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IMAMI BEGAM
v.
GOBIND
PRASAD.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.)¹ was delivered by

STRAIGHT, J.—It appears to us that a decision of a Division Bench of this Court in *Banda Hasan v. Abadi Begam* (1) is directly applicable to the present case, and as we no reason to dissent from the view therein expressed, we are of opinion that this appeal must be dismissed with costs.

Appeal dismissed.

FULL BENCH.

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March 8.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

JOGAL KISHOR AND ANOTHER (DEFENDANTS) v. TALE SINGH AND OTHERS
(PLAINTIFFS).*

BINDESHRI CHAUBEY AND ANOTHER (PLAINTIFFS) v. NANDU (DEFENDANT).†

Suit to have a lease set aside and buildings erected by lessees demolished—Suit for possession of land and demolition of buildings erected thereon—Court-fees—Valuation of suit for the purposes of the Court-Fees' Act, 1870—Jurisdiction—Declaratory decree—Consequential relief—Act VII of 1870 (Court-Fees' Act), s. 7, art. iv, cl. iv.—Act VI of 1871 (Bengal Civil Courts' Act), ss. 20, 22.

Certain co-sharers of a village sued to have a lease of certain land, the joint undivided property of the co-sharers, which the other co-sharers had granted, set aside, and to have the buildings erected on such land by the lessees demolished, on the ground that such lease had been granted without their consent, without which it could not lawfully be granted. They valued the relief sought at Rs. 100. The value of the buildings of which they sought demolition was Rs. 3,000.

B sued *N* claiming, *inter alia*, possession of certain land, and to have certain buildings erected thereon by the defendant demolished.

Held, with reference to the above mentioned suits, that in estimating their value for the purposes of the Court-Fees' Act, 1870, or of the Bengal Civil Courts' Act, 1871, the value of the buildings which might have to be demolished should not be taken into account.

Held by STRAIGHT, BRODHURST, and TYRRELL, JJ., with reference to the first suit, that it was one for a declaratory decree in which consequential relief was

* Second Appeal, No 770 of 1880, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 26th June, 1880, affirming a decree of Munvi Muhammad Sayyid Khan, Munsif of Mainpuri, dated the 16th August, 1878.

† Second Appeal, No. 197 of 1881, from a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 21st July, 1880, reversing a decree of Maulvi Abdul Razak, Munsif of Deoria, dated the 19th March, 1880.

(1) I. L. R., 4 All. 180.

prayed, and fell under s. 7, art. iv, cl. iv, Court-Fees' Act, 1870, and, such relief being valued at Rs. 100, had been properly instituted in the Munsif's Court.

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THESE were two second appeals which came for hearing before Stuart, C. J., and Tyrrell, J. The plaintiffs in the suit out of which second appeal No. 770 of 1880 arose were co-sharers of a certain village. The defendants Nos. 3, 4, 5, 6, 7, and 8 were also co-sharers of the same village. The latter granted the defendants—Nos. 1 and 2 a lease of certain land, which was the joint undivided property of the co-sharers of the village, for the purpose of building an indigo factory, such lease being dated the 5th November, 1878. The plaintiffs claimed to have such lease cancelled, and the buildings which had been erected on such land demolished, on the ground that such lease had been granted without their consent, and the defendants Nos. 3-8 were not competent to grant the same without their consent. They valued the relief claimed at Rs. 100, and paid court-fees on their plaint accordingly. The suit was instituted in the Court of the Munsif of Mainpuri. The defendants Nos. 1 and 2 set up as a defence to the suit, *inter alia*, that the relief sought had been improperly valued at Rs. 100, as the buildings sought to be demolished were worth about Rs. 10,000, and that the suit was not cognizable by a Munsif, as the value of such buildings exceeded the pecuniary jurisdiction of a Munsif. The Munsif framed the following issue, among others, for trial: "Is the suit cognizable by this Court." He held on this issue that the suit was cognizable by him, as neither the land in question nor the lease exceeded Rs. 100 in value; and in the event he gave the plaintiffs a decree, which, on appeal by the defendants Nos. 1 and 2, the lower appellate Court affirmed. In second appeal the defendants Nos. 1 and 2 urged in their memorandum of appeal that the Munsif was not competent to entertain the suit, as the buildings sought to be demolished exceeded Rs. 1,000 in value. The Court (STUART, C. J., and TYRRELL, J.), by an order dated the 12th May, 1881, remanded the case to the lower appellate Court for the trial of the issue: "What was the market-value, on the 13th June, 1879 (the date of the institution of the suit), of the buildings the demolition of which was sought by the plaintiffs." The lower appellate Court found that the value of such buildings on that date was Rs. 3,000.

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The plaintiffs in the suit out of which second appeal No. 197 of 1881 arose claimed possession of two pieces of land ; to have a wall built on one piece by the defendant, and a house built on the other piece by the defendant, demolished ; to establish their right to the flow of the rain water from the roof of their house over land belonging to the defendant ; and to have a certain drain closed. They valued the suit at Rs. 49, being Rs. 38, the value of the land in question, Rs. 10 the cost of demolishing the buildings in question, and Re. 1 for the closing of the drain. The suit was instituted in the Court of the Munsif of Deoria, zila Gorakhpur. The defendant set up as a defence to the suit, *inter alia*, that the relief claimed in respect of the buildings erected by him should be valued at their market-value and not at the amount which it would cost to demolish them ; and that, as the house of which demolition was sought was worth Rs. 3,000, the suit was not cognizable by the Munsif. The Munsif held that such relief should have been valued at the market-value of such buildings, and, finding that their value was Rs. 225, called on the plaintiffs to pay court-fees accordingly. He also held, with reference to his finding as to the value of such buildings, that the suit was cognizable by him ; and in the event gave the plaintiffs a decree. On appeal by the defendant the lower appellate Court held that the suit was not cognizable by the Munsif, as the value of the buildings sought to be demolished exceeded Rs. 1,000. On second appeal the plaintiffs urged in their memorandum of appeal that the Munsif had jurisdiction to entertain the suit.

The same point of law was raised in both these appeals, *viz.*, whether the buildings, of which demolition was sought, were to be taken into account in estimating the value of the suit for the purpose of the Court-Fees' Act. This point the Court (STUART, C. J., and TYRRELL, J.) referred to the Full Bench, the order of reference being as follows:—

STUART, C. J.—The question that arises for decision in these two cases, Second Appeal No. 770 of 1880, and Second Appeal No. 197 of 1881, is the same, *viz.*, whether the buildings sought to be demolished are to be taken into account in estimating the value in suit for the purpose of determining the court-fees payable on the plaint. This question we refer to the Full Bench of this Court.

No precedent directly bearing on its solution was cited before us, but the case of *Ostoche v. Hari Das* (1) was cited as showing, for the purpose of determining the court-fees, the nature and extent of the relief sought in a plaint.

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In one of the present cases, Second Appeal No. 770 of 1880, the value of the land, which is the subject of the case, is stated at Rs. 100, and the rent is only Rs. 16, but the buildings which were erected for the purpose of an indigo factory are very valuable, and their demolition would involve a loss to the defendants of about Rs. 10,000. In the other case, Second Appeal No. 197 of 1881, the value of the buildings is not so great, but the same principle of valuation for the purposes of the suit applies to it.

The Court-Fees' Act of 1870, s. 7, sub-section v., contemplates a value for the purposes of a court-fee being put on "houses and gardens" when the "possession" of these is sought, and in the same section and sub-section of the Act and by cl. (e) a court-fee is provided for where the subject-matter is "a house or garden according to the market-value of the house or garden." These provisions no doubt relate to suits for possession of houses, a term that would probably be considered to apply to any buildings inhabited or used for any purpose. In the present cases the suit is not for the possession of houses or other buildings, but for their *demolition*, in order that the land may be restored to the plaintiffs without them.

Mr. *Conlan* and *Munshi Hanuman Prasad*, for the appellants,
Pandit *Nand Lal*, for the respondents, in Second Appeal No. 770.

Mr. *Conlan* and *Babu Jogindro Nath Chaudhri*, for the appellants,

Babu Baroda Prasad Ghose, for the respondent, in Second Appeal No. 197.

The following judgment was delivered by STUART, C. J., in the two cases :

STUART, C. J.—The question submitted to us by this reference relates only to the demolition of the buildings as claimed

(1) I. L. R., 2 ALL 869.

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in the plaint. With the general question of the whole court-fee payable on the suit we have no concern, excepting so far as the relief sought covers, is affected by, or is irrespective of, such demolition. The reference precisely and in terms asks the Full Bench: "Whether the buildings sought to be demolished are to be taken into account in estimating the value in suit for the purpose of determining the court-fees payable on the plaint;" and the reference adds: "This question we refer to the Full Bench of the Court." And in explanation of the difficulty experienced by the Division Bench it is added: "The Court-Fees' Act of 1870, s. 7, sub-section v., contemplates a value for the purpose of a court-fee put on 'houses and gardens' when the 'possession' of these is sought, and in the same section and sub-section of the Act and by cl. (e) a court-fee is provided for where the subject-matter is a 'house or garden according to the market value of the house or garden'. These provisions no doubt relate to suits for the *possession* of houses, a term that would probably be considered to apply to any buildings inhabited or used for any purpose. In the present cases the suit is not for the possession of houses or other buildings, but for their *demolition*, in order that the land may be restored to the plaintiff without them."

Nothing therefore could be more distinct than the one question put by this reference, and the difficulty experienced respecting it by the Division Bench. And that this question was considered material by the Division Bench appears from their order of remand of the 12th November, 1881, made in Second Appeal No. 770 of 1881, and which is in these terms: "The question that arises on the threshold of this action, *and which governs the jurisdiction of the first Court*, has been determined on insufficient grounds. There is no evidence to show satisfactorily what was the market value on the 13th day of June, 1879, of the buildings, the demolition of which was sought by the plaintiff. We remand the case therefore for a distinct finding on valid evidence in respect of this question. On the return to this order, a time to be fixed by the Registrar will be given before the hearing". In the finding returned on this remand the value of the buildings was stated by the Subordinate Judge to be Rs. 3,000 at the time of institution of the suit in

that case, although at the hearing before the Division Bench it was explained, and did not appear to be disputed, that the real value of the building sought to be demolished was about Rs. 10,000. In the other case, Second Appeal No. 197 of 1881, the value of the buildings, as stated in the referring order, is not so great, but the principle on which the valuation for the purpose of the court-fee on the plaint is to be calculated must of course be the same, that is, the court-fee so far as it is affected by the single question of the demolition of the buildings.

Now this question, although it only relates to the matter of a court fee, is a very important one, and it cannot be disposed of by implication or innuendo, for, as stated in the order of remand of the 12th November, 1881, it goes to jurisdiction and to procedure of, it may be, a very perilous nature. Thus if the true value in suit is that stated respectively in the plaints in the two cases before us the Munsif clearly had jurisdiction to entertain them. But not so if the contention of the defendants that the estimated value of the buildings sought to be demolished is well founded. If that case the Court of the Judge or Subordinate Judge would be the proper *forum* for the institution of the suit. Then the consequence of the relief sought being under-valued, or of a miscalculated court-fee, are very serious, for by s. 54 of the Procedure Code it is provided that: "The plaint shall be rejected in the following cases: (a) if the relief is under-valued, and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court fails to do so; (b) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court fails to do so." The question put by the reference therefore is in all respects a very serious one.

In the first of the two cases, Second Appeal No. 770 of 1880, the plaint states: "That on the 5th November, 1878, Khalak Singh, Halhal Singh, Lachman Singh, and Dalel Singh, share-holders, and Sugar Singh, the agent of the Raja Sahib, the share-holder of the mauza, executed an invalid lease in perpetuity on a plain paper with respect to eight bighas (by chain measurement) of land bearing Nos.

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1712, 1650, and 1658, in favour of Jogal Kishor and Ram Lal, caste Sadh, for the purpose of building an indigo factory at a rental of Rs. 16"; and the prayer of the plaint is: "That the lease dated Katik Badih 11th, Sambat 1935, corresponding with the 5th November, 1878, in favour of Jogal Kishor and Ram Lal, residents of Farakh-abad, be cancelled; that the said lessees be ousted from the land entered in the lease; and that whatever buildings, such as compound and vats, &c., built by them, be demolished: the suit is valued at Rs. 100: the cause of action accrued on the 27th December, 1878: the defendants may be directed to produce the original lease in suit, which is in their possession, under the provisions of s. 70 of Act X of 1877." This certainly is a very loosely worded pleading. It does not ask for possession of land nor even in terms for a declaration of right, although I suppose it must be understood in the latter sense. The only precise claim it makes relates to the houses and their demolition, for it will have been observed it recites the fact of the lease given to the defendants by certain of the share-holders "for the purpose," as the plaint explains, "of building an indigo factory at a rental of Rs. 16," and then in the prayer it asks that the lease be cancelled; that the lessees be ousted from the land; and that whatever buildings, such as compound and vats, &c., built by them (defendants), be demolished." It is thus to my mind perfectly clear that the principal object, if not the sole and only purpose of the suit, was the demolition of the buildings, which the reference states are very valuable, and their demolition would involve a loss to the defendants of about Rs. 10,000. Of course such a demand as this would not be intelligible unless the plaintiffs were understood at least to assert at the same time their own rights. By their plaint, however, as I have pointed out, they make no such assertion, although for the purpose of this reference I am willing to believe that that was what they meant. Their action was directed to these buildings which they wished to demolish, although they knew they had been erected under a lease granted by four of their co-sharers, and were of very considerable value. It may also I think be fairly suggested, although the consideration is scarcely relevant to the present reference, that in erecting these buildings the defendants may be taken to have acted in good faith, and with an honest belief in their rights under their lease, so much so as possibly in the

event of their ouster by the plaintiffs to give them a claim for damages against their lessors, of which if demolished the value of the buildings might be held to be the measure.

In the other case, Second Appeal No. 197 of 1881, the plaint is a very long one, and it alleges a more distinct claim to the land than in the other case, yet this is done in terms in which show that the main object of the suit was to demolish the buildings which had been erected by the defendants. For the principal relief prayed for is:—
 “To obtain possession as before of the foundation land, 28 cubits long and $2\frac{1}{2}$ cubits broad, on the west, belonging to the plaintiffs’ house, by *demolishing* the recently built wall both kacha and pukka, and of 10 cubits long and 10 cubits broad of land on the east of that wall, which appertains to the two storied house built in the yard of their former house, by *demolishing* the house recently built by the defendant.”

Such being the nature of these two suits it appears to me to be extremely doubtful, to say the least, whether the right and title and possession of the land are the only matter in regard to which the relief asked for can be looked to. But on the other hand s. 7 of the Court-Fees’ Act provides that: “The plaintiff shall state the value of the relief sought,” and in any case a plaintiff could not be expected to put any value on buildings which it is the object of his suit to demolish. It is indeed very difficult to find a place for a suit of the kind within the four corners of the Court-Fees’ Act of 1870, and perhaps we might, without impropriety, hold that their legal character for the purposes of a proper court-fee to be charged on it is a *casus omissus* in the Act, unless it be considered to fall within No. 17(vi), sch. ii of the Act, relating to “every other suit where it is not possible to estimate at a money-value the subject-matter in the suit, and which is not otherwise provided for by the Act.” In these two suits, however, it is not only possible to estimate the value of the buildings sought to be demolished, but such estimate has been ascertained with particular distinctness.

In s. 7, sub-section v., there is a court-fee provided for “suits for the *possession* of land, houses, and gardens, according to the value of the subject-matter,” and in (e) under the same sub-section there is provision for a court-fee where “the *subject-matter* is a house

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or garden," and if this expression "subject-matter" could be detached from the opening words of the same sub-section, it might perhaps be considered to cover a claim of the nature made in these suits, but the words "subject-matter" in this provision must I think be read not irrespective of but *with* the commencing words of the same sub-section, "for the *possession* of land, houses and gardens," and that therefore the "subject-matter" in (e) means a suit for the possession of a house as the sole and single subject of it, that is, for its use and enjoyment as property, and not possession of a house for the purpose of its demolition. And of course if that be the true view of the present state of the law as provided by the Court-Fees' Act of 1870, the value of the buildings in these two cases sought to be demolished is not to be taken into account in estimating the court-fees to be charged in the suit.

Whether such is a desirable state of the law, or whether the peculiarity of these suits shows a *casus omissus* in the present Court-Fees' Act is a question for serious consideration, and as the Government of India are contemplating a reform and recasting of the Act, and a Bill has been brought into the Legislative Council for that purpose, the opinions given under the present reference might perhaps with advantage be communicated to the Government of India.

The following judgments were delivered by STRAIGHT, BRODHURST, and TYRRELL, JJ., and by OLDFIELD, J., in Second Appeal No. 770.

STRAIGHT, BRODHURST, and TYRRELL, JJ., concurring.—We are of opinion that this is a suit for a declaratory decree, in which consequential relief is prayed, and that it falls within s. 7, article iv., cl. iv., (c), of the Court-Fees' Act. The relief sought appears to have been valued at Rs. 100, and the suit was therefore rightly instituted in the Munsif's Court.

OLDFIELD, J.—This suit is on the part of some joint proprietors against other joint proprietors and lessees holding under them, and the claim is substantially to have a certain lease made by some of the defendants in favour of other defendants declared invalid, and to have it set aside, and to eject the lessees from the land, and to have the buildings erected by them removed.

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The suit in my opinion was under s. 7, cl. iv, (c), of the Court-Fees' Act, and is a suit to obtain a declaratory decree or order where consequential relief is prayed.

There is no prayer for possession of the land or houses so as to bring it under cl. v., s. 7, by which the amount of the fee payable is to be valued according to the value of the subject-matter; the court fee will therefore be valued according to the amount at which the relief sought is valued in the plaint, subject to the provisions of s. 54 of Act X of 1877; the value of the building will not be taken into consideration in estimating the amount of the court-fee payable.

The following judgments were delivered by STRAIGHT, BRODHURST and TYRRELL, JJ., and by OLDFIELD, J., in Second Appeal No. 197.

TYRRELL, J. (STRAIGHT, and BRODHURST, JJ., concurring).—In this case the plaintiff sued to recover possession (a) of a piece of land valued at Rs. 38, market-value, alleging that the defendant setting up a false rival claim to ownership and possession of the land had built on it. The plaintiff also (b) asserted his title to an easement of roof water over the defendant's land, value Rs. 10: and (c) he claimed an injunction for the removal of some buildings made by the defendant on the land in suit. The first claim (a) is for title to and possession of land, and is governed by the Court-Fees' Act, s. 7, sub-section v (d), providing that such a suit is to be valued on the market-value of the subject-matter, *i.e.*, the land. The claim (b) is for an easement, and is governed by s. 7, iv (e), and is ordinarily valued at Rs. 10. The relief (c) is an injunction, s. 7, sub-section iv (d), and is to be similarly valued. The combined valuation would be Rs. 58.

The "subject-matter in dispute" of ss. 20 and 22 of Act VI of 1871 is the same thing as the "relief sought" of s. 54 of Act X of 1877, with respect to the question of valuation for jurisdiction.

In this suit the "subject-matter in dispute," the "relief sought," is the restoration of the plaintiff's possession over his land which the defendant has taken from him. There is a further sub-relief incidental to the repossession, that is, the removal of the buildings made by the defendant on his pretended title; and also the plaintiff's easement. The plaintiff must pay the *ad valorem fee* of the Court-Fees' Act on the first relief he claims, and the fixed fees of

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the same Act on the others. But he need not pay on the value of the buildings raised by the defendant. This is not a proper factor in the estimate of the plaintiff's reliefs. He must pay on the title he asserts, the thing he wants to recover, or the equities he has to vindicate, not on any considerations of what cost or charges or loss his success in his suit may entail on the defendant.

The answer therefore in this as well as in the other referred case should be that the value of the buildings which may have to be demolished is not to be taken into account in estimating the the value of the suit for the purposes of the Court-Fees' Act or of the Bengal Civil Courts' Act VI of 1871.

OLDFIELD, J.—The suit is to obtain possession of a piece of land, to have demolished certain buildings which the defendants have erected, and to have a right of easement decreed.

The first relief sought comes under v (d), s. 7, Court-Fees' Act, and the court-fee will be computed according to the market-value of the subject-matter, that is the land, irrespectively of the buildings of which possession is not sought, subject to the operation of s. 9 of the Court-Fees' Act.

The second relief sought is in the nature of a mandatory injunction, and the third an easement, coming under (d) and (e), iv, s. 7, Court-Fees' Act, and the fees will be computed according to the amount at which the reliefs sought are valued in the plaint subject to the provisions of s. 54 of the Code of Civil Procedure. The value of the buildings sought to be removed should not in my opinion be considered in computing the value of the second relief sought.

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March 10.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

SIRDAR KUAR AND ANOTHER (PLAINTIFFS) v. CHANDRAWATI AND ANOTHER
(DEFENDANTS).*

*Accounts stated—Bond given for balance—Bond impounded as insufficiently stamped
—Suit on accounts stated—Contract, substitution of new.*

Where accounts between a creditor and his debtor were stated, and the latter gave the former a bond for the balance found due by him to the creditor, held

*Second Appeal, No. 925 of 1881, from a decree of W. Kaye, Esq., Commissioner of Jhansi, dated the 19th May, 1881, affirming a decree of J. MacLean, Esq., Assistant Commissioner of Jhansi, dated the 3rd March, 1881.