

other allowances make up is a matter upon which members of the Council and the member of the tax-paying community also may feel that they have a grievance; but that is not a question with which this Court is in any way concerned. The law with regard to the matter is in my view perfectly clear and the only duty of this Court is to interpret it.

I agree therefore that this application should be rejected.

Application rejected.

REVISIONAL CIVIL.

Before Ross and Kulwant Sahay, J.J.

MUSSAMMAT BARKATUNNISA BEGUM

v.

MUSSAMMAT KANIZA FATMA.*

1926.

April, 28.

Court-fees Act, 1870 (Act VII of 1870), section 7(iv)(c) and (v)—suit for ejectment—subject-matter of the suit, court-fee payable on the market value of—subject-matter, what constitutes.

Plaintiff brought a suit in relation to a house on the allegation that it belonged to her, that she had allowed the defendant no. 1, who was her daughter, and defendant no. 2, who was the husband of defendant no. 1, to live in a portion of the house, that on account of the behaviour of the defendants towards her she was not willing to allow them to remain in the house any longer and that she had served notice upon them to quit but they refused to do so. She further stated in the plaint that the defendant no. 1 had set up a title to the house under an oral gift from the plaintiff.* The prayer portion in the plaint ran thus :

“(i) On the determination of the plaintiff's proprietary interest as also on the determination of the fact.....that the position of the defendants

*Civil Revision no. 58 of 1926, from a decision of F. F. Madan, Esq., i.c.s., District Judge of Gaya, dated the 18th January 1926, affirming a decision of Babu P. Dayal, Munsif, 3rd Court, Gaya, dated the 27th October 1925.

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is that of a licensee-tenant-at-will, the defendants may be ordered to vacate the house and garden in suit.....”

The plaintiff valued the suit at Rs. 400 which was much less than the value of the house. One of the objections on behalf of the defendants was that the suit had been undervalued and that the Munsif had no jurisdiction to entertain the suit. An issue was framed on the subject and the Munsif, who proceeded to determine this issue in the first instance, held that the suit was for a declaratory decree and consequential relief and, therefore, that the suit ought to be valued according to the valuation of the subject-matter of the suit, namely, the house in dispute, under section 7(iv)(c) of the Court-fees Act. The plaint was therefore returned for presentation to the proper court. On appeal the District Judge affirmed the order.

Held, in revision, (i) that the suit as framed was a suit for ejectment and that court-fee was payable under section 7(v), Court-fees Act, according to the market-value of the subject-matter of the suit;

(ii) that the subject-matter of the suit was the right to eject the defendants and the value of that right was the value to defendants of the right to remain in the house under the license of the plaintiff;

(iii) that the valuation of a suit is determined not upon the plea taken in the written statement, but upon the allegations made in the plaint.

Ramraj Tewari v. Girnandan Bhagat(1) was referred to.

Where, therefore, a suit was valued at Rs 400 and the trial court did not find the valuation to be unreasonable the High Court held that the suit was properly valued and remanded the case for disposal according to law.

Application by the plaintiff.

The facts of the case material to this report are stated in the headnote, *supra*.

Hasan Jan, Kailas Pati and Sarjoo Prasad, for the petitioner.

Md. Yunus (with him *Manohar Lal*), for the opposite party.

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KULWANT
SAHAY, J.

KULWANT SAHAY, J. (after stating the facts of the case, proceeded as follows):

The whole question is whether the suit as framed asks for a declaratory decree and for consequential relief. In my opinion the suit as framed is a suit for ejectment. The prayer for determination of the plaintiff's title was only incidentally made in the plaint. It is not denied on behalf of the defendants that at the time they entered the house the plaintiff was the owner of the house. They set up a subsequent gift from the plaintiff. The plaintiff denies that she made any gift to the defendants. If the defendants can succeed in proving the oral gift, the suit will certainly be dismissed: but the valuation of the suit is to be determined not upon the plea taken in the written statement but upon the allegations as made in the plaint. The plaint merely asks for a decree for ejectment of the defendants. The case comes, in my opinion, under section 7, clause (v), of the Court-fees Act and the court-fee payable is according to the market-value of the subject-matter of the suit. The subject-matter of the suit is the right to eject the defendants and the value of that right is the value at which the defendants' right to remain in the house under the license of the plaintiff may be valued [See *Ramraj Tewari v. Girnandan Bhagat*(1)]. The plaintiff has valued it at Rs. 400. The Court does not say that this valuation is an unreasonable one. The plaintiff, however, has put in a petition for leave to amend the plaint in order to make her position clear. In my opinion she ought to be given an opportunity to amend the plaint.

The order of the Munsif returning the plaint will therefore be set aside and the case remanded to him for consideration of the application for amendment of the plaint and for disposal of the suit according to law.

Ross, J.—I agree.

Case remanded.