

## APPELLATE CIVIL.

*Before Kulwant Sahay and Allanson, JJ.*

SYED AMIR NAWAB

v.

MUSAMMAT WAJDA BEGUM.

*Suits Valuation Act, 1887, (Act VII of 1887), section 8—suit valued at a sum below Rs. 5,000—appeal to High Court on increased valuation, whether maintainable—plaintiff whether can alter valuation—forum, determination of—Bengal, United Provinces and Assam Civil Courts Act, 1887 (Act XII of 1887), section 21(1).*

Plaintiff brought a suit in the court of the Subordinate Judge for a declaration that the properties in suit were wakf properties and paid the fixed court-fee under Schedule II, Article 17, Court-fees Act, after having valued the suit for the purpose of jurisdiction at a sum below Rs. 5,000. The suit was dismissed. Under section 21(1) of the Bengal, United Provinces and Assam Civil Courts Act, 1887, an appeal lay to the court of the District Judge but the plaintiff preferred an appeal to the High Court on the allegation that the real value of the properties in suit exceeded Rs. 5,000. The defendant accepted the increased valuation but contended that the plaintiff could not change the valuation and that the procedure adopted was illegal.

*Held, (i)* that the plaintiff was not debarred from showing what the real value of the subject-matter of the suit was, and that the forum of appeal was to be determined not by the valuation as stated in the plaint, but by the real value of the subject-matter of the suit;

*Mohini Mohan Misser v. Gour Chandra Rai* (1), *Mahanth Rukmin Das v. Deva Singh* (2) and *Shah Radha Kishan v. Mahadeo Lal* (3), followed.

*(ii)* that the procedure adopted by the plaintiff in preferring the appeal directly to the High Court, without first appealing to the court of the District Judge, was proper.

(1) (1920) 5 Pat. L. J. 397.

(2) (1926) 7 Pat. L. T. 407.

(3) S. A. 1924 of 1922 (unreported).

The defendant no. 1, Musammat Wajda Begum, obtained a decree for dower against her husband Saiyid Amir Nawab, the plaintiff in the suit, in March 1925. In execution of that decree she attached certain properties alleging the same to belong to her judgment-debtor, the plaintiff in the present suit. The plaintiff objected to the attachment on the ground that the properties sought to be attached were not his personal properties but were waqf properties and that he was in possession as mutwali. His objection was disallowed. The plaintiff thereupon instituted the suit, out of which the present appeal arose, in the Court of the Subordinate Judge of Patna, for a declaration that the properties were waqf properties and not his personal properties. The Subordinate Judge dismissed the suit.

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In her application for execution the defendant no. 1 valued the properties sought to be attached at Rs. 3,200. The plaintiff in his suit valued the properties at the same amount of Rs. 3,200. No objection appeared to have been taken by the defendant no. 1 as regards this valuation. No issue was framed on the point, and the suit was disposed of by the Subordinate Judge on the valuation stated in the plaint.

According to this valuation an appeal against the decision of the Subordinate Judge lay to the Court of the District Judge. The plaintiff-appellant, however, preferred the appeal to the High Court and valued the appeal at Rs. 21,620-4-0. The reason of the increase in the valuation was stated to be this: Two properties formed the subject-matter of the suit. One of these properties was acquired by the Government under the Land Acquisition Act and a sum of Rs. 20,420-4-0 was paid as compensation thereof. The other property in suit had been valued at Rs. 1,200; and thus the plaintiff-appellant valued the appeal at Rs. 21,620-4-0.

The acquisition of the property was made, according to the statement of the parties, in December

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1925, and the compensation of Rs. 20,420-4-0 appeared to have been awarded before the institution of the suit in January 1926. The defendant-respondent did not challenge the correctness of the fact that one of the properties was represented by a sum of Rs. 20,420-4-0 as compensation awarded under the Land Acquisition Act. The value of the subject-matter of suit, therefore, was in fact above the sum of Rs. 5,000.

The question which arose in the appeal was, whether under these circumstances the forum of appeal was to be determined by the valuation as stated in the plaint, or by the real value of the subject-matter of the suit.

The Stamp-reporter reported that the appeal lay to the Court of the District Judge inasmuch as the valuation put by the plaintiff in his plaint determined the jurisdiction of the Court, and the value of the subject-matter of the suit, as fixed in the plaint, determined the forum of appeal. The Registrar was also of opinion that the appeal lay to the District Judge, and he relied upon the provisions of section 21(7) of the Bengal, United Provinces and Assam Civil Courts Act, 1887.

The matter was referred to a Bench, and by an order dated the 14th of December, 1926, the Court directed notice to issue on the respondent for determining the question whether the High Court had jurisdiction to entertain this appeal.

*Rai Tribhuan Nath Sahay*, for the appellant:—  
In the present case the valuation of the suit for the purpose of jurisdiction will be the subject-matter of the suit. Although on the valuation stated in the plaint an appeal would lie to the court of the District Judge, my appeal to this court is not incompetent if I succeed in showing that the real value of the property is a sum far exceeding Rs. 5,000. I am not debarred from showing that the valuation given in

the plaint was erroneous. The forum of appeal is determined by reference to the real valuation of the subject-matter of the suit. I could not appeal to the court of the District Judge inasmuch as, having regard to the value of the appeal, an appeal to him would have been incompetent and his decree would have been without jurisdiction. The under-valuation in the plaint cannot operate as an estoppel against me; it is the duty of the court to determine the real value of the subject-matter of the suit. I rely on *Mohini Mohan Misser v. Gour Chandra Rai* (1), *Dayaram Jagjivan v. Gordhan Das Dayaram* (2) and *Satish Chandra Joardar v. Kumar Birendra Nath Ray Bahadur* (3).

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Under similar circumstances, where the valuation in the plaint was put at a sum below Rs. 5,000, this court ordered an investigation, and, after having found that the real value of the subject-matter of the suit was higher than the pecuniary jurisdiction of the District Judge, held that the decree of the District Judge was without jurisdiction. [*Mahanth Rukmin Das v. Deva Singh* (4) which has followed an earlier unreported decision of this court in *Shah Radha Krishna v. Mahadeo Lal Goenka* (5)].

In *Satish Chandra Joardar v. Kumar Birendra Nath Ray Bahadur* (3) the plaintiff was allowed to appeal to His Majesty in Council although originally he had valued the suit at a sum below Rs. 10,000.

*Khurshaid Husnain* (with him *Syed Ali Khan*) for the respondent:—The appellant having valued the suit at a sum below Rs. 5,000, cannot now turn round and say that he had undervalued it. He cannot be allowed to approbate and reprobate to suit his purpose. Under Order VII, rule 1, the plaintiff has to value the suit and when once he has done so the forum of appeal is determined

(1) (1920) 5 Pat. L. J. 397. •

(3) (1926-27) 31 Cal. W. N. 268.

(2) (1907) I. L. R. 31 Bom. 73. • (4) (1926) 7 Pat. L. T. 407.

(5) (1922) S. A. 1904 (unreported).

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under section 21 of the Act by reference to such valuation. It is merely to escape the bar of limitation that the plaintiff has appealed directly to this court; his appeal to the District Judge had in fact become time-barred. As a rule of law a party cannot at his leisure choose a forum of appeal before the real value of the subject-matter of the suit is judicially determined. Under section 96, Code of Civil Procedure, read with section 21 of Act XII of 1887, the plaintiff was bound to go to the District Judge in appeal on the valuation as it stood. The cases cited by the appellant have no bearing as in each of them the parties had, in the ordinary course, proceeded through the proper channel according to the original valuation. *Satish Chandra Joardar v. Kumar Bivendra Nath Ray Bahadur* (1) is not applicable inasmuch as appeals to His Majesty in Council are not controlled by section 21 of Act XII of 1887, and, secondly, because these cases are generally governed by the second part of section 110, Code of Civil Procedure, which lays down that "the decree or final order must involve directly or indirectly some claim or question to or respecting property of like amount or value".

*Tribhuan Nath Sahay*, replied.

*Cur. adv. vult.*

S. A. K.

KULWANT SAHAY and ALLANSON, JJ. (after stating the facts set out above, proceeded as follows:)

Under section 8 of the Suits Valuation Act where in suits other than those referred to in section 7, paragraphs V, VI and IX, and paragraph X, clause (d), of the Court-fees Act, court-fees are payable advalorem, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same. In the present case court-fee is payable under Schedule II, Article 17 of the Court-fees Act. The fee payable on the plaint

(1) (1926-27) 31 Cal. W. N. 268.

as well as on the memorandum of appeal is a fixed sum of Rs. 15 and not advalorem. Therefore, the value of the subject-matter of the suit must be the market value thereof. Having regard to the circumstances of the present case, there can be no doubt that the market value of the subject-matter of suit exceeds the sum of Rs. 5,000, and under section 21(1) of Act XII of 1887 the appeal would lie to the High Court.

It has, however, been contended on behalf of the defendant-respondent that the plaintiff having valued the properties in suit in his plaint at a sum below Rs. 5,000, he is not now entitled to alter the valuation, and that the value of the subject-matter of the suit must be taken to be the valuation as stated in the plaint, and that, therefore, the appeal would lie to the District Judge. Learned Advocate for the defendant-respondent referred to Order VII, rule 1, of the Code of Civil Procedure where it is provided that the plaint shall, among other matters, contain a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees so far as the case admits. He next refers to section 96 of the Code and contends that the appeal would lie to the Court authorised to hear the appeal, and that the Court authorised to hear this appeal under section 21 of Act XII of 1887 is the Court of the District Judge. These provisions, however, in my opinion, do not help us in determining the question now before us. Order VII, rule 1, merely directs that the value of the subject-matter of the suit should be stated in the plaint, and section 96 directs that the appeal would lie to the Court authorised to hear the appeal. The real question is, what is the value of the subject-matter of the suit. The value of the subject-matter of the suit unquestionably exceeds the sum of Rs. 5,000, and, therefore, the Court authorised to hear the appeal would be the High Court.

It is, however, contended that the plaintiff having valued the subject-matter of the suit in the plaint

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at a certain sum cannot now turn round and say that the valuation is higher than that sum. In my opinion there is nothing in the law to prevent the plaintiff-appellant from showing what the real value of the subject-matter of the suit is. Cases have frequently come up to this Court where objection has been taken that the valuation given in the plaint did not represent the true value of the subject-matter of the suit, and this Court has on several occasions enquired into the real value of the subject-matter of the suit inspite of the fact that the plaintiff had stated the value at a certain figure in the plaint.

In *Mohini Mohan Misser v. Gour Chandra Rai* <sup>(1)</sup> the suit was valued in the plaint at Rs. 1,400. An appeal against the decree passed by the trial Court was filed in the Court of the District Judge, and on the case coming up in Second Appeal to the High Court against the decree of the District Judge in appeal, it was found that the proper valuation of the subject-matter of the suit was Rs. 16,275. It was held that the appeal to the District Judge was incompetent and that his decree was without jurisdiction. No doubt, objection as regards valuation in that suit was taken in the trial Court as well as in the District Judge's Court, but this circumstance does not affect the question now for determination.

In *Mahanth Rukmin Das v. Deva Singh* <sup>(2)</sup> it was held under similar circumstances that the appeal to the District Judge was incompetent, and his decree was without jurisdiction.

In *Shah Radha Kishun v. Mahadeo Lal* <sup>(3)</sup> the Second Appeal was heard by a Division Bench of this Court and judgment delivered. But before judgment was signed, a question was raised as regards the value of the subject-matter of the suit. An inquiry was ordered, and it was found that the value exceeded the sum of Rs. 5,000. It was held

(1) (1920) 5 Pat. L. J. 897.

(2) (1926) 7 Pat. L. T. 407.

(3) S. A. No. 1204 of 1922.

that the District Judge had no jurisdiction to hear the appeal and his decree was set aside on this ground, and the memorandum of appeal presented in the Court of the District Judge was directed to be returned in order to be presented to this Court.

It is contended that, having regard to the valuation put by the plaintiff in his plaint, the memorandum of appeal must be presented before the District Judge, and the question as regards valuation determined by him, and if he found that the value exceeded the sum of Rs. 5,000, it was for him to return the memorandum of appeal to be presented to this Court, and that the plaintiff-appellant could not come up directly to this Court without first going to the Court of the District Judge. In my opinion this is not the proper procedure. If the District Judge had no jurisdiction to entertain the appeal, the plaintiff-appellant cannot be compelled to present his memorandum before the District Judge with the object of its being returned.

The question whether the plaintiff can be allowed to show that the valuation given by him in the plaint is below the real value has been frequently raised in applications for leave to appeal to the Privy Council. Under section 110, paragraph 1, of the Code of Civil Procedure the amount or value of the subject-matter of the suit in the court of first instance must be Rs. 10,000 or upwards, and plaintiffs desiring to appeal to His Majesty in Council have frequently been allowed to show that although the valuation put by them in the plaint was below the sum of Rs. 10,000, yet the real value was above Rs. 10,000.

On a consideration of all the circumstances we are of opinion that this Court has jurisdiction to entertain this appeal, and the memorandum of appeal was properly presented to this Court. We, therefore, direct that the appeal be admitted and proceeded with in the ordinary course.

*Appeal admitted.*

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