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section 158 of the Bengal Tenancy Act and the present proceeding is not barred under the provisions of Order IX, rule 9, of the Civil Procedure Code which is only applicable to suits.

Appeal dismissed.

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Dawson Miller, C.J. and Mullick, J.

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August, 1.

RAM SEKHAR PRASAD SINGH

v.

SHEONANDAN DUBEY.

Court-Fees Act, 1870 (*Act VII of* 1870), *sections* 5 *and* 7(iv)(c)—*Taxing Officer, finality of decision of—Suit for declaration and "confirmation of possession", court-fee payable on—consequential relief, how to be valued—Suits Valuation Act*, 1887 (*Act VII of* 1887), *sections* 3, 4 *and* 8.

Under section 5 of the Court-Fees Act, 1870, the decision of the Taxing Officer is final and even if he has done anything which the law does not allow him to do the High Court has no jurisdiction to interfere with his decision as to the amount of the fee.

Balkaran Ray v. *Gobindnath Tewari*(1), *Kunwar Karan Singh* v. *Gopal Rai*(2), *Lagan Bart Kuer* v. *Khakhan Singh*(3), and *Mussammat Chanderbati Kuer* v. *Gorey Lall Singh*(4), followed.

Section 7(*iv*)(*c*) of the Court-Fees Act applies to a suit for a declaration of title and confirmation of possession.

Bahuroonissa v. *Kureemoonissa Khatoon*(5), *Jhumak Kamti* v. *Debu Lal Singh*(6), and *Dina Nath Das* v. *Rama Nath Das*(7), followed.

(1) (1890) I. L. R. 12 All. 129, F.B.
(2) (1910) I. L. R. 32 All. 59.
(3) (1918) 3 Pat. L. J. 92.
(4) (1919) 4 Pat. L. J. 700.
(5) (1872) 19 W. R. 18.
(6) (1915) 22 Cal. L. J. 415.
(7) (1916) 23 Cal. L. J. 561.

In a suit for a declaration of title and recovery of possession if the plaintiff does not place a reasonable value on the consequential relief which he prays for it is the duty of the Taxing Officer to value such relief.

Parathayi v. *Sankumani*(1), *Jageshra* v. *Durga Prasad*(2), *Mussammat Bibi Umatul Batul* v. *Mussammat Nanji Koer*(3), *Krishna Das Laha* v. *Hari Charan Banerji*(4), *Raj Krishna Dey* v. *Bipin Bchari Dey*(5), *Pandit Brij Krishna Dar* v. *Chowdhury Murli Rai*(6) and *Shama Prasad Sahi* v. *Sheoparsan Singh*(7), followed.

Samiya Mavali v. *Minamal*(8), *Vachhani Keshabai* v. *Vachhani Nanbha Bavaji*(9), *Dayaram Jagjivan* v. *Gordhandas Dayaram*(10), *Sunderabai* v. *The Collector of Belgaum*(11), *Barru* v. *Lachman*(12) and *Hari Sanker Dutt* v. *Kali Kumar Patra*(13), distinguished.

In the absence of any rules under sections 3 and 4 of the Suits Valuation Act, 1887, for the valuation of an interest in land which is the subject matter of a suit under section 7(*iv*) of the Court-Fees Act, 1870, the value to be placed on such interest is the value of the relief sought that is to say, the money value of the loss which the plaintiff apprehends.

Appeal by the defendants.

Plaintiffs, who claimed the land in dispute as tenants of the defendants, sued for a declaration that an entry in the Record-of-Rights stating that the defendant No. 1 was the tenant of the land was incorrect and also for confirmation of possession. For the purpose of jurisdiction the suit was valued at Rs. 100. A court-fee of Rs. 10 was paid on the plaint. The first Court dismissed the suit and the plaintiffs appealed, paying a court-fee of Rs. 10 on the memorandum of appeal. The appellate Court decreed

(1) (1892) I. L. R. 15 Mad. 294.
(2) (1914) 12 All. L. J. 844.
(3) (1906-07) 11 Cal. W. N. 705.
(4) (1911) 14 Cal. L. J. 47.
(5) (1912) 16 Cal. L. J. 194.
(6) (1919) 4 Pat. L. J. 703.
(7) (1920) 5 Pat. L. J. 394.
(8) (1900) I. L. R. 23 Mad. 490.
(9) (1909) I. L. R. 33 Bom. 307.
(10) (1907) I. L. R. 31 Bom. 73.
(11) (1919) I. L. R. 43 Bom. 376; L. R. 46 I. A. 15.
(12) (1914) 22 Ind. Cas. 503, F.B.
(13) (1905) I. L. R. 32 Cal. 734.

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the suit. The defendants appealed to the High Court and paid a court-fee of Rs. 10 on the memorandum of appeal.

The Stamp Reporter found that the market value of the land was Rs. 1,239-10-6 and he claimed that an *ad valorem* fee was payable on this amount. The matter being referred to the Taxing Officer, the latter upheld this view. The appellants having failed to pay the deficit the matter was placed before the Bench.

The facts of the case material to this report are stated in the judgment of Mullick, J.

Atul Krishna Rai, for the appellants.

MULLICK, J.—The plaintiffs allege that they held under the proprietors defendants Nos. 4 to 18, a holding of 11 *bighas*, 3 *kathas*, which, by private partition, has been split up into three sets of parcels, survey plots 253 and 72 being allotted to defendants 4 to 14, survey plots 253—1136 and 363 being allotted to defendants 15 to 17 and plot 177 to defendant No. 18. The rent of plot No. 253 is shown in the record-of-rights as Rs. 4-2-0 whereas the plaintiffs state that it is Rs. 1-13-6, and plot No. 712 is shown as *kabil lagan*, whereas the plaintiffs state that it is part and parcel of plot No. 253.

The plaintiffs also allege that the defendants have conspired together and got the name of defendant No. 1 entered as a *raiyat* of the entire 11 *bighas*, 3 *kathas*, although he has no interest in the same. The plaintiffs accordingly pray for a declaration that the record-of-rights is wrong. In regard to possession they state that the defendants are resisting their possession and they, therefore, ask for confirmation of possession.

In the Court of the Munsif the land was valued at Rs. 100 evidently for the purpose of jurisdiction and a fee of Rs. 10 was paid upon the plaint upon the footing that the suit was for a declaration only. The Munsif dismissed the suit and the same amount of court-fee was paid by the plaintiffs in their appeal to the Subordinate Judge.

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The Subordinate Judge having decreed the suit, the defendants have preferred the present second appeal and have paid the same court-fee as the plaintiffs did in the Courts below.

The Stamp Reporter, however, found that the market value of the land affected was Rs. 1,239-10-6 and that an *ad valorem* fee was payable thereon, and as the appellants had paid Rs. 10 he claimed a deficit of Rs. 80. There being a difference of opinion between the Stamp Reporter and the appellants, the case was referred to the Taxing Officer who has affirmed the view of the Stamp Reporter and called upon the appellants to pay the deficit. As the appellants have refused to do so, the case has been sent up to this Bench in order that final orders may be passed on the appeal.

Now, the first question to be decided is, whether the Taxing Officer's decision as to the amount of the court-fee due on the memorandum of appeal is final. Section 5 of the Court-Fees Act would seem to conclude the matter, but the learned Vakil for the appellants before us contends that as the case comes under section 7 (*iv*) (*c*) of the Act, the appellants are entitled to value the relief at their own figure, that in declining to accept their valuation, the Taxing Officer has exceeded his jurisdiction, and that his decision can, therefore, be revised by the Court.

Now it seems to me that the wording of section 5 is so explicit and general that it leaves the Court no option. The Taxing Officer has jurisdiction to fix the amount of fee payable and if he decides that the valuation put by the appellants upon the relief was incorrect he has the power to correct it. Even if he has done anything which the law does not allow him to do, the Court-Fees Act gives the High Court no jurisdiction to interfere with his decision as to the amount of the fee.

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This view is also completely covered by authority. In *Balkaran Ray* v. *Gobindnath Tewari* (1) it was held that a decision under section 5 of the Court-Fees Act is not open to appeal, revision or review and is final for all purposes and that no means have been provided or suggested by the Legislature for questioning it. In *Kunwar Karan Singh* v. *Gopal Rai* (2) it was held that the decision of a Taxing Officer as to the category within which a suit falls for the purpose of ascertaining the proper amount of court-fees payable on a memorandum of appeal, as also his decision as to the amount of fee, is final and binding upon the Court under section 5 of the Court-Fees Act and that the Court cannot go behind the order of the Taxing Officer to examine the method which he adopted to arrive at his decision. This Court also has uniformly adopted this view of section 5 and I think it is too late for the appellants to attack the Taxing Officer's decision on the ground that he has illegally assumed jurisdiction [see *Lagan Bart Kuer* v. *Khakhan Singh* (3) and *Mussammat Chanderbati Kuer* v. *Gorey Lall Singh*(4)].

Then it is contended that the Taxing Officer has jurisdiction only to deal with fees payable under Chapter II and that as the fee now demanded is one payable under Schedule I of the Act, it is not a fee in respect of which his decision is final. The reply to this is that Schedule I is merely supplementary to section 7; it is a table provided for ready reckoning and indicates how the *ad valorem* fee prescribed by section 7 is to be calculated.

But apart from this preliminary point I think it is quite clear that the Taxing Officer's procedure was perfectly correct and that his decision must be affirmed.

The plaintiffs pray for a declaration and for confirmation of possession. It may be contended that the prayer for confirmation of possession is nothing

(1) (1890) I. L. R. 12 All. 129, F.B. (2) (1910) I. L. R. 32 All. 59.
(3) (1918) 3 Pat. L. J. 92. (4) (1919) 4 Pat. L. J. 709.

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more than a prayer that the fact of and his right to possession may be declared; but the words "confirmation of possession" have now acquired a technical meaning and include a prayer for recovery of possession if the Court thinks the plaintiff is out of possession; and it is for this reason that for over half a century confirmation of possession has been held to be consequential relief within the meaning of section 7 (*iv*) (*c*) of the Court-Fees Act [see *Bohuroonissa* v. *Kureemoonisa Khatoon* (1), *Jhumak Kamti* v. *Debu Lal Singh* (2) and *Dina Nath Das* v. *Rama Nath Das* (3)].

I have been unable to discover how and when this form of pleading originated but at the present time I think it is indisputable that though it may be often unnecessary to ask for it a prayer for confirmation of possession is added as an useful precaution against failure to prove possession up to the date of the suit. In the present case the plaintiff states in paragraph 13 of his plaint that owing to the resistance of the defendants he is compelled to bring a regular suit. This is, therefore, in essence a suit for possession which is a form of consequential relief.

That being so, how is the consequential relief to be valued in this case? Are the plaintiffs entitled to put their own valuation or is the Court or in a High Court the Taxing Officer competent to correct such valuation?

The learned Vakil for the appellants relies upon various decisions in the High Courts of Bombay and Madras and of the Chief Court of the Punjab, which, though affirming the principle that the plaintiffs' valuation must be accepted, do not seem really to cover the case now before us. I proceed to refer to these briefly.

(*1*) *Parathayi* v. *Sankumani* (4). In this case the plaintiff sought to set aside a deed of sale of which the

(1) (1892) 19 W. R. 18.
(2) (1915) 22 Cal. L. J. 415.
(3) (1916) 23 Cal. L. J. 561.
(4) (1892) I. L. R. 15 Mad. 294.

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consideration was Rs. 60,500. He paid a court-fee of Rs. 10 only as on a declaratory suit but the Court held that he must pay *ad valorem* fee on the value of his interest on the document.

(2) *Samiya Mavali* v. *Minammal* (1). In this case the plaintiff sued to set aside a sale deed and valued his relief at Rs 800. The trial Court assessed the value at Rs. 2,000 the amount mentioned in the sale deed. The High Court on second appeal held that the plaintiff's valuation should be accepted. The report does not show whether in the opinion of the Court that was the proper valuation of the relief.

(3) *Vachhani Keshabhai* v. *Vachhani Nanbha Bavaji* (2). The plaintiffs prayed for a declaration of title to certain lands, recovery of a sum of Rs. 637 being their share of the income for the years 1956—1960 *Samvat*, and for an injunction. They valued the first relief at Rs. 130, the second at Rs. 637-8-0 and the third at Rs. 25. The High Court held that both for court-fees and jurisdiction the plaintiffs' valuation must be accepted and that notwithstanding the defendants' objection that the property was worth Rs. 5,000 the suit was triable by a second class Subordinate Judge whose jurisdiction was confined to suits less than Rs. 5,000 in value

Their Lordships, however, were of opinion that the valuation would be determinable by the Court if a claim for possession were made and on this ground they distinguished the previous ruling of their own Court in *Dayaram Jagjivan* v. *Gordhandas Dayaram* (3).

(4) *Sunderabai* v. *The Collector of Belgaum* (4). This was a suit for a declaration and an injunction. Their Lordships of the Privy Council cited with

(1) (1900) I. L. R. 23 Mad. 490. (2) (1909) I. L. R. 33 Bom. 307.
(3) (1907) I. L. R. 31 Bom. 73.
(4) (1919) I. L. R. 43 Bom. 376; L. R. 46 I. A. 15.

approval the observation of the Bombay High Court that jurisdiction should be determined by the plaintiffs' valuation.

(5) *Barru* v. *Lachman* (1). In this case the plaintiffs sought a declaration and an injunction and valued the relief at Rs. 130 for purposes of court-fee and at Rs. 1,100 for purposes of jurisdiction though the value of the land was Rs. 73,192. A Full Bench of the Punjab Chief Court held that as the case fell within section 7 (*iv*) (*c*) of the Court-Fees Act the valuation was proper.

(6) *Hari Sanker Dutt* v. *Kali Kumar Patra* (2). In this case the plaintiff sought a declaration of title to some jungle land, damages for the cutting of some trees and an injunction. He valued the declaration together with the injunction at Rs. 130 and the damages at Rs. 79. The High Court of Calcutta held that though the value of the whole jungle was Rs. 1,200, it was neither the duty nor within the power of the Court to ascertain the value of the property for purposes of jurisdiction.

It will be observed that none of the cases relate to possession. They would all seem to relate to claims in which the Court had no option but to accept the plaintiffs' valuation. No case has been shown to us where there was a claim for possession and where the plaintiff was allowed to put a valuation upon it which the Court knew to be false.

On the other hand, it was observed by Richards, C. J., in *Jageshra* v. *Durga Prasad* (3), that section 7, clause (*iv*) (*c*) requires that the plaintiff shall truly state the value of his relief; to the same effect is *Mussammat Bibi Umatul Batul* v. *Mussammat Nanji Koer* (4), *Krishna Das Laha* v. *Hari Charan Banerji* (5) and *Raja Krishna Dey* v. *Bipin Behari Dey* (6), and in the High Court at Patna the authorities are unanimous that it is not open to the plaintiff to give

(1) (1914) 22 Ind. Cas. 503, F.B.
(2) (1905) I. L. R. 32 Cal. 734.
(3) (1914) 12 All. L. J. 844.
(4) (1906-07) 11 Cal. W. N. 705.
(5) (1911) 14 Cal. L. J. 47.
(6) (1912) 16 Cal. L. J. 194.

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an arbitrary and incorrect valuation [see *Pandit Brijkrishna Dar* v. *Chowdhury Murli Rai* (1), *Shama Prasad Sahi* v. *Sheoparsan Singh* (2)].

In this state of the authorities I think the Taxing Officer was clearly right in following the practice prevailing in this Court.

Apart from authority, it is also quite clear that the interpretation put by the appellants on section 7 (*iv*) (*c*) cannot be accepted; for if pushed to its logical conclusion it would lead to manifest absurdities. It is admitted that a suit for declaration of title and recovery of possession is a suit for declaration with consequential relief. If the section is to be literally construed, then while a plaintiff suing simply for possession would under section 7 (*v*) have to pay *ad valorem* fees on the value of the property, he would, by joining a prayer for declaration, pay an *ad valorem* fee on whatever smaller value he chose to put upon the consequential relief. Again when a plaintiff had valued his prayer for consequential relief at a certain figure in his plaint and had failed in the trial Court it would be open to him in appeal to value the consequential relief at any lower figure he might choose. These inconsistencies and anomalies would not occur if the section were held to mean that the valuation for the purposes of court-fee is to be made in the first instance by the party concerned but is finally determinable by the Court.

The next question is, what is the proper value of the consequential relief in this case. No rules have been made under sections 3 and 4 of the Suits Valuation Act in this province for the valuation of an interest in land which is the subject-matter of a suit under section 7, clause (*iv*), of the Court-Fees Act. Sections 3 and 4 of the former Act provide for the valuation of land for the purposes of jurisdiction and under section 8 the value as determinable for the computation of court-fees is to be the same as the value for the purposes of jurisdiction. No rules having

(1) (1919) 4 Pat. L. J. 703. (2) (1920) 5 Pat. L. J. 394.

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been framed, we must look to the value of the subject-matter of the relief, that is to say the money value of the loss which the plaintiffs apprehend; and in this case we must follow the practice of this Court, and assess the value of the relief at the value of the 11 *bighas*, 3 *kathas*, in respect of which possession is claimed. The Taxing Officer finds that in 1910 the plaintiffs purchased the entire holding of 11 *bighas*, 18 *kathas*, at a Civil Court auction sale for Rs. 1,323-10-6 and that the proportionate value of the 11 *bighas*, 3 *kathas*, is Rs. 1,239-10-6. The *ad valorem* fee payable upon this sum is Rs. 90 and there is, therefore, a deficit of Rs. 80 in the present case. It may be that the value of the property at the time of the suit was less, though this is not probable, than its value eight years earlier, but the appellants had an opportunity of proving its real value before the Taxing Officer and as no proof was given we are not in a position to say that the Taxing Officer's decision is incorrect I think, therefore, that his decision must be affirmed.

The learned Vakil for the appellants desires two days' time to pay the deficit court-fee. If the amount is not paid by the 3rd instant, the appeal will be dismissed without further reference to a Bench.

DAWSON MILLER, C. J.—I agree.

LETTERS PATENT.

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Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 51, *Order XXI, rules* 62, 64 *and* 68—*Attachment, whether absence*

*Letters Patent Appeal No. 11 of 1922.