

off any of the reliefs. For the reasons already given in the aforesaid order, ad valorem court-fee must, therefore, be paid on the plaint as well as on the memorandum of appeal in the lower appellate court. The defendant, who was appellant in the lower appellate court, has already paid the deficit court-fee; and the learned Vakil for the plaintiff says that he is ready to deposit the court-fee payable upon the plaint. Let him do so.

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MEGHNI.

APPELLATE CIVIL.

Before Jwala Prasad and Bucknill, J.J.

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v.

DEVA SINGH.*

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March, 31.

Suits Valuation Act, 1887 (Act VII of 1887), section 11, meaning of—under-valuation, appeal to the District Judge by reason of—Second Appeal to High Court—Valuation increased beyond the pecuniary jurisdiction of District Judge—order of District Judge, whether without jurisdiction.

The plaintiff valued the present suit, for the purposes of jurisdiction, at Rs. 2,550. The defendants in their written statement contended that the suit was under-valued and the court-fee paid was insufficient. Upon this plea the Subordinate Judge framed an issue which, however, was not pressed at the trial and was accordingly decided in favour of the plaintiff. The suit was decreed and on appeal to the District Judge by the defendant the plaintiff did not object to the valuation of the appeal or to the jurisdiction of the District Judge to entertain the appeal. The decree of the first court was reversed and the plaintiff preferred a second appeal to the High Court which, however, held that the valuation of the suit, and, therefore, of the appeal, should have been Rs. 8,000. The appellant made

* In the matter of appeal from Appellate Decree no. 666 of 1923, from a decision of Rai Bahadur J. Chatterjee, Additional District Judge of Patna, dated the 9th April, 1923, reversing a decision of Maulavi Saiyid Ghalib Hussain, Additional Subordinate Judge of Patna, dated the 21st February, 1922.

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good the deficiency in the court-fee, but on the strength of this order contended that the appeal to the District Judge was incompetent and his order without jurisdiction.

Held, that the under-valuation prejudicially affected the disposal of the appeal on the merits within the meaning of section 11(1) (b) of the Suits Valuation Act, 1887, and, therefore, that the order of the District Judge was without jurisdiction. The High Court treated the appeal as an appeal from an original decree, disregarding the appellate decree passed by the District Judge.

Mohini Mohan Misser v. Gour Chandra Rai (1) and *Sah Radha Krishna v. Babu Mahadeo Lal* (2), followed.

Kelu Achan v. Cheriya Parvathi Kethiar (3) and *Vettehatte Vectil Charatto v. K. A. Krishna Nair* (4), dissented from.

Maharaja Bahadur Kesho Prasad Singh v. Lakhu Rai (5), distinguished.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of the court.

Manuk (with him *S. Dayal* and *N. C. Sinha*), for the appellant :

Sir Ali Imam (with him *S. N. Bose*), for the respondents.

JWALA PRASAD and BUCKNILL, J.J.—Mr. Manuk on behalf of the appellant contends that the decree made by the court below must be set aside upon the sole ground that the appeal filed by the defendants in that court was wholly incompetent. The ground for this contention urged is that the value of the subject-matter of the suit was over Rs. 5,000 and hence the appeal from the decision of the Subordinate Judge who tried the case lay directly to the High Court, and not to the District Judge.

The plaintiff, who is the appellant before us, valued the suit for the purpose of jurisdiction at

(1) (1921) 5 Pat. L. J. 897. (3) (1924) I. L. R. 46 Mad. 681, F. B.

(2) (S. A. 1204 of 1922.) (4) (1921) 62 Ind. Cas. 715.

(5) (1923) 4 Pat. L. T. 525.

Rs. 2,550. The defendants in their written statement stated that the properties in the suit were under-valued and the court-fee paid was insufficient. Upon this plea the Subordinate Judge raised an issue as to the sufficiency of valuation and the court-fee paid by the plaintiff, that is, issue no. 1. At the hearing this issue was not pressed, and the court held.

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"The court-fee paid according to law is all right."

The suit was decreed.

The defendants appealed to the District Judge, and valued their memorandum of appeal according to the valuation thereof mentioned by the plaintiff in his plaint, and they paid the same amount of court-fee as was paid by the plaintiff on his plaint. The plaintiff, who was respondent before the learned District Judge, did not object to the valuation of the appeal or the jurisdiction of the District Judge to entertain the appeal. The District Judge set aside the decree of the Subordinate Judge and dismissed the plaintiff's suit. The plaintiff has come to this court.

In this court the Stamp-Reporter discovered that the subject-matter of the litigation was under-valued and, according to him, the proper valuation should have been over Rs. 8,000. The plaintiff made up the deficiency in the court-fee paid by him on the plaint and on the memorandum of appeal in this court. Yesterday, the defendants-respondents objected to the valuation of the Stamp-Reporter and the question came before us under sections 10 to 12 of the Court-fees Act and we by our order passed yesterday upheld the valuation fixed by the Stamp-Reporter and directed the defendants-respondents to make up the deficiency, or else the matter would be dealt with under sections 10 to 12 of the Court-fees Act.

It is now contended on behalf of the appellant that the value of the subject-matter of the litigation having been now finally settled to be over Rs. 5,000,

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the court below had no jurisdiction to entertain the appeal filed by the defendants. In support of this contention two rulings of this court have been cited [*Mohini Mohan Misser v. Gour Chandra Rai*⁽¹⁾ and an unreported decision in the case of *Sah Radha Krishna v. Babu Mahadeo Lall Goenka*⁽²⁾, decided on the 22nd June, 1925]. The defendants, on the other hand, rely upon the decision of this court in *Maharaja Bahadur Kesho Prasad Singh v. Lakhu Rai*⁽³⁾ and two other decisions: one a Full Bench decision of the Madras High Court in *Kelu Achan v. Cheriya Parvathi Nethiar*⁽⁴⁾ and the other in *Vattekatte Veetil Chorotto Amma's daughter Ammalu Ammal v. K. A. Krishna Nair*⁽⁵⁾.

The Suits Valuation Act (Act VII of 1887) has laid down the rules as to how a case of this kind should be dealt with. Section 11, clause (1), says—

"An objection that by reason of the over-valuation or under-valuation of a suit or appeal, a court of first instance or lower appellate court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto, shall not be entertained by an appellate court unless

(a) the objection was taken in the court of first instance at or before the hearing at which issues were framed and recorded, or in the lower appellate court in the memorandum of appeal to that court, or

(b) the appellate court is satisfied for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and, that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits."

Clause (2) says—

"If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate court is not satisfied as to both the matters mentioned in clause (b) of that sub-section, and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the court of first instance or lower appellate court."

In this case an objection was taken as to the valuation by the defendants themselves in their written statement in the court of the first instance. Therefore,

(1) (1921) 5 Pat. L. J. 397. (3) (1923) 4 Pat. L. T. 525.

(2) S. A. no. 1204 of 1922. (4) (1924) I. L. R. 46 Mad. 631, F. B.

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clause (a) of sub-section (1) applies to this case. It is now concluded by the decision of this court that the suit as well as the appeal in the court below were under-valued and that the proper value was such as took the matter out of the jurisdiction of the lower appellate court. Therefore, the first part of clause (b) is also satisfied. In accordance with this section it is not enough to set aside the decree of the court below unless under the second part of clause (b) the under-valuation prejudicially affected the disposal of the suit or the appeal on its merits. There is no question as to the valuation not having affected the disposal of the suit by the court of the first instance on account of its valuation where the suit was tried by the Subordinate Judge of Patna, who had local jurisdiction over the subject-matter in suit and his pecuniary jurisdiction was unlimited. Therefore, it did not matter whether the value of the suit was mentioned in the plaint to be Rs. 2,550 or over Rs. 5,000 or Rs. 10,000. The Subordinate Judge in question would in any case have tried the suit. Therefore, the under-valuation did not affect the disposal of the suit on its merits in the trial court

The matter is, however, different so far as the lower appellate court is concerned. If the appeal were properly valued, then the lower appellate court would have no jurisdiction to entertain the appeal or dispose of it on its merits. The appeal then would have come directly to the High Court where it could have been heard and disposed of by a Bench consisting of two Judges. No doubt, it has ultimately come to a Bench of this court consisting of two Judges but it has come as a second appeal and the power of the court is limited to points of law only. In other words, the court cannot enter into the merits of the case, whereas if it had come as a first appeal it would have entered into the merits of the case. Therefore, literally speaking, the disposal of the appeal on its merits has been affected on account of the under-valuation. The view taken by the Madras High

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Court does not commend itself to us, and with great respect to the decision of that court, which is a decision of a Full Bench, we do not find ourselves in agreement with the view of that court. We think that the decision is not in accordance with the true interpretation of section 11 of the Suits Valuation Act. It does not seem to have taken into consideration the import and effect of the words in that section "the disposal of the suit or appeal on its merits". The decision of this court in *Maharaja Bahadur Kesho Prasad Singh v. Lakhu Rai*⁽¹⁾, is fully in accordance with the provisions in the section; but it is a decision with respect to the circumstances and facts which were before the court in that case. The court however, ultimately found it equitable to enter into the merits of the case and to treat the second appeal as a first appeal. The other two cases of this court, particularly the unreported case, are on all fours with the present case.

We think the order which will meet with the requirements of the section and the ends of justice should be to treat this second appeal as a first appeal, ignoring the judgment of the court below and allowing the parties to go into the merits of the case, that is, into the evidence, etc., just as in a first appeal.

The appellants has consented to supply typed copies of the evidence for the use of the court and also for the use of the respondents.

According to the order which has just been passed it would seem that the appellants here becomes the respondents and the respondents become the appellants. The memorandum of appeal which was filed in the court below by the defendants will be treated as the grounds of appeal to this court. It will be open to the appellants to add to the grounds already mentioned in the memorandum of appeal in the court below. The question of cost of the paper-

(1) (1923) 4 Pat. L. T. 525,

books will depend upon the result of the final hearing of the case.

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Mr. N. C. Sinha on behalf of the appellant says that he will print paper-books of the oral and documentary evidence, for he considers that it will be less costly and inconvenient than to get the paper-books typed. He must do so in consultation with the Deputy Registrar of the Court.

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Before Das and Ross, J.J.

MALIK FAZLUL RAHMAN

v.

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1926.

April, 8.

Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 16—Bengal Tenancy Act, 1885 (Act VIII of 1885), section 69—Application for execution of order under, by transferee of the land—Person claiming adversely to the decree-holder, whether entitled to execute the decree.

F instituted proceedings under section 69 of the Bengal Tenancy Act, 1885, against the tenants of certain land and obtained an order appointing an officer to appraise or divide the produce of the land. The land in respect of which the decree had been obtained passed into the hands of *K* who had obtained a decree against *F* in the civil court. *K* sought to execute the order obtained by *F* against the tenants on the ground that she was the representative-in-interest of *F*. Order XXI, rule 16, Code of Civil Procedure, provides: "Where a decree.....is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder."

*Appeal from appellate order nos. 192, 301 to 328 of 1925, from an order of F. F. Madan, Esq., i.c.s., District Judge of Gaya, dated the 19th of May, 1925, confirming an order of Babu Sadhu Charan Mahanti, Munsif of Gaya, dated the 25th February, 1925.