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October, 29.

APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice A. G. P. Pullan.

PITAM SINGH AND ANOTHER (PLAINTIFFS-APPELLANTS) *v.* BISHUN NARAIN AND OTHERS (DEFENDANTS-RESPONDENTS).*

Appeal—Forum of suit or appeal, determination of—Value fixed in the plaint or the value found by the trial court, whether to determine the forum of appeal—Suits Valuation Act (VII of 1887), section 11—No question of suit or appeal having been decided by a court not having jurisdiction—Objection as to valuation raised before hearing of appeal—Section 11 of Suits Valuation Act, applicability of.

Held, that the general rule is that the value fixed by the plaintiff in his plaint must, *prima facie*, be the basis for determination of the forum of the suit or appeal arising out of it. But the position is different if it is found that the plaintiff has deliberately undervalued or overvalued his claim with the object of having the suit tried or the appeal heard by a court which would not have jurisdiction to try the suit or hear the appeal in case the claim is properly valued or where the plaintiff has acted recklessly in fixing the valuation of the suit.

Where, therefore, it could not be said that the plaintiff deliberately undervalued the suit and the nature of the property was such that it could not be said that the plaintiff acted recklessly in fixing its value and it was impossible to attribute to him the intention of changing the venue of the appeal, *held*, that the case must be governed by the general rule and it was not possible to bring it under any of the well recognized exceptions. *Mahabir Singh* v. *Behari Lal* (1), *Madho Das* v. *Ramji Patak* (2), *Nilmony Singh* v. *Jagabandhu Roy* (3), *Putta Kannayya Chetti* v. *Rudrabhatta Venkata Narasayya* (4), *Muhammad Abdul Majid* v. *Ala Bakhsh* (5), and *Thakur Sheodat Singh* v. *Thakur Bishunath*

* First Civil Appeal No. 123 of 1929, against the decree of Babu Sitla Sahai, Additional Subordinate Judge of Unao, dated the 31st of July, 1929.

(1) (1891) I.L.R., 13 All., 320. (2) (1894) I.L.R., 16 All., 286.
(3) (1896) I.L.R., 23, Calc., 536. (4) (1916) I.L.R., 40, Mad., 1.
(5) (1925) I.L.R., 47, All., 534.

Singh (1), relied on. *Goswami Sri Raman Lalji Maharaj* v. *Bohra Desraj* (2), *Ijjatulla Bhuyan* v. *Chandra Mohan Bannerjee* (3), and *Budha Mal* v. *Rallia Ram* (4) distinguished.

Section 11 of the Suits Valuation Act is intended to cure a defect as regards valuation in respect of a suit or an appeal when it has been tried or heard by a court which did not have jurisdiction with regard to it. But where both the parties agree that the court had jurisdiction to entertain the suit and there is no question about an appeal having been heard and decided by a court not having jurisdiction and a preliminary objection as to valuation is raised before the appeal is heard that section has no application.

Messrs. *Ali Zaheer* and *Khaliquzzaman*, for the appellants.

Messrs. *Radha Krishna*, *B. N. Bhargava* and *Shyam Manohar*, for the respondents.

SRIVASTAVA and PULLAN, JJ. :—This is a plaintiffs' appeal against the judgment and decree dated the 31st of July, 1929, passed by the Additional Subordinate Judge of Unao.

On behalf of the defendants-respondents a preliminary objection has been raised to the effect that the appeal should have been filed in the court of the District Judge and not in this Court.

The plaintiffs claimed a decree for possession of certain lands, the title in respect of which was in dispute between the parties, and a decree for Rs. 489-9-6, being the income arising from a *mela* which had been held on part of the land in question and had been realized by the defendants. Originally the value of the land in suit had been put at Rs. 500 and the total valuation of the suit had been fixed at Rs. 989-9-6. On this valuation the suit was instituted in the court of the Munsif, North, Unao. On an objection raised by the defendants, the learned Munsif held that the valuation of the claim was more than Rs. 2,000 and accordingly returned the plaint

(1) (1903) 6 O.C., 255.
(2) (1910) I.L.R., 32, All., 322.
(3) (1907) I.L.R., 34, Calc., 594.
(4) (1927) I.L.R., 9, Lah., 23.

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for presentation to the proper court. The plaintiffs thereupon raised the valuation of the suit to Rs. 2,089-9-6 and filed the plaint in the Court of the Subordinate Judge of Unao. In paragraph 8 of the amended plaint they stated as follows :—

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> "That although the land in suit is by no means of the value of above Rs. 500 yet on account of the said decision (referring to the decision of the Munsif) and in order to avoid dispute as to valuation of the said land it is fixed at Rs. 1,600 and the money due to the plaintiffs from defendant No. 1 is Rs. 489-9-6, in this way the valuation of the suit comes to Rs. 2,089-9-6 whereupon a court-fee of Rs. 130 is paid."

The defendants denied the correctness of the valuation put in the amended plaint and alleged that the value of the land in suit exceeded Rs. 10,000. In view of these pleadings the learned Subordinate Judge framed an issue to the following effect :—

> "What is the value of the subject-matter in suit? Is the plaint sufficiently stamped?"

The finding recorded by the learned Subordinate Judge in respect of this issue was that the value of the land in suit was Rs. 5,748-2-0 and including Rs. 489-9-6 claimed for the *mela* income, the total value of the suit amounted to Rs. 6,237-11-6 on which a court-fee of Rs. 325 was payable. As the plaintiff had paid a court-fee of Rs. 130 only, the learned Subordinate Judge held that there was a deficiency of Rs. 195 and the plaintiffs were granted two weeks' time from the date of the judgment within which they were required to make good the deficiency. It was further ordered that in case they failed to pay the additional court-fee within the time fixed the plaint would be rejected. The deficiency was made good within the time allowed and the appeal before us was filed in this Court.

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The appeal was valued at Rs. 6,237-11-6 and necessary court-fee was paid on that amount. Two of the grounds raised in the memorandum of appeal are as follows :—

(4) That the court below should have held that the court-fees paid were sufficient.

(5) That the court below should have held that the valuation of the suit as given in the plaint was correct.

The objection raised on behalf of the respondents is that the forum of appeal ought to be determined on the value of the suit as given by the plaintiff and not on the value as found by the lower court, more particularly as the finding of the court below as regards valuation is challenged by the plaintiffs in their appeal. We think that the objection is sound and must succeed. Section 39 of the Oudh Courts Act provides that an appeal from a decree or order of a Subordinate Judge shall lie to the District Judge when the value of the original suit in which the decree or order was made did not exceed Rs. 5,000 and to the Chief Court in any other case. The question therefore arises as to what is to be regarded as the value of the original suit which has given rise to this appeal.

The general rule is that the value fixed by the plaintiff in his plaint must, *prima facie*, be the basis for determination of the forum of the suit or appeal arising out of it. But the position is different if it is found that the plaintiff has deliberately undervalued or overvalued his claim with the object of having the suit tried or the appeal heard by a court which would not have jurisdiction to try the suit or hear the appeal in case the claim is properly valued. The position is also the same in a case where the plaintiff has acted recklessly in fixing the valuation of the suit. The reason for these exceptions to the general rule stated above lies on the surface and is not far to seek. A plaintiff who

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does not act *bona fide* and with due care and attention cannot be allowed to take advantage of his wrongful act so as to enable him to have the case tried in a court different from that intended by the Legislature. It seems to us that the present case must be governed by the general rule and it is not possible to bring it under any of the well recognised exceptions. The land in suit is for the most part uncultivated, covered with weeds and grass. The learned Subordinate Judge in the course of his finding regarding the valuation of the land remarked that "it is not possible to come to any correct conclusion regarding the value of that land." Under the circumstances, in spite of the finding ultimately arrived at by the lower court that the value of the land in suit was Rs. 5,748-2-0, it cannot be said that the plaintiffs in fixing the valuation of the land in their amended plaint at Rs. 1,600 deliberately undervalued it. In fact plaintiff No. 2 when he was examined as a witness during the trial of the suit stated on oath that the land in suit "is of a value of Rs. 500 or Rs. 600 according to my estimate." The plaintiffs fixed the value at Rs. 1,600 in order to comply with the decision of the Munsif to which reference has been made above. It is also clear that whether the valuation of the land was put at Rs. 1,600 or Rs. 5,748-2-0 in either case the suit was cognizable by the Subordinate Judge. It is impossible to attribute to the plaintiffs any intention of changing the venue of the appeal from the Chief Court to that of the court of the District Judge inasmuch as the plaintiffs themselves have filed this appeal in the Chief Court and not in the court of the District Judge. The nature of the land is also such that it cannot be said that the plaintiffs acted recklessly in fixing the value of the land as they did.

On behalf of the appellants reliance has been placed upon section 11 of the Suits Valuation Act. This section is not at all in point. It is intended to cure a defect as regards valuation in respect of a suit or an appeal

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when it has been tried or heard by a court which did not have jurisdiction with regard to it. In the present case both parties are agreed that the Subordinate Judge had jurisdiction to entertain the suit. As regards the appeal, there is no question about its having been heard and decided by a court not having jurisdiction. The section has no application to a case like the present where a preliminary objection is raised before the appeal has been heard.

It was also argued that as the plaintiffs in compliance with the order of the lower court made good the deficiency in the court fee, they should be deemed to have accepted the valuation fixed by the lower court. We cannot accede to this argument. The deficiency was made good only in order to prevent the rejection of the plaint. The two grounds of appeal which we have reproduced above show conclusively that the plaintiffs, far from accepting the valuation of the lower court have directly challenged it in the appeal.

The view which we have taken above is also supported by the weight of authority on the point. In *Mahabir Singh* v. *Behari Lal* (1), it was held that for the purpose of determining the proper appellate court in a civil suit, what is to be looked to is the value of the original suit, that is to say, "the amount or value of the subject-matter of the suit." Such "amount or value of the subject-matter of the suit" must be taken to be the value assigned by the plaintiff in his plaint and not the value as found by the court unless it appears that either purposely or through gross negligence, the true value of the suit has been altogether misrepresented in the plaint. In *Madho Das* v. *Ramji Patak* (2), it was observed "that convenience would require that the jurisdiction to hear a suit and make a decree or to hear an appeal and to make a decree in appeal, must be determined by the value assigned in the plaint, otherwise there would be no certainty as to the court in which a

(1) (1891) I.L.R., 13 All., 320. (2) (1894) I.L.R., 16 All., 286.

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suit should be brought or as to the court in which an appeal should be brought." In *Nilmony Singh* v. *Jagabandhu Roy* (1), their Lordships of the Calcutta High Court observed as follows:—

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> "It was contended that the value of the original suit must be taken to mean not the value which the plaintiff chooses to give to his suit but the value which was found upon investigation by the court below to be the value of the suit. We are not prepared to accept this contention as correct in the broad form in which it has been presented to us. There may be cases, and the present is one of them, in which the finding of the court below upon the subject of value is itself questioned in the appeal; and there it cannot be said that the appellant, notwithstanding that he questions the correctness of the finding of the court below as to valuation is still bound to accept that finding for the purpose of determining what court has jurisdiction in respect of the appeal. Questioning, as the plaintiff appellant did, the correctness of the finding as to the value, and contending that his valuation was a correct one, he could not but have preferred the appeal to this Court as he has done."

These observations are fully applicable to the present case. We might note that all the three cases cited above were decided with reference to the provisions of section 21 of the Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887) which are similar to the provisions of section 39 of the Oudh Courts Act. In *Putta Kannayya Chetti* v. *Rudrabhatta Venkata Narasayya* (2), a Full Bench of the Madras High Court dealing with the analogous provisions of section 13 of the Madras

(1) (1896) I.L.R., 23 Cal., 536. (2) (1916) I.L.R., 40 Mad., 1.

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Civil Courts Act (III of 1873), held that the amount or value of the subject-matter as fixed in the plaint and not the amount decreed by the trial court should determine the court to which the appeal lies. This case was followed in a later decision of the Allahabad High Court in *Muhammad Abdul Majid* v. *Ala Bakhsh* (1). It was held that in order to determine the proper appellate court, what has to be looked at is the value of the original suit, that is to say, the amount or value of the subject-matter of the suit, and that must be taken to be the value assigned by the plaintiff in his plaint and not the value as found by the court unless it appears that either through carelessness or gross negligence, the true value has been altogether misrepresented by the plaintiff. It is the plaintiff's valuation in his plaint which controls the jurisdiction not only of the first court but of the appellate court.

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Lastly in *Thakur Sheodat Singh* v. *Thakur Bishunath Singh* (2), a case decided by the late Court of the Judicial Commissioner of Oudh, Mr. (now Sir EDWARD) CHAMIER held that the plaintiff's valuation determines the forum except in cases where it is proved that the plaintiff has misrepresented the true value with the intention of getting a trial in a different court from that intended by the Legislature, or has acted recklessly in valuing his suit, or has adopted a wrong method of valuation.

On behalf of the plaintiffs appellants reliance was placed upon the decisions in *Goswami Sri Raman Lalji Maharaj* v. *Bohra Desraj* (3), *Ijjatulla Bhuyan* v. *Chandra Mohan Bannerjee* (4) and *Budha Mal* v. *Rallia Ram* (5). In our opinion all these cases are distinguishable.

Goswami Sri Raman Lalji v. Bohra Desraj (3) was a case in which an order was made by the court to make

(1) (1925) I.L.R., 47 All., 534.
(2) (1903) 6 O.C., 255.
(3) (1910) I.L.R., 32 All., 222.
(4) (1907) I.L.R., 34 Calc., 954.
(5) (1927) I.L.R., 9 Lah., 23.

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good a deficiency in court-fee and this order was accepted by the plaintiff. Their Lordships observed as follows :—

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> "So long as there has been no order accepted by the plaintiff to make good the deficiency, the original value placed by the plaintiff must be taken as the value of the suit for the purpose of regulating the proper appellate court, but we think that, when there has been such an order accepted by the plaintiff, from that moment the value of the suit must be taken as being in accordance with the fee paid by the plaintiff."

We have already given our reasons for coming to the conclusion that in the present case the valuation fixed by the trial court has not been accepted by the plaintiff.

Ijjatulla Bhuyan v. *Chandra Mohan Banerjee* (1), was a case in which the plaintiff had put in an approximate or tentative value in respect of the relief claimed by him for mesne profits and it was held that the amount found by the court to be due to the plaintiff must in such cases be regarded as the value of the original suit for the purpose of determining the forum of appeal. Similarly, *Budha Mal* v. *Ballia Ram* (2), was a case for rendition of accounts in which the value of the relief claimed had been tentatively fixed at a certain amount. It was held that the amount ascertained by the trial court to be due to the plaintiff should, in such a case, determine the forum of appeal. It might be pointed out that the learned Judges also based their decision on the ground of *stare decisis* in view of the earlier decisions of their court. It is clear that there is no question of the valuation having been fixed tentatively or approximately in the present case. The only decision of the Oudh Court bearing on the point which has been cited to us, namely,

(1) (1907) I.L.R., 34 Calc., 954. (2) (1927) I.L.R., 9 Lah., 23.

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Thakur Sheodat Singh v. *Thakur Bishunath Singh* (1), is against the appellants' contention. So we do not feel hampered in the view which we have taken, by any course of decisions in this province against it.

We are, therefore, of opinion that the present appeal ought to have been filed in the court of the District Judge. We accordingly direct that the memorandum of appeal should be returned to the appellants for presentation to the proper court. The appellants will pay the costs of the respondents in this Court.

Srivastava and Pullan, JJ.

APPELLATE CRIMINAL.

Before Mr. Justice A. G. P. Pullan.

SHIAM SUNDAR (APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-RESPONDENT).*

1930 *November, 24.*

Criminal Procedure Code (Act V of 1898), section 222—Misappropriation—Conviction for Criminal Misappropriation, whether permissible without proof of specific sums misappropriated—Proof required for a conviction for criminal misappropriation.

It is impossible for the prosecution to follow the money in the hands of an accused person and prove that he spent a certain specific item in any particular manner. The prosecution must stop when it is proved that the accused has received the money, has acknowledged the receipt and has failed to pay it to his master or show it in his master's accounts. *King-Emperor* v. *Kadir Bakhsh* (2), referred to.

Section 222, clause (2) of the Code of Criminal Procedure was primarily enacted so that persons who showed a deficiency in the accounts with which they were entrusted could be convicted of criminal misappropriation even when it could not be shown that they had misappropriated this or that specific sum. *Emperor* v. *Mohan Singh* (3), *Samiruddin Sarkar* v. *Narain Chandra Ghose* (4), and *Emperor* v. *Bhatkhande* (5), relied

*Criminal Appeal No. 459 of 1930, against the order of Sham Manohar Nath Shargha, Additional Session Judge of Unao, dated the 17th of October, 1930.

(1) (1903) 6 O.C., 255.
(2) (1910) 8 A.L.J.R., 88.
(3) (1920) I.L.R., 42 All., 522.
(4) (1904) I.L.R., 31 Calc., 928.
(5) I.L.R., 48 Bom., 119.