

**SPECIAL BENCH.**

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

NARAYAN JHA NARONE

v.

JOGNI PRASAD JHA.\*

1933.

November,  
29, 30,  
December,  
21.

*Suits Valuation Act, 1887 (Act VII of 1887), sections 8 and 11—provisions of the Act, whether applicable to suits in Sonthal Parganas valued up to one thousand rupees—spirit of the Act, whether should be applied—jurisdiction, whether should follow the valuation and allegations in the plaint—objection as to pecuniary jurisdiction when can be entertained—Sonthal Parganas Act, 1855 (Beng. Act XXXVII of 1855), section 2, proviso—suit based on contract of tenancy—plaintiff, duty of, to prove existence of relationship of landlord and tenant—question of title raised by defendant—suit, whether should be converted into possessory or declaratory suit.*

Although it may be doubtful whether the Suits Valuation Act, 1887, has any application to suits in the Sonthal Parganas in which the matter in dispute does not exceed one thousand rupees, the spirit of the Act should nevertheless be applied and, therefore, the jurisdiction should follow the valuation on which court-fee is paid.

For the purposes of jurisdiction and in order to find out whether the matter in dispute exceeds the value of one thousand rupees the criterion is an examination of the plaint and not an examination of the issues framed after the written statement has been filed.

An objection as to valuation in relation to jurisdiction shall not be entertained unless the objection is taken in the court of first instance at or before the hearing at which issues are first framed and recorded, unless the appellate court is satisfied for reasons to be recorded by it in writing, that the error in valuation has prejudicially affected the disposal of the suit or appeal on its merits.

\* Appeal from Appellate Decree no. 541 of 1930, from a decision of E. S. Hoernle, Esq., District Judge of the Sonthal Parganas, dated the 12th December, 1929, reversing a decision of Rai Bahadur Amarendra Nath Das, Subordinate Judge of Deoghar, dated the 26th September, 1929.

1933.

NARAYAN  
JHA NARONE  
v.  
JOGNI  
PRASAD JHA.

Where the plaintiff sues on the express allegation that there was a relationship of landlord and tenant and he seeks to enforce the contract on the part of the tenant that after the period of tenancy the tenant would deliver up the premises, it is essential for him to prove the relationship of landlord and tenant since the suit is essentially based upon contract. On the other hand if the question of title is raised by the defendant and if it is found as a fact that there was no contract of tenancy, the proper course is to dismiss the suit and not to convert it into a declaratory or possessory suit.

*Govinda Kumar Sur v. Mohini Mohan Sen*(<sup>1</sup>), followed.

Appeal by the plaintiffs.

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

*S. N. Basu* (with him *S. N. Banerjee*), for the appellants :—The valuation for the purposes of jurisdiction is according to the value of the right I claim and I have put it at Rs. 2,094. Unless it is definitely found that the valuation is unreasonable that has to be accepted by the court. As the suit relates to the house in question, the value of the house must be the “subject-matter of the suit”.

[CHIEF JUSTICE.—Then you say that in the Sonthal Parganas in suits for possession the valuation for the purposes of court-fee is not the same as the valuation for the purposes of jurisdiction.]

The words “the value of the subject-matter”, as used in Act XXXVII of 1855, should be the criterion—*Aukhil Chunder Sen Roy v Mohiny Mohun Dass*(<sup>2</sup>).

(1) (1929) I. L. R. 57 Cal. 349.

(2) (1879) I. L. R. 5 Cal. 489.

[KULWANT SAHAY, J.—If the suit is to be tried by the ordinary court, how will Act XXXVII of 1855 apply?]

1933.

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 NARAYAN  
JHA NARONE

 v.  
JOUNI  
PRASAD JHA.

By reason of section 3 of Regulation III of 1872 the special law applicable to the Sonthal Parganas must override section 8 of the Suits Valuation Act.

[KULWANT SAHAY, J.—If your valuation was not contested by the defendants then it must be taken to be above Rs. 1,000. That being so, the Suits Valuation Act would apply.]

Yes, then my answer would be section 11 of the Act. The learned judge, while rightly holding that the spirit of the Act should be applied to suits in the Sonthal Parganas in which the matter in dispute does not exceed one thousand rupees, has without any reason omitted to apply the provisions of section 11. I therefore submit that the objection as to overvaluation or undervaluation not having been taken at the earliest stage, the same cannot be entertained now and the Subordinate Judge had rightly refused to go into the matter of jurisdiction.

*S. N. Bose*, for the respondents:—The plaintiffs claim recovery of possession of the house from the tenants. They need not value the property at all. The contention of the appellants that they have to value the property for the purposes of jurisdiction is not tenable. See *Gobinda Kumar Sur v. Mohini Mohan Sen*<sup>(1)</sup>. In the present case no question of title to property is involved.

[JAMES, J.—Why can't the plaintiffs pay higher court-fees under section 7, clause (v), and have their suit tried by the ordinary court?]

The plaintiff cannot be allowed to amend their plaint as the amendment would alter the scope of the suit. The landlord's suit against a tenant cannot be turned into a declaratory or possessory suit against

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(1) (1929) I. L. R. 57 Cal. 349.

1933.

NARAYAN  
JHA NARONEv.  
JOGNI  
PRASAD JHA.

a trespasser. See *Gobinda Kumar Sur v. Mohini Mohan Sen*<sup>(1)</sup>, *Bai Shri Majirajba v. Maganlal Bhaishankar*<sup>(2)</sup> and *Newby v. Sharpe*<sup>(3)</sup>.

[CHIEF JUSTICE.—But you did not raise the question of jurisdiction either in the pleading or in the memorandum of appeal.]

I submit that I can raise the point of jurisdiction for the first time in appeal. The objection was entertained for the first time by the Judicial Committee in *Maha Prasad Singh v. Ramani Mohan Singh*<sup>(4)</sup>. Even the consent of parties cannot confer jurisdiction on a court if it has none—*Ledgard v. Bull*<sup>(5)</sup>.

The provisions of the Suits Valuation Act have no application to suits in the Sonthal Parganas. In any case section 11 cannot apply to the facts of the present case. The section contemplates a case of dispute as regards the valuation of the subject-matter of the suit. It does not apply to a case where the plaintiff puts the valuation arbitrarily and against the principles of valuation.

[Reference was made to *Dhaturi Singh v. Kedarnath Goenka*<sup>(6)</sup>.]

*S. N. Basu*, in reply.

S. A. K.

*Cur. adv. vult.*

COURTNEY TERRELL, C.J.—This is an appeal from a decision of the District Judge of the Sonthal Parganas allowing an appeal from a decision of the Subordinate Judge on the preliminary point that the suit was by reason of its valuation outside the jurisdiction of the Subordinate Judge and was only triable by the court of the Deputy Collector under the Sonthal

(1) (1929) I. L. R. 57 Cal. 349.

(2) (1894) I. L. R. 19 Bom. 303.

(3) (1878) 8 Ch. Div. 99.

(4) (1914) I. L. R. 42 Cal. 116, P. C.

(5) (1886) I. L. R. 9 All. 191, P. C.

(6) (1927) 8 Pat. L. T. 475.

Parganas Act (XXXVII of 1855). The District Judge rejected the plaint with the intimation that it should be presented in that court.

The plaint alleged that defendants were tenants under a lease of a house belonging to the plaintiffs; that the lease had expired; that the defendants refused to leave the demised premises; that a sum of Rs. 72 was owing to the plaintiffs in respect of the last two years of the tenancy as rent and a further sum of Rs. 22 as damages. The plaintiffs claimed ejectment, a decree for Rs. 94 and further damages at the rate of Rs. 2 per diem from the date of the suit till ejectment. A court-fee of Rs. 10-8-0 was paid (on the sum of Rs. 94) but the plaint stated that as the suit related to property worth Rs. 2,000 it was valued at Rs. 2,094 for the purposes of jurisdiction.

The written statement denied the relationship of landlord and tenant and claimed title to the house in question. There was no plea that the Court of the Subordinate Judge had no jurisdiction; but the defendants alleged that the court-fee paid was insufficient.

Four issues were settled, viz. :—

1. Is the suit maintainable?
2. Is the suit bad for misjoinder of issues?
3. Is the court-fee sufficient?
4. Is there any relationship of landlord and tenant?

The Judge heard evidence and decided every issue in favour of the plaintiffs. He said that the question of valuation was not raised before the framing of the issues and that section 11 of the Suits Valuation Act prevented the defendants from raising it at a later stage and refused to go into this matter.

The defendants appealed to the District Judge. It was argued by the defendants that the Subordinate Judge had tried the suit without jurisdiction having reference to the terms of section 9 of Regulation V of

1933.

NARAYAN  
JHA NARJUNEv.  
JOGNI  
PRASAD JHA.COURTNEY  
TERRELL,  
C.J.

1923.

NARAYAN  
JHA NARGNE  
v.  
JOHNI  
PRASAD JHA.  
  
COURTNEY  
FERRELL,  
C.J.

1893 read with Act XXXVII of 1855 inasmuch as the subject-matter of the dispute was not Rs. 2,094 but Rs. 94 only. The plaintiffs argued that their suit was one for recovery of possession and that the value of the property in dispute was the value of the house. The Judge felt himself in some difficulty. The proviso to section 2 of the Sonthal Parganas Act is as follows:—

“ Provided that all civil suits in which the matter in dispute shall exceed the value of one thousand rupees shall be tried and determined according to the general laws and regulations in the same manner as if this Act had not been passed.”

He said that it was doubtful whether the Suits Valuation Act had any application to the Sonthal Parganas in the sense that he doubted if it applied to suits in which the matter in dispute did not exceed one thousand rupees but decided that the spirit of the Suits Valuation Act should nevertheless be applied and that the jurisdiction should follow the valuation on which the court-fees were paid. He held further that the value of the property concerned was no guide to the valuation of the suit having regard to the nature of the plaint. In these conclusions he was, in my opinion, right. For the purposes of jurisdiction and in order to find out whether the matter in dispute exceeded the value of one thousand rupees the criterion is an examination of the plaint and not an examination of the issues which have been framed after the written statement has been filed. In the plaint the plaintiffs sued on the express allegation that there was a relationship of landlord and tenant and they sought to enforce the contract on the part of the tenant that after the period of tenancy the tenant would deliver up the premises. The plaint disclosed no dispute in the matter of title. The principle was well illustrated by the case of *Govinda Kumar Sur v. Mohini Mohan Sen*<sup>(1)</sup> which was a suit of this nature and it was held by the court that it was essential to such a suit that the plaintiff should prove

(1) (1929) I. L. R. 57 Cal. 349.

the relationship of landlord and tenant since the suit was essentially based upon contract. On the other hand if the question of title were raised by the defendant and if it were found as a fact that there was no contract of tenancy the proper course would be to dismiss the suit and not to convert it into a declaratory and possessory suit which was of another nature entirely. In my opinion the suit was wrongly valued by the plaintiffs for the purpose of jurisdiction. On this basis the learned Judge allowed the appeal, set aside the decree passed by the Subordinate Judge and stated that it was open to the respondents to present their plaint in the proper court, that is to say, the court of an officer appointed under Act XXXVII of 1855.

The learned Judge, however, while rightly holding that the spirit of the Suits Valuation Act must be followed neglected to apply the provisions of section 11 of that Act which is based upon the most ordinary principles of justice. It enacts that a question of valuation in relation to jurisdiction shall not be entertained unless the objection was taken in the court of first instance at or before the hearing at which issues were first framed and recorded unless the appellate court is satisfied for reasons to be recorded by it in writing that the error in valuation has prejudicially affected the disposal of the suit or appeal on its merits. Now in this case the defendant did not plead to the jurisdiction nor did he raise the matter before the issues were framed. The trial court was allowed to enter into matters of fact whereas if the defendant wished to raise the question of jurisdiction he should have raised it at the earliest moment. In my opinion the Subordinate Judge was right in these circumstances in refusing to enter into the matter of jurisdiction. There is no written record of any opinion by the District Judge that the trial of the suit had been affected on its merits and indeed the attitude of the defendant is merely that of one who in the first place accepted the jurisdiction of the

1938.

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NARAYAN  
JHA NARONE  
v.  
JOGNI  
PRASAD JHA.

COURTNEY  
TERRELL,  
C.J.

1933.

NARAYAN  
JHA NARONE

v.

JOGNI  
PRASAD JHA.

court but seeks to evade it when disappointed with the decision. In my opinion the proper course is to allow this appeal and to send this case back to the court of the District Judge for argument upon the merits and the defendant should pay the costs of the plaintiffs incurred up to now throughout.

COURTNEY  
TERRELL,  
C.J.

KULWANT SAHAY, J.—I agree.

JAMES, J.—I agree.

*Appeal allowed.**Case remanded.***SPECIAL BENCH.**

1933.

November,  
29.  
December,  
21.*Before Courtney Terrell, C.J., Kulwant Sahay and James, JJ.*

COMMISSIONER OF INCOME-TAX, BIHAR AND  
ORISSA

v.

MAHARAJADHIRAJ SIR KAMESHWAR SINGH.\*

*Income-tax Act, 1922 (Act XI of 1922), section 2, sub-section (1) (a)—advance of loan by assessee—zerpeshgi lease with usufructuary mortgage executed by mortgagor—certain sum to be reserved for lessor mortgagor—balance to be appropriated by mortgagee as “thica profits”—income derived by assessee, whether is agricultural income—fiscal statute—rules of construction.*

The proprietress of an estate executed a zerpeshgi lease with a usufructuary mortgage in favour of the assessee to secure a loan of about 18 lakhs. The yearly income of the mortgaged property was calculated as Rs. 1,59,813. A sum for expenses amounting to Rs. 37,530 was set off. A further sum of Rs. 31,000 called the “thica rent” was reserved for the lessor mortgagor but it was not to be paid direct to her but was to be appropriated by the assessee towards the principal of the loan and in addition there was a provision that the principal of the loan might be reduced by annual payments not

\* Miscellaneous Judicial Case no. 99 of 1932.