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COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA v. MAHARAJADHIRAJ SIR KAMESHWAR SINGH.

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agricultural purposes or otherwise. In my opinion this contention is not sound. If the income is derived from land used for agricultural purposes as rent or revenue then such income is exempt from assessment. The income cannot be made taxable unless and until it can be brought strictly within the letter of the law and a fiscal statute must be construed strictly in favour of the subject. After consideration of the document in question and the circumstances of the case I am clearly of opinion that the income in question is exempt from taxation as being rent or revenue derived from land used for agricultural purposes. The assessee is in the position of a landlord with respect to the actual cultivating tenants within the meaning of the term under the Bengal Tenancy Act and the income derived from the lands must be agricultural income within the meaning of the Act and is, therefore, exempt from taxation.

JAMES, J.—I agree.

*Order accordingly.*

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November, 30. December, 1, 4, 21.

## SPECIAL BENCH.

*Before Courtney Terrell, C. J., Kulwant Sahay and James, JJ.*

MUSAMMAT UREHAN KUER

*v.*

MUSAMMAT KABUTRI.*

*Suits Valuation Act*, 1887 (*Act VII of* 1887), *sections* 8 *and* 11—*suit for accounts—pecuniary jurisdiction, whether governed by value of suit stated in the plaint—court, whether has power to award decree for a sum exceeding the limits of its pecuniary jurisdiction—Court-Fees Act*, 1870 (*Act VII of* 1870), *sections* 7 *and* 11—*Bengal, Agra and Assam Civil Courts Act*, 1887 (*Act XII of* 1887), *sections* 18 *and* 19—*Code of Civil Procedure*, 1908 (*Act V of* 1908), *section* 15 *and Order VII, rule* 2—*objection on the score of undervaluation or*

* Appeal from Original Order no. 255 of 1931, from a decision of Babu Narendra Nath Chakravarty, Subordinate Judge of Patna, dated the 13th August, 1931.

*overvaluation, when can be entertained—liability of the legal representative of a defendant to render accounts, nature and extent of.*

In a suit for accounts the pecuniary jurisdiction of the civil court is ordinarily governed by the value stated by the plaintiff in his plaint and if a suit having regard to the valuation in the plaint is within the jurisdiction, such jurisdiction is not ousted by the court finding that a decree for a sum exceeding the limits of its pecuniary jurisdiction should be given to the plaintiff.

The jurisdiction to consider the right of the plaintiff to an account is conferred by the valuation of the plaint in the first instance and the ultimate decision on the enquiry into the accounts can have no bearing upon the conduct of the trial upon its merits.

*Dinanath Sahay* v. *Musammat Mayavati Koer*(1), *Sudarshan Das Shastri* v. *Ram Prasad*(2), *Khudajiatul Kubra* v. *Amina Khatun*(3) and *Ambadas Harirao Karante* v. *Vishnu Govind Baramanikar*(4), followed.

*Golap Sundari Debi* v. *Indra Kumar Hazra*(5), not followed.

Order VII, rule 2, Code of Civil Procedure, 1908, however imposes upon the plaintiff the duty of approximately and in a bona fide manner putting a value upon his suit. It is always open to a defendant to object to the value at the earliest possible moment on the ground of undervaluation or overvaluation. But such an objection on the ground of pecuniary jurisdiction must be taken in the trial court at the earliest possible opportunity and where the objection is not taken it is not to be entertained thereafter unless the appellate court is satisfied that there has been some miscarriage of justice on the merits.

*Khudajiatul Kubra* v. *Amina Khatun*(3) followed.

Where during the pendency of a suit for accounts the defendant dies and his legal representative is substituted in his place, the only liability of such legal representative is to disclose all books and documents in his possession and power

(1) (1921) 6 Pat. L. J. 54.
(2) (1910) I. L. R. 33 All. 97.
(3) (1923) I. L. R. 46 All. 250.
(4) (1926) I. L. R. 50 Bom. 839.
(5) (1909) 13 Cal. W. N. 493.

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and he is liable on the taking of the accounts for the amount of money, if any, wrongfully withheld from the plaintiff to the extent of the assets of the deceased in his hands.

Appeal by the plaintiff.

The facts of the case material to this report are set out in the judgment of Courtney Terrell, C. J.

The case was in the first instance heard by Courtney Terrell, C. J. and Kulwant Sahay, J. who referred it to a larger Bench.

On this Reference.

*Bhuvaneshwar Prasad Sinha* and *S. B. Prasad*, for the appellant.

*P. R. Das* (with him *S. N. Bose* and *D. C. Verma*), for the respondent.

COURTNEY TERRELL, C. J.—The facts of this case are as follows:—The plaintiff is the widow of one Ramprit Sahu. The defendant was originally one Ram Khelawan but he died during the pendency of the suit and his widow was substituted in his place. The plaint alleges that the late Ramprit had a gola business, that is to say, a warehouse to which merchants brought their goods for sale (paying the proprietor a commission on transactions) to which business the plaintiff succeeded on his death. The plaintiff finding that she could not manage the business by herself took into partnership the late Ram Khelawan. A deed dated the 29th January, 1923, was executed between the parties who became partners in losses and gains sharing equally. Furthermore each advanced a sum of Rs. 5,000 in addition to the capital already invested in the business. The sole custody of the business was left to Ram Khelawan and it was provided that in each year he would render accounts to the plaintiff. After many fruitless requests Ram Khelawan ultimately on the 25th March, 1929, rendered his first and only statement of account, a copy of which was filed with the plaint

and since the 16th April, 1929, he repudiated partnership and began to assert an exclusive title to the business. The accounts rendered are said by the plaintiff to be incorrect and she started criminal proceedings against Ram Khelawan which were however unsuccessful. The plaintiff sued for dissolution of partnership and asked that the business might be wound up and that the defendant should be ordered to deliver accounts from the 20th January, 1923, to date. The plaintiff for the purpose of jurisdiction valued her suit under section 7(*iv*) of the Court-fees Act at Rs. 1,000 paying a court-fee of Rs. 97/8 on that value.

The material part of the defence with which we are concerned is contained in the first two paragraphs of the written statement which are as follows :—

" 1. The suit is not maintainable in this manner in which the plaintiff has instituted it.

2. The suit is not fit to be heard by this court (*moqadma haza kabil samayat adalat haza ke nahin hai*) and the suit is bad for not impleading Sham Lal Sahu and Chandan Ram Sahu " (persons whom the defendant alleged to be existing partners in the defendant's business).

The suit came on for trial before the Munsif who held that Ram Khelawan was liable to account. Further he held that the defendant's widow was liable to render accounts as the legal representative of Ram Khelawan but that her liability would be limited to the assets of the deceased in her hands. At this stage it may be pointed out that the only liability of the widow is that she must disclose all books and documents in her possession or power and that she is liable on the taking of the accounts for the amount of money, if any, wrongfully withheld from the plaintiff to the extent of the assets of the deceased in her hands. The plea by the defendant that the suit was bad because of the failure to join the plaintiff's two sons was overruled and it is not insisted upon before us. The Munsif concluded his

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judgment by stating that an objection to the valuation of the suit had been taken at the time of the trial. It was said that according to the statement in the plaint the suit should have been valued at more than Rs. 1,000 and hence that the court had no jurisdiction to try the suit. The Munsif overruled this plea and stated that there was nothing in the plaint to show that this amount had been arbitrarily or inadequately fixed or that the amount ultimately found to be due would exceed Rs. 1,000.

It has been argued before us that this plea was taken in paragraph 2 of the written statement. In my opinion this paragraph will not bear the construction urged by the defendant. The pleading is of a vague character but the reference to the failure to implead the two alleged partners is of its essence. The Munsif was right in stating that the objection to valuation was taken at the time of the trial. In my opinion it was not taken at any earlier date.

The defendant appealed to the Subordinate Judge. Before the appeal was argued the defendant who had paid into court Rs. 1,000 as security offered this sum in full satisfaction of the respondent's dues and argued that as the jurisdiction of the Munsif was limited to Rs. 1,000 that was the maximum for which a decree could be passed even if, when the accounts came to be taken, it should be found that more than Rs. 1,000 was due to the plaintiff. This argument has been pressed before us and it has been urged that the Munsif has no jurisdiction to pass a decree for a sum exceeding his pecuniary jurisdiction. It is further urged that on the plaint itself it is clear that the plaintiff's dues, if she became successful, must be more than Rs. 5,000. This is founded upon the fact that the plaintiff relied upon the allegation that each party had contributed Rs. 5,000 to the capital of the firm and that that sum was claimable by the plaintiff. Upon the true construction of the claim I am unable to see that any such claim was made. Moreover it would be balanced by the claim of the defendant to

recover his own contribution of Rs. 5,000. It is a mere statement of the history of the partnership and of the matters which must be considered in taking the account. It is not a claim to the sum of Rs. 5,000. Furthermore, it is alleged in the plaint as an act of repudiation of the partnership by the defendant that he began to take away bags of grain, the property of customers, from the Gola and alleging that the value of such grain must amount to over Rs. 5,000, that that sum being claimed from the defendant was an additional reason for making the value of this suit as stated in the claim more than Rs. 1,000. These two latter arguments of the defendant were accepted by the Subordinate Judge. In my opinion both are erroneous and the true allegations by the plaintiff are not the basis of the claim nor do they constitute claim to the specific amounts.

The defendant, however, persists before us in the argument that having paid into court Rs. 1,000 and the jurisdiction of the Munsif being limited to that sum the Munsif had no power to pass a decree for any sum in excess of that amount and that he should not have proceeded to try it; nor should he have ordered the taking of accounts for if, when the accounts come to be taken, the amount found due is more than Rs. 1,000, it will not be possible to pass a decree for the excess. Now jurisdiction is governed by sections 18 and 19 of the Civil Courts Act, 1887, which are as follows :—

" 18. Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure, to all original suits for the time being cognizable by Civil Courts.

19. (*1*) Save as aforesaid, and subject to the provisions of sub-section (*2*) the jurisdiction of a Munsif extends to all like suits of which the value does not exceed one thousand rupees."

By section 15 of the Code of Civil Procedure every suit shall be instituted in the court of the lowest grade competent to try it. Valuation of a

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suit for the purpose of jurisdiction is regulated by the Suits Valuation Act of 1887. Section 8 of this Act inter alia provides that the value of the subject-matter of a suit for partnership accounts for the purposes of jurisdiction is the same as that determinable for the computation of court-fees and the amount of the court-fee is governed by the Court-fees Act of 1870. By section 7 of that Act suits for accounts are to be valued according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. Under Order VII, rule 2, of the Code of Civil Procedure where the plaintiff sues for mesne profits or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for. Under section 11 of the Court-fees Act in a suit for an account if the amount decreed on taking the account is in excess of the amount at which the plaintiff valued the relief sought, the decree is not to be executed until the difference between the fee actually paid and the fee which would have been payable if the whole amount so decreed had been stated shall have been paid. It is, therefore, contemplated that notwithstanding the valuation of the suit obligatory upon the plaintiff for the purposes of jurisdiction, the fee payable may be increased to correspond to the amount ultimately found to be due. Now if the amount ultimately found to be due should exceed the pecuniary jurisdiction of the court, it was argued, but without much force, that the jurisdiction of the Munsif was entirely removed. I cannot think that it was the intention of the legislature that a suit should at one time be considered within the jurisdiction of the court and subsequently after the trial of the suit on its merits the court should be held to have had no jurisdiction. In my opinion this argument does not merit serious consideration.

Now there are certain cases where the Munsif is expressly given jurisdiction by the Code of Civil

Procedure to take accounts and some of these are dealt with in Order XX. By order XX, rule 15, the court has power in a partnership action to pass a preliminary decree and to direct accounts to be taken and provided that the condition of the Suits Valuation Act and the Court-fees Act are properly complied with, the Munsif clearly had jurisdiction to entertain the partnership action, to pass preliminary decree and to direct the taking of accounts. Another case is provided by Order XX, rule 12, where the suit is for the recovery of possession and mesne profits and here the court is given jurisdiction not only to estimate the amount of the mesne profits up to the institution of the suit but subsequent to the suit until delivery of possession. In such cases it is only reasonable to suppose that the court should have power to direct payment of such amount as may ultimately be found due notwithstanding that this may exceed the pecuniary jurisdiction of the Munsif. In a case where the enquiry had been conducted under Order XX, rule 12, the power of the Munsif to grant a decree for a sum larger than his pecuniary jurisdiction was affirmed by this court in *Dinanath Sahay* v. *Musammat Mayavati Kuer*(1) where the following expression of opinion was enunciated :—

" The argument that the Munsif is incompetent to investigate a claim which exceeds his pecuniary jurisdiction overlooks the saving clause in section 19 (Civil Courts Act) which preserves his jurisdiction to act under the Civil Procedure Code as one of the enactments for the time being in force. Section 19, it is true, does not empower the Munsif to entertain an application to investigate a claim which exceeds his pecuniary jurisdiction; but, also, it does not prohibit him. The word deliberately used by the legislature in section 19 is 'suit', and though the word ' suit ' must include proceedings in the suit the proceedings must be such as, irrespective of any

(1) (1921) 6 Pat. L. J. 54, 58.

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statute, could properly be had in the suit". It was then pointed out by the court that by the express provision of Order XX, rule 12, the court is competent to pass a decree for mesne profits pendente lite and further that Order XX, rule 12, cannot be read as subject to the provisions of section 19 of the Civil Courts Act.

Similarly in directing an enquiry under Order XX, rule 15, the court must obviously have power to pass a preliminary decree and, after the account has been taken, to pass a final decree for such amount as may be found due. This view of the law has been consistently followed in the High Courts of Allahabad and Madras. The case of *Sudarshan Das Shastri* v. *Ram Prasad*(1) may be taken as an example. This was a suit to redeem a usufructuary mortgage. The sum secured was Rs. 100. The plaintiff stated that the mortgage had been satisfied out of the profits of the property and that probably about another Rs. 100 would be found due to them on taking an account. The suit was brought in the Munsif's court and he gave the plaintiffs a decree for over Rs. 4,000. The High Court held that the pecuniary jurisdiction of the Civil Court is ordinarily speaking governed by the value stated by the plaintiff in his plaint and if a suit having regard to the valuation in the plaint is within the jurisdiction, such jurisdiction is not ousted by the court finding that a decree for a sum exceeding the limits of its pecuniary jurisdiction should be given to the plaintiff and the court disagreed with the decision of the Calcutta High Court in *Golap Sundari Debi* v. *Indra Kumar Hazra*(2). This latter is the only authority on the other side of the argument and it has been apparently followed by the Calcutta High Court but I agree with the reasoning of the Allahabad High Court which was followed in the case of *Khudajiatul Kubra* v. *Amina Khatun*(3).

(1) (1910) I. L. R. 33 All. 97.
(2) (1909) 13 Cal. W. N. 493.
(3) (1923) I. L. R. 46 All. 250.

The latest expression of opinion of the Bombay High Court is contained in *Ambadas Harrao Karate* v. *Vishnu Govind Baramaniker*(1) where at page 842 the learned Judges said :—

"We are unable to agree with the learned Subordinate Judge that the mere fact that the decree was for an amount of Rs. 5,700 and was passed by the second class Subordinate Judge (whose jurisdiction was limited to Rs. 5,000) was ipso facto proof that it was beyond jurisdiction and a nullity. For instance, if a suit has commenced within the jurisdiction and by the addition of mesne profits after the date of institution, the amount is increased to an amount beyond the jurisdiction, a decree for the full amount is, nevertheless, perfectly valid and with jurisdiction. The jurisdiction in the first instance is determined under the Bombay Civil Courts Act by the valuation in the plaint and not by the result of the decree, whatever it might turn out to be It is true that deliberate and mala fide undervaluation or overvaluation might cause the decree to be a nullity".

With these observations I respectfully agree.

It was contended before us that the cases in which under Order XX, rule 12, special jurisdiction was given to the Munsif to deal with the account of mesne profits pendente lite differ in principle from this in which the duty of the Munsif is to enquire into the accounts up to the institution of the suit. The reasoning, however, of the courts and particularly of the court which decided the case of *Dinanath Sahay* v. *Musammat Mayawati Koer*(2) proceeds upon no such basis. In my opinion the Munsif has jurisdiction to pass a decree for a sum, if any, in excess of Rs. 1,000 and the device of the defendant in paying into court the sum of Rs. 1,000 has been entirely ineffective and will not prevent the account from proceeding. If, however, it should be

(1) (1926) I. L. R. 50 Bom. 839.
(2) (1921) 6 Pat. L. J. 54.

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ascertained on taking the account that the sum recoverable does not exceed Rs. 1,000 the Munsif will be able in his discretion to award the costs of taking the account to the defendant. Whether or not he will exercise this discretion will depend upon factors which we need not now take into consideration.

COURTNEY TERRELL, C.J.

It remains to notice a further point against the defendant's contention of want of jurisdiction. I have referred to Order VII, rule 2, which imposes upon the plaintiff the duty of approximately and in a bona fide manner putting a value upon his suit. It was impossible for the plaintiff to estimate precisely the amount which would ultimately be found due. Indeed this is the case in many partnership suits where the active partner is requested by the sleeping partner to deliver accounts of the business transactions of which he has been in charge. It is, however, always open to the defendant to object at the earliest possible moment that the suit has been under or overvalued for the purpose of giving the plaintiff recourse to a court which would otherwise have been incompetent to try the cause. The defendant might, for example, demonstrate that if he were, contrary to his contention, held liable to account he would have to account for a very large sum in excess of the jurisdiction. The tribunal should be given an opportunity of dealing with this matter of jurisdiction at the earliest moment in order that it might not waste time by going into the merits, and the enactment shows that this is the policy of the legislature. Section 11 of the Suits Valuation Act enacts that an objection by reason of over or undervaluation shall not be entertained by an appellate court unless the objection is taken in the court of first instance at or before the hearing at which issues were first framed and recorded or in the lower appellate court in the memorandum of appeal to that court or the appellate court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was overvalued or undervalued and that the overvalua-

tion or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits. As was stated in the case of *Khudajiatul Kubra* v. *Amina Khatun*(1). " It is clearly contemplated there (i.e., in the statute) that any objection which is to be raised on the ground of pecuniary jurisdiction must be taken in the trial court at the earliest possible opportunity and where the objection is not taken, it is not to be entertainable thereafter unless the appellate court is satisfied that there has been some miscarriage of justice on the merits ".

Now the pleading in paragraph 2 of the written statement which I have quoted above does not raise the point of pecuniary jurisdiction. It is either a vague objection or, if on an alternate construction it is not vague, it refers to the defect in not impleading the two alleged partners. That this was the meaning placed by both the parties and by the trial court upon the pleading is demonstrated by the issues which the court framed :—

" *1.* Is the suit bad for non-joinder of Shyamlal and Chandan Ram.

2. Is the plaintiff entitled to a decree for rendition of accounts by the defendant and for winding up the business?

3. To what further relief, if any, is the plaintiff entitled?"

Had the court considered that there was a matter of jurisdiction to be considered it would have framed a specific issue and would have decided it as a preliminary point without proceeding as it did to hear the evidence and consider the case on its merits. Moreover after deciding the isssue the Munsif expressly states that the objection to the valuation was taken at the time of the trial. Further, the lower appellate court has not recorded any reasons in writing to show that the overvaluation or undervaluation had prejudicially affected the disposal of the suit on its merits. The jurisdiction to consider the right of the plaintiff to an account was conferred by the valuation of the plaint in the first instance and the ultimate

(1) (1923) I. L. R. 46 All. 250, 253.

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decision on the enquiry into the accounts could have no bearing upon the conduct of the trial upon its merits. In my opinion the objection to valuation was not taken at the earliest possible moment as prescribed by section 11 and it should fail in any case.

The suit should now go back to the trial court with a direction to the Munsif to enquire into the accounts to be rendered by the widow defendant on the principles enunciated in the earlier part of this judgment. She should make a proper affidavit of all documents in her possession or power and the commissioner should arrive at his estimate of the amount due to the plaintiff from an examination of the materials so disclosed together with such assistance as he can obtain from the parties, but the widow defendant cannot be compelled to furnish an account in the way such an account could have been ordered from her deceased husband, had he been alive, the obligation to render the account being of a personal nature only. The appeal must be allowed with costs throughout. The costs of taking the account will be determined by the Munsif in accordance with the ordinary principles in such cases.

KULWANT SAHAY, J.—I agree.

JAMES, J.—I agree.

*Appeal allowed.*
*Case remanded.*

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December, 21, 22.

## APPELLATE CIVIL.

*Before James and Agarwala, JJ.*

BIRENDRA KESHRI PRASAD NARAIN SAHEE

*v.*

BAHURIA SARASWATI KUER.*

*Transfer of Property Act*, 1882 (*Act IV of* 1882), *sections* 95 *and* 123—*co-mortgagor paying up whole mortgage debt—charge, whether created—right to enforce the charge, when*

* Appeal from Original Decree no. 26 of 1930, from a decision of Babu Jatindranath Ghosh, Subordinate Judge of Muzaffarpur, dated the 25th July, 1929.