawat deceased and that his widow was transferring the property without legal necessity and was committing acts of waste. They claimed the following reliefs : (*a*) A declaration that the plaintiffs are next reversioners; (*b*) a declaration that after the widow's death a certain deed of partition will not be binding upon the reversioners and that they will be owners of a certain grove; (*c*) a declaration that two alienations by the widow will not be binding upon the reversioners

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after the widow's death; and (*d*) that a receiver may be appointed for the management of certain property detailed in schedule A. They valued the suit at Rs. 12,000 for the purposes of jurisdiction, but paid a fixed court fee of Rs. 10 on each of the four reliefs, that is a total of Rs. 40. No objection was taken to the insufficiency of court fees in the trial court.

The plaintiffs being unsuccessful in the trial court have filed a First Appeal in this Court, and the Stamp Reporter has taken objection to the insufficiency of court fees both on the plaint and on the memorandum of appeal. It is contended by the Taxing Officer that relief (*d*), for the appointment of a receiver, is a *consequential relief* and the suit falls under section 7 (iv)(*c*) of the Court Fees Act for the purpose of court fee. It is further contended that as under section 8 of the Suits Valuation Act, 1887, the value for the purpose of jurisdiction and the value for the purpose of the court fee in a suit of this nature must be the same, therefore the plaintiffs appellants must pay an *ad valorem* court fee on the value stated in the plaint for the purpose of jurisdiction. It is, however, not suggested by the Taxing Officer that the *ad valorem* court fee should be reckoned on the value of the whole suit for purposes of jurisdiction, because the plaintiffs only ask that a receiver may be appointed in respect of a portion of the property, which is set forth in schedule A. This property has been valued at Rs. 3,280. It is suggested, therefore, that the *ad valorem* court fee should be paid on Rs. 3,280.

The appellants challenge the contentions of the Taxing Officer, and several points arise for determination.

The first question is whether relief (*d*) should be held to be a "consequential" relief within the meaning of section 7(iv) (*c*) of the Court Fees Act, or whether it should be held to be a separate and independent relief.

The appellants rely strongly upon the ruling of a single Judge of the Madras High Court in *Karuppana Tevar* v. *Angammal* (1). This ruling relates to a suit by a reversioner for a declaration that an alienation by a Hindu widow was not binding on him, and for the appointment of a receiver to manage the property during the widow's lifetime. In that case it was held that the claim for the appointment of a receiver could not be held to be a "consequential" relief as there was no connection between the two reliefs. It was pointed out that the court might refuse to grant the declaration, and nevertheless might appoint a receiver. Conversely the court might grant the declaration, and yet refuse to appoint a receiver. I think this ruling can be distinguished upon the facts. Reliefs (*b*) and (*c*) in the present suit are declarations that certain alienations made by the widow are not binding upon the reversioners. Relief (*d*), the appointment of a receiver, might be held to be quite separate and independent of those reliefs. Relief (*a*), however, is a declaration of the plaintiffs' title as next reversioners. I think we may take it as certain that, unless the plaintiffs are able to establish their title as next reversioners, the court will not grant the prayer for the appointment of a receiver. In that sense, therefore, the appointment of a receiver may be held to be a relief "consequential" upon the granting of the declaration of the plaintiffs' title.

In a number of cases the courts have held that in suits of this nature the appointment of a receiver was a consequential relief and section 7(iv) (*c*) was applicable. In *Lakhmi Das* v. *Daropti* (2) the suit was for a declaration that certain alienations made by a Hindu widow will not be binding upon the plaintiff as reversioner, and for the appointment of a receiver, and for the restoration of certain property. Here the appointment of a receiver was regarded as a consequential

(1) A.I.R.. 1926 Mad., 678. (2) (1913) 19 Indian Cases, 859.

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relief. In *Dodda Sannekappa* v. *Sakravva* (1) the suit was for a declaration that certain transactions by a Hindu widow are not binding upon the plaintiff, and for the appointment of a receiver to preserve the property from being wasted. Here it was also held that the relief by way of appointment of a receiver was a consequential relief.

In *Harbans Sahu* v. *Lalmoni Kuer* (2) the suit was by a reversioner for a declaration that the widow was wasting her husband's estate, and for the appointment of a receiver. Here the appointment of a receiver was held to be a consequential relief. But this ruling may be distinguished, because the plaintiffs expressly asked for a declaration that the widow was wasting the estate. No such relief is asked for in the present suit. In *Krishnarao* v. *Chandrabhagabai* (3) the appointment of a receiver was regarded as a consequential relief; but here, again, the case can be distinguished on the ground that the plaintiffs expressly asked for a declaration that the widow was committing acts of waste. In the present case I hold that the appointment of a receiver is a relief consequential upon the declaration of the plaintiffs' title, namely, the relief asked for in paragraph (*a*).

Assuming that the suit falls under section 7 (iv) (*c*), then the next question is whether the plaintiffs are entitled to put their own valuation upon the consequential relief, and whether such valuation determines both the court fee and the jurisdiction.

If the question is raised in the trial court, I think the answer is certainly in the affirmative In section 7 (iv), clauses (*a*) to (*f*), of the Court Fees Act it is laid down that in all such suits the plaintiff shall state the amount at which he values the relief sought, and the court fee is to be paid according to the amount at which the relief sought is valued in the plaint or memorandum

(1) (1916) 36 Indian Cases, 831. (2) (1921) 62 Indian Cases, 36.
(3) A. I. R., 1924 Nag., 316.

of appeal. The plaintiff, therefore, should have put a valuation upon the relief sought. In the present suit the plaintiffs did not put any separate value on each of the four reliefs, but merely fixed a lump sum of Rs. 12,000 as the valuation of the whole suit for the purposes of jurisdiction. I think there can be no doubt, however, but that in a suit of this nature the plaintiff is entitled to put his own valuation upon the relief sought, and such valuation determines both the court fee and the jurisdiction. It is argued that under section 8 of the Suits Valuation Act the value as determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same. Hence, as the plaintiffs have stated the value for purposes of jurisdiction, they should be liable to pay the court fee on the same amount. I do not think this would be correct if the question were raised in the trial court. It appears to me from the language of section 8 itself that the value should first be determined for the computation of the court fee in accordance with the Court Fees Act, and when such value has been determined, it will govern the value for the purposes of jurisdiction also. It is true that a contrary view has been taken in *Raj Krishna Dey* v. *Bipin Behari Dey* (1) where their Lordships state: "The suit as framed falls within section 7, clause (iv), sub-clause (*c*) of the Court Fees Act, 1870. Consequently, the value as determined for purposes of jurisdiction, namely, Rs. 11,005, must also determine the value for the purpose of payment of court fees." The contrary view, however, has been held in a number of cases, such as *Kanhaiya Ojha* v. *Jagrani Kunwar* (2), *Pannalal Lala* v. *Abdul Gani* (3), *Guruvajamma* v. *Venkatakrishnama Chetti* (4), *Balkrishna Narayan Samant* v. *Jankibai* (5) and *Govinda* v. *Hanmaya Lingaya* (6) and the matter may

(1) (1912) I.L.R., 40 Cal., 245 (249).
(2) (1924) I.L.R., 46 All., 419.
(3) (1930) 34 C.W.N., 321.
(4) (1900) I.L.R., 24 Mad., 34.
(5) (1919) I.L.R., 44 Bom., 381.
(6) (1920) I.L.R., 45 Bom., 567.

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be regarded as settled by the pronouncement of their Lordships of the Privy Council in *Sunderabai* v. *Collector of Belgaum* (1) where it was held that when a plaintiff sues for a declaratory decree and asks for consequential relief, the amount at which the plaint values the relief sought determines jurisdiction in the suit.

The next question is, if the plaintiff puts a high valuation on a suit under section 7 (iv) (*c*) for the purpose of jurisdiction, and a lower valuation or no valuation at all on the consequential relief, and thus obtains an adjudication from a court of superior grade, is he bound to pay the court fee on the valuation for the purpose of jurisdiction?

If the question had been raised in the trial court, I have already held that the plaintiff would be entitled to put his own valuation upon the consequential relief and then fix the valuation for the purpose of jurisdiction accordingly. But the matter is complicated when no question is raised in the trial court and the plaintiff has not put any valuation on his consequential relief. It is contended for the appellants that they may now be permitted to put their own valuation upon the consequential relief, and they suggest that it is open to them to value it at any sum up to Rs. 130. If they do so, the court fee of Rs. 10 would be sufficient. The question is whether they can be permitted to put a low valuation upon the relief claimed, at the present stage when they have already obtained an adjudication from a court of superior grade in consequence of their having put a high value upon the suit for the purpose of jurisdiction. The view which has been taken consistently by this Court is that at the present stage the plaintiff must pay his court fee *ad valorem* on the valuation of the suit for the purposes of jurisdiction.

(1) (1918) I.L.R., 43 Bom., 376.

I would refer to the case of *Kanhaiya Ojha* v. *Jagrani Kunwar* (1). Here it was held that in a suit for a declaration and an injunction to restrain a Hindu widow from wasting the reversion the plaintiffs were entitled to set the value on the relief claimed at whatever figure they chose, and the court fees must be calculated according to the amount at which the relief sought is thus valued. These provisions, however, must be read subject to section 8 of the Suits Valuation Act. What the plaintiffs in such a suit are not entitled to do is to put a high valuation on the plaint for the purposes of jurisdiction, and thus obtain an adjudication on the matter from a court of superior grade, while at the same time asking for a different and much lower valuation for the purpose of court fees. A similar view was taken in *Bachhan* v. *Municipal Board of Mirzapur* (2), and in *Manni Lal* v. *Radhe Gopalji* (3). Here, again, the learned Judge remarks that the plaintiff "cannot at one and the same time obtain the services of the highest possible tribunal for the determination of his claim and evade the payment of *ad valorem* court fees. If for purposes of jurisdiction he sets a high value on the relief by way of declaration and a merely nominal value on the relief by way of injunction, it is doing him no injustice to hold that the 'relief sought' on which the court fee must be levied is the sum total of the two reliefs." The ruling in *Balkrishna Narayan Samant* v. *Jankibai* (4) seems to me to support the same conclusion.

In the present suit it must be noted that the appointment of a receiver was only prayed for in respect of a portion of the estate, and not in respect of the whole of the property which formed the subject matter of the suit. I think it should be held that the plaintiffs must pay an *ad valorem* court fee on the value of the property in respect of which they pray for the appointment of a receiver. That property has been valued at Rs. 3,280.

(1) (1924) I.L.R., 46 All., 419. (2) (1926) I.L.R., 48 All., 412.
(3) (1925) I.L.R., 47 All., 501. (4) (1919) I.L.R., 44 Bom., 331.

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I hold, therefore, that the court fee upon the plaint should be Rs. 190 in respect of reliefs (*a*) and (*d*). Reliefs (*b*) and (*c*) are additional reliefs, and the fixed court fees of Rs. 10 on each have already been paid. The total court fee on the plaint, therefore, should be Rs. 210.

The court fee on the memorandum of appeal should be Rs. 210 plus Rs. 37-8-0 which is the *ad valorem* court fee payable on the valuation of the costs referred to in ground No. 10 of the memorandum of appeal.

APPELLATE CIVIL.

Before Mr. Justice Pullan and Mr. Justice Niamat-ullah: and On reference, before Mr. Justice Mukerji.

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May, 13.
July, 21.

KANHAIYA LAL AND ANOTHER (DEFENDANTS) *v.* R. H. SKINNER AND OTHERS (PLAINTIFFS) AND GOBIND SARUP (DEFENDANT).*

Agra Tenancy Act (Local Act II of 1901), *section* 165—*Suit for settlement of accounts and for profits against co-sharers—Some of the defendants were lambardars but were not sued as such—Liability of defendants only in respect of any excess collections made by them over and above their own shares.*

Held by a majority (MUKERJI and PULLAN, JJ.) :—

In a suit under section 165 of the Agra Tenancy Act, II of 1901, brought by certain co-sharers against the other co-sharers including the lambardar, who however was not sued as such, the plaintiffs are entitled to a proportionate share of the excess profits collected by the defendants over and above their own full shares.

If the suit is under section 165, no question of one of the defendants being a lambardar can arise. The plaintiffs claim not as against the lambardar as such, but as against all the co-sharers, as co-sharers. The lambardar in the array of the defendants in such a suit cannot be treated as a lambardar

*First Appeal No. 328 of 1927, from a decree of Hukam Singh, Assistant Collector, First Class of Meerut, dated the 24th of March, 1927.