of the Code of Criminal Procedure read with section 439 does not authorise the High Court, in revision, to award costs of the proceedings before it. Clause (*d*) of section 423 authorises the appellate court "to make any amendment or any consequential or incidental order that may be just or proper". The words under quotation mean that the appellate court may amend the order appealed from and may, further, pass such orders that follow from or are accessary to the order passed. They do not mean that the appellate court may pass any order as to costs of the appeal itself. We are of opinion that no costs can be awarded to the opposite party.

In the result the application fails and is hereby dismissed.

Before Sir Lal Gopal Mukerji, Acting Chief Justice, Mr. Justice King, and Mr. Justice Niamat-ullah

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MOOLCHAND MOTILAL (DEFENDANT) *v.* RAM KISHEN AND OTHERS (PLAINTIFFS)*

Valuation of suit—Suit under order XXI, rule 63—Suit for declaration of ownership of property and its non-liability to be sold in execution of a decree against another person—Valuation according to decretal amount sought to be realized, or the value of the property, whichever less—Suits Valuation Act (VII of 1887), section 11—Under-valuation—Suit decided by court of inferior jurisdiction—Whether disposal on the merits prejudicially affected thereby—Estoppel—Plaintiff urging in appellate court that suit being undervalued was tried by wrong court.

A suit for a declaration that the plaintiffs were the owners of certain immovable properties and that these properties were not liable to be attached and sold in execution of a decree obtained by defendant No. 1 against defendant No. 2 was valued at Rs.1,342 and was accordingly filed in the court of the Munsif. This amount was the balance remaining due on the decree in execution of which the properties had been attached. Nothing was mentioned about the

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*First Appeal No. 164 of 1931, from an order of Brij Behari Lal, Subordinate Judge of Etawah, dated the 11th of August, 1931.

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value of the properties, nor did the defendants raise any plea that the suit was undervalued and should have been filed in the court of the Subordinate Judge. The judgment-debtor, defendant No. 2, did not enter appearance. The suit was dismissed on the merits and the plaintiffs appealed, and in the appellate court they raised the plea that the property in question was worth Rs.20,000, the suit had been undervalued and the Munsif had no jurisdiction to try it. The appellate court found in favour of this plea and returned the plaint for presentation to the proper court. On appeal to the High Court—

Held, that in a suit like the present it is the amount of the decree sought to be realized that determines the value of the suit, where the property involved is of larger value than the amount due under the decree; but where the decretal amount is large and the market value of the property involved is smaller, it is the market value of the property that determines the value of the suit. The fact that the judgment-debtor is also impleaded in the suit, as in most cases he is impleaded *pro forma*, makes no difference in the rule. *Dwarka Das* v. *Kameshar Prasad*, I. L. R., 17 All., 69, not approved. In the present case the suit had been properly valued and filed in the proper court.

Held, also, that the mere fact that a court of inferior jurisdiction has taken cognizance of a suit on account of undervaluation is not, in itself, a ground for saying that the disposal of the suit on the merits has been prejudicially affected, within the meaning of section 11 of the Suits Valuation Act. Having regard to the object for which section 11 was enacted, the conclusion is clear that the mere fact that there has been an undervaluation, and therefore the case has been heard by a court which should not ordinarily have heard it, should not be allowed to affect the decree if there has been no prejudice in the proper trial of the case on the merits.

Held, also, that no question of estoppel against the plaintiffs arose in this case. The plaintiffs did not say in the plaint that the property involved was worth Rs.1,342. They valued their suit at that figure, which was the amount due on the decree. It was a pure question of law whether the valuation of the suit should be the market value of the property or the amount due on the decree, and there could be

no estoppel on a question of law. Accordingly, the plaintiffs were not estopped from pleading in the appellate court that the true valuation of the suit was the market value of the property.

This appeal was first heard by a Division Bench, which referred it to a Full Bench with the following referring order :—

MEARS, C. J., and KING, J. :—This appeal arises out of a suit brought for a declaration that the plaintiff is the owner of the property in suit and it is not liable to be attached and sold in execution of a decree in favour of the defendant No. 1 against the defendant No. 2. The plaintiff valued the claim for the purposes of jurisdiction at Rs.1,342, and paid Rs.10 as court fees for the declaratory relief. There was no suggestion in the plaint that the value of the property was more than the amount mentioned. It does, however, appear that the sum of Rs.1,342 represented the balance of the decretal amount which was still outstanding and which was sought to be realised in execution. In the written statement neither of the defendants raised the plea that the claim had been undervalued and was not triable by the Munsif in whose court it had been filed. There was no issue framed by the trial court as regards the valuation of the subject-matter of the claim. The learned Munsif went into the question on the merits and dismissed the suit. He, however, mentioned that the enclosure in dispute was a valuable building of Rs.20,000. This was apparently based on the statement made by some witness who was examined in the case.

The plaintiff appealed to the court of the District Judge, and himself raised the point that the trial court had no jurisdiction because the value of the property in suit exceeded its pecuniary jurisdiction. The appellate court went into this question and recorded a finding that the property was worth much more than Rs.2,000, and that therefore the Munsif should not have tried the suit. He accordingly allowed the appeal and ordered the plaint to be returned for presentation to the proper court. The defendant has accordingly come up in appeal to this Court and contends that the order of the appellate court is wrong.

Several important questions of law arise in this case. It is to be seen whether the plaintiff, who himself valued the claim at less than Rs.2,000 and chose the forum, can be

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allowed to complain that the suit has been prejudicially affected on its merits by trial in the Munsif's court. Another point for consideration is whether the plaintiff had correctly valued his claim at Rs.1,342, which was the outstanding amount of the decree. A subsidiary question may arise whether in claiming a declaration of title as against the defendant No. 2 also the plaintiff was bound to value his claim at the full market value of the property.

On the question whether the mere fact—that the suit has been tried by a Munsif, with the necessary result that the appeal has been entertained by the District Judge, whereas if it had been tried by the Subordinate Judge an appeal would have lain to the High Court—is in itself sufficient to bring the case within section 11 of the Suits Valuation Act, the Lahore High Court in *Cheloo* v. *Kali Das* (1) has gone to the extreme length of holding that whenever there is an undervaluation and a case is tried by a Munsif instead of a Subordinate Judge, there is a prejudice within the meaning of the section. On the other hand a Full Bench of the Madras High Court in *Kelu Achan* v. *Cheriya Parvathi Nethiar* (2) has held that the circumstance that the appeal has ultimately to be heard by a District Judge and not by a Bench of the High Court does not involve the prejudice contemplated by the section. This case has, however, been dissented from by the Patna High Court in *Mahanth Rukmin Das* v. *Deva Singh* (3), and by the Oudh Court in *Sheoraj Singh* v. *Phulbasa Kuer* (4). We may point out that the point directly arose before a single Judge of this Court in *Musa Imran* v. *Bhagwan Das* (5), and the learned Judge has expressed a definite opinion in favour of the appellant.

We think that this case raises questions of such importance that the conflict requires to be set at rest by a Full Bench. We accordingly direct that the case be laid before the Chief Justice for the constitution of a Full Bench.

The case was then heard by a Full Bench.

Messrs. *Shiva Prasad Sinha* and *Nanak Chand*, for the appellants.

Messrs. *N. P. Asthana* and *B. N. Sahai*, for the respondents.

(1) (1917) 44 Indian Cases, 816. (2) (1923) I.L.R., 46 Mad., 631.
(3) (1926) I.L.R., 5 Pat., 505. (4) A.I.R., 1925 Oudh, 561.
(5) (1927) 100 Indian Cases, 546.

MUKERJI, A. C. J., KING and NIAMAT-ULLA, JJ.:— This appeal has been referred to a Full Bench because it raises several difficult points of law.

The facts of the case briefly are these. The appellants before us obtained a simple money decree against one Lalman. In execution of the decree the appellants caused the attachment of certain immovable properties. The respondents Nos. 1 and 2 preferred an objection to the attachment on the ground that one half of one of the properties and a whole shop belonged to themselves and, not being the property of the judgment-debtor, had been improperly attached. Their objection failed in the execution department and thereupon they instituted the suit, out of which this appeal has arisen, to obtain a declaration that the property, the attachment of which had been objected to, was their own property and could not be attached and sold in execution of the decree obtained against Lalman. To this suit, not only were the decree-holders made parties but also Lalman was impleaded.

Lalman did not enter appearance. The decree-holders defended the suit. The suit was heard on the merits by the learned Munsif, it having been valued at Rs.1,342 which was the amount then due on the decree in execution against Lalman. The plaintiffs who lost their suit went to the court of the District Judge and there urged that the property involved in the suit was really worth Rs.20,000 and the Munsif had no jurisdiction to hear the suit. The learned Subordinate Judge who heard the appeal was of opinion that the fact that a suit of large valuation had been heard by a Munsif was in itself a ground for holding that the plaintiffs had been prejudiced by the trial. The learned Subordinate Judge accordingly reversed the decree of the first court and directed that the plaint be returned to the plaintiffs for presentation to the proper court. Against this order this first appeal from order has been filed.

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The questions that were raised during the hearing of the appeal before a Division Bench may be framed as follows: (1) What, in the circumstances of the case, would be the true valuation of the suit? (2) If the valuation be larger than the pecuniary jurisdiction of the Munsif, whether section 11 of the Suits Valuation Act (Act VII of 1887) precluded the lower appellate court from interfering with the decree except on the ground of the disposal of the suit on the merits being prejudicially affected? and (3) Whether the plaintiffs were estopped from pleading that the true valuation of the suit was more than the value put by them in the plaint?

We take the several points raised one after another.

On the first point, namely the true valuation, the cases decided in this Court have almost uniformly taken the view that it is the amount of the decree that determines the value of the suit, where the property involved is of larger value than the amount due under the decree. These cases further lay down that where the decretal amount is large, but the market value of the property involved is smaller, it is the market value of the property that determines the value of the suit. One of these cases is *Khetra* v. *Mumtaz Begam* (1), which followed the opinion expressed by their Lordships of the Privy Council in *Radha Kunwar* v. *Reoti Singh* (2) and another Privy Council case in *Phul Kumari* v. *Ghanshyam Misra* (3). A still later case is *Anandi Kunwar* v. *Ram Niranjan Das* (4). These cases lay down the propositions of law in the manner stated above.

There is an earlier case in *Dwarka Das* v. *Kameshar Prasad* (5) where it was mentioned that in a similar suit, if the judgment-debtor be made a party, the value of the property claimed would determine the value of

(1) (1915) I.L.R., 38 All., 72.
(2) (1916) I.L.R., 38 All., 488.
(3) (1907) I.L.R., 35 Cal., 202.
(4) (1918) I.L.R., 40 All., 505.
(5) (1894) I.L.R., 17 All., 69.

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the suit. This view, however, has not been maintained in the two later cases quoted above, on the ground that in most of the cases the judgment-debtor would be a party *pro forma* and not as a person disputing the claim of the plaintiffs. At page 74 of the report in *Khetra* v. *Mumtaz Begam* (1) their Lordships say: "No doubt she (the plaintiff) made her husband a party to the suit, but she asked for no relief against him and did not allege any cause of action which would entitle her to sue him. Apparently her husband was only made a formal defendant to the suit." A further reason is given at the same page as follows: "The whole of the property is not in dispute, and under the attachment and the sale which might take place in pursuance of it the whole property cannot be sold, but only so much of it as will be sufficient for the realisation of the amount of the decree. Therefore, the value of the subject-matter of the suit is the amount of the decree and not the amount of the actual value of the property or the value for which the plaintiff alleges that she purchased it." We entirely agree with the view taken in the cases cited above and are of opinion that the valuation would depend on the circumstances stated above and not on the actual value of the property where the decretal amount to be realised is less than the market value of the property claimed. In this view, the proper valuation is Rs.1,342 as stated in the plaint.

On the second question again, the decisions in this Court have been uniform. The earliest case that was placed before us on this point is *Kishan Lal* v. *Rup Chand* (2). The other cases are: *Dalip Singh* v. *Kundan Singh* (3), *Khudaijat-ul-Kubra* v. *Amina Khatun* (4) and *Musa Imran* v. *Bhagwan Das* (5). The view taken in this Court has been followed by the Madras High Court in *Kelu Achan* v. *Cheriya Parvathi Nethiar* (6).

(1) (1915) I.L.R., 38 All., 72.
(2) Weekly Notes 1889, p. 169.
(3) (1913) I.L.R., 36 All., 58.
(4) (1923) I.L.R., 46 All., 250.
(5) (1927) 100 Indian Cases, 546.
(6) (1923) I.L.R., 46 Mad., 631.

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In Lahore the opinion seems to be in conflict. While Mr. Justice ABDUL QADIR has taken the same view as this Court in *Sardarni Hamir Kaur* v. *Court of Wards* (1), Mr. Justice BROADWAY has taken a contrary view in *Cheloo* v. *Kali Das* (2). The Patna view is contrary to the view taken by us, *vide Mahanth Rukmin Das* v. *Deva Singh* (3), and Oudh has followed the Patna view in *Sheoraj Singh* v. *Phulbasa Kuer* (4).

In view of the opinion expressed by other High Courts we have reconsidered the question on the merits and have arrived at the conclusion that the view taken in this Court is the correct view.

Section 11 of the Suits Valuation Act starts by quoting section 578 of the Code of Civil Procedure of 1882, which has now been replaced by section 99 of the Code of Civil Procedure of 1908. These sections lay down that "No decree shall be reversed or substantially varied . . . in appeal on account of any . . . error, defect or irregularity . . . not affecting the merits of the case or the jurisdiction of the court." As jurisdiction of the court is specifically exempted from the operation of the rule contained in these two sections, section 11 lays down that, notwithstanding the provision contained in these sections, the overvaluation or undervaluation of a suit or appeal shall not affect a decree of the court of first instance or of a lower appellate court, unless certain conditions stated in the section are fulfilled. The important point is that the decree passed shall not be interfered with unless the overvaluation or undervaluation "has prejudicially affected the disposal of the suit or appeal on its merits".

The question is whether the mere fact that a court of inferior jurisdiction has taken cognizance of the suit on account of undervaluation is in itself a ground for saying that the disposal of the suit on the merits

(1) (1932) 138 Indian Cases, 62.
(2) (1917) 44 Indian Cases, 816.
(3) (1926) I.L.R., 5 Pat., 505.
(4) A.I.R., 1925 Oudh, 561.

has been prejudicially affected. We are of opinion that any such argument would not be good in view of the fact that section 11 aims directly at nullifying any such argument. The legislature thought it fit to create two grades of courts of original jurisdiction and two grades of courts of appellate jurisdiction. The jurisdiction of these courts depends on the valuation of the suit or appeal. Disputes as to the proper court to choose for the suit or the appeal are likely to arise and the legislature which created these various courts thought that it was proper for it to settle the dispute in certain cases. It accordingly enacted, as we read section 11, that the mere fact that there has been an undervaluation and therefore the case has been heard by a court which should not ordinarily have heard it, shall not be allowed to affect the decree if there has been no prejudice in the proper trial of the case. If we put the object for which section 11 was enacted before us, we come at once to the conclusion that the fact that a court of inferior jurisdiction has heard a suit of larger value should not be allowed to be an exception to the rule enacted in section 11.

The overvaluation and undervaluation have been put in the same category and in the same sentence. The prejudice contemplated must be or may be of the same nature. If it is argued that the hearing of a suit by a court of inferior jurisdiction itself operates as a prejudice, then it cannot be said that the hearing of a suit of smaller value by a court of higher jurisdiction can, in itself, operate as a prejudice on the merits.

Some difficulty has been experienced in finding an illustration where an undervaluation of a suit or appeal is likely to prejudice the disposal of a case and difficulty has also been experienced in finding an illustration where the overvaluation of a suit or appeal may affect prejudicially the disposal of a case on the merits. We have been able to hit upon two instance, one of each case, and they are these. In the case of overvaluation,

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if a property which should have been valued at say Rs.2,000 is valued at Rs.11,000 and the suit is brought before a Subordinate Judge, a first appeal would lie to the High Court against the decision. The maintenance of an appeal in the High Court is a costly matter. The record has to be translated and printed and it is possible that a party with small resources may not be able to prosecute properly an appeal in the High Court. In the case of an appeal to the Privy Council from the decision of a High Court, a party may point out that from poverty he could not print the proper documents for the benefit of the High Court and therefore the disposal has suffered prejudicially on the merits.

In the case of undervaluation this illustration may do. Suppose the market value of a piece of jewellery is really Rs.1,500. A party claims it and, valuing it at Rs.500, brings the suit in the court of small causes. If the right valuation had been given, the suit would have been cognizable by a Munsif and the party who lost would be entitled to file an appeal. When the suit is decided, it would be open to the High Court in revision to find out whether the disposal of the suit on the merits has been prejudicially affected. A party may show that his evidence was taken piecemeal, that the whole of the evidence was not recorded *in extenso* and the result was that the Judge, not remembering fully what the witnesses had stated at an earlier stage, arrived at a conclusion which was not the right one.

It is really immaterial whether we are able or not to give proper illustrations of the disposal of a suit or appeal being prejudicially affected by undervaluation or overvaluation. Suffice it to say that the language of the law is clear and the necessary consequence of that language has to be followed if there be no ambiguity. The law lays down that the mere fact that a suit has been overvalued or undervalued shall not be allowed to affect the decree unless the disposal of the

suit on the merits has been prejudicially affected owing to the overvaluation or undervaluation. The learned Subordinate Judge who heard the appeal has not come to the conclusion that owing to undervaluation the disposal of the suit has been prejudicially affected on the merits. In the circumstances, we are of opinion that it was not open to him to interfere with the decree of the court of first instance.

The third point is one of estoppel. In this case no question of estoppel can arise. The value of the property was known to the parties. The plaintiffs did not say in the plaint that the property claimed was worth Rs.1,342. They distinctly stated that they valued their suit according to the amount due to the decree-holders from Lalman. It was a pure question of law whether the valuation of the suit should be the market value of the property or the amount due from Lalman. There can be no estoppel on a question of law. We accordingly hold that the plaintiffs were not estopped from pleading before the Subordinate Judge that the true valuation of the suit was the market value of the property in dispute. We have, however, held that the plaintiffs properly valued their suit.

The result is that the appeal succeeds. We set aside the order returning the plaint for presentation to the proper court and direct the learned Subordinate Judge to hear the appeal on the merits. The appellants will have their costs of both the hearings in this Court, at all events.