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applicable. Dhaneshar died without issue, and her 1/3rd share in the properties therefore passed to the surviving sisters, the appellants before us.

Appeal allowed.

DHAVLE, J.

SPECIAL BENCH.

[Reference under the Court-fees Act, 1870.]

1935.

March 18, 25. *April* 10.

Before Wort, Khaja Mohamad Noor and James, JJ.

DEOJI GOA

v.

TRICUMJI JIVAN DAS.*

Court-fees Act, 1870 (*Act VII of* 1870), *sections* 5, 7(*iv*)(*f*) *and* 12—*suits for accounts—defendant's appeal against preliminary decree—defendant, whether at liberty to put his own valuation on the memorandum of appeal—reference under section* 5 *to a Bench of three Judges—Bench, jurisdiction of, to deal with the matter.*

Plaintiff brought a suit for accounts valuing his relief in the plaint at Rs. 70,000. The Subordinate Judge passed a preliminary decree and the defendant appealed to the High Court, valuing his memorandum of appeal at Rs. 10,000 only. The Taxing Officer held that the valuation was insufficient and referred the matter to the Taxing Judge who, being of the opinion that it was not within his jurisdiction to permit reduction of the valuation, referred the question to a Division Bench. Thereafter a reference under section 5 of the Court-fees Act, 1870, was made to a Bench of three Judges.

Held, (*i*) that section 12 of the Court-fees Act, 1870, was inapplicable and that it was only under section 5 of the Act that the Bench had jurisdiction to deal with the matter;

(*ii*) that although the word "Judge" is used in the singular number in section 5, there is nothing in the section to prevent a reference, in any particular case, to more than one Judge.

*Reference under the Court-fees Act, 1870, in F. A. 73 of 1935.

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Per WORT, J.—In a suit for accounts, where the plaintiff has tentatively valued his relief in the plaint under section 7(*iv*)(*f*) a defendant appealing against the preliminary decree is not bound by the tentative valuation which the plaintiff places upon his claim, and is at liberty to place his own valuation on the memorandum of appeal, which valuation, however, must not be arbitrary. But the court is not precluded at a later stage from deciding on sufficient materials that the memorandum has in fact been undervalued and calling upon the defendant to correct his valuation.

Chuni Lal v. *Sheo Charan Lal Lalman*(1), *C. K. Ummar* v. *C. K. Ali Ummar*(2) and *Kuldip Sahay* v. *Harihar Prasad*(3), followed.

Butto Krishna Ray v. *The Barakar Coal Company*(4), distinguished.

Faizullah Khan v. *Mauladad Khan*(5), *Sarju Bala Dasi* v. *Jogemaya Dasi*(6) and *Khatija* v. *Sheikh Adam Husenally*(7), referred to.

Per JAMES, J. (KHAJA MOHAMAD NOOR, J. *concurring*): The value placed on a memorandum of appeal must not be an arbitrary valuation; in all ordinary cases coming under section 7(*iv*)(*f*) of the Court-fees Act, a defendant preferring an appeal from the preliminary decree should not be permitted to value his appeal at any thing less than the valuation in the plaint (provided of course that he is appealing from the whole decree), unless he can demonstrate that there is valid ground for holding that the plaint was deliberately overvalued.

Faizullah Khan v. *Mauladad Khan*(5), explained.

C. K. Ummar v. *C. K. Ali Ummar*(2), *Nukala Venkatanandam, In re*(8), *Butto Krishna Ray* v. *The Barakar Coal Company*(4) and *Dhupati Srinivasacharlu* v. *A. Perindevamma*(9), referred to.

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(1) (1925) I. L. R. 47 All. 756.
(2) (1931) I. L. R. 9 Rang. 165, F. B.
(3) (1923) I. L. R. 3 Pat. 146.
(4) (1930) I. L. R. 10 Pat. 458.
(5) (1929) L. R. 56 I. A. 232.
(6) (1917) I. L. R. 45 Cal. 634.
(7) (1915) I. L. R. 39 Bom. 545.
(8) (1932) I. L. R. 56 Mad. 705.
(9) (1915) I. L. R. 39 Mad. 725, F. B.

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Reference under section 5 of the Court-fees Act, 1870.

The plaintiff brought a suit for the dissolution of partnership and rendition of accounts and valued it tentatively at Rs. 70,000. The Subordinate Judge made a preliminary decree, and the defendant preferred a First Appeal to the High Court against that decree. The memorandum of appeal was valued at Rs. 10,000 only. On the report of the Stamp Reporter the Registrar, as Taxing Officer, referred the matter to the Taxing Judge and recorded the following order :—

" In this case the Stamp Reporter bases his report on a decision of the Taxing Judge of this Court in *Butto Krishna Ray* v. *The Barakar Coal Company*(1). That decision is directly in point and clearly supports the view of the Stamp Reporter under which a deficit court-fee of Rs 1,237-8-0 is payable. The learned Advocate says that this decision is based upon a Madras ruling which has since been overruled and that there are rulings of several other High Courts in which it has been held that the defendant appellant is not bound by the plaintiff's estimate of value in an account suit, but can place his own tentative value on the appeal. However that may be, I am bound by the decision of the Taxing Judge of this court. I, therefore, think the proper course is to lay this case before the Taxing Judge for orders."

The Taxing Judge (James, J.) heard the matter but he was of the opinion that it was not his business to permit reduction in valuation. His order was to the following effect :

" In this case the appeal is on the face of it undervalued on the principle which has hitherto been followed in this court. It is not strictly speaking the business of the Taxing Judge to permit reduction in valuation and I defer making any final order in this case until the appellant has had an opportunity of moving the court for permission to reduce the value of the suit for the purposes of this appeal."

Thereupon an application was filed by the appellants praying that they may be permitted " to put their own valuation ", and that the valuation already given be accepted.

The matter then came up before a Division Bench composed of Fazl Ali and Rowland, JJ. who passed the following order :—

" As in our opinion the question of valuation cannot be decided independently of the question of court-fee payable on the memorandum

(1) (1930) I. L. R. 10 Pat. 458.

of appeal, we think this case should be placed before the Hon'ble the Chief Justice for giving such direction as he considers necessary. In view of the importance of the question involved we recommend that this matter may be heard by a Bench constituted under section 5 of the Court-fees Act."

This led to the reference under section 5 to the Special Bench by an order of the Chief Justice.

On this reference—

Manohar Lal (with him *S. C. Mazumdar*), for the appellant: In a suit for accounts falling under section 7(*iv*)(*c*) of the Court-fees Act, 1870, the value of the relief should be that stated in the plaint *or the memorandum of appeal.*

The section clearly permits the appellant to put his own valuation on the memo. of appeal.

[NOOR, J.—In the case of plaintiff the undervaluation will not affect the revenue; but in defendant's case, if it is found that the memo. of appeal is undervalued, there is no rule by which the deficit court-fee can be realized. That marks the distinction between the undervaluation of the plaint and that of the memo. of appeal.]

If there is a defect in the Act it cannot be helped. This consideration, however, is immaterial. If the liability of the defendant is determined, he must pay court-fee on the amount ascertained; but when the amount is not yet determined, he is not in a position to know what exactly his liability is; and, therefore, he is entitled to put his own tentative value on the memo. of appeal. I rely on *C. K. Ummar* v. *C. K. Ali Ummar*(1), *Chunni Lal* v. *Sheo Charan Lal Lalman*(2), *Kuldip Sahay* v. *Harihar Prasad*(3), *Nukala Venkatanandam, In re*(4) and *Faizullah Khan* v. *Mauladad Khan*(5).

(1) (1931) I. L. R. 9 Rang. 165, F. B.
(2) (1925) I. L. R. 47 All. 756.
(3) (1923) I. L. R. 3 Pat. 146.
(4) (1932) I. L. R. 56 Mad. 705.
(5) (1929) L. R. 56 I. A. 232.

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Rai Guru Saran Prasad, Government Pleader (with him *N. N. Roy*), for the respondent: Section 12 of the Court-fees Act has no application to a question of court-fees payable on a memorandum of appeal presented to a High Court, but only applies to the fees payable in other courts: *Krishna Mohan Sinha* v. *Raghunandan Pandey*(1). Even if it applies, this Bench has no power to decide the matter under section 5 of the Act.

[NOOR, J.—Why can't the Chief Justice appoint more than one Judge as Taxing Judges?]

The Division Bench itself had no jurisdiction.

[NOOR, J.—But this is a reference to the Special Bench by the Chief Justice under section 5.]

The word "Judge" in section 5 is used in the singular number.

[NOOR, J.—Under the General Clauses Act singular includes plural.]

On merits my submission is that the legislature has made a distinction between the valuation put on the plaint by the plaintiff and that put on the memorandum of appeal by the defendant. If the suit had been dismissed and the plaintiff had come up on appeal, could he change the valuation?

[NOOR, J.—No, because he would be bound by his own valuation.]

I rely on *Butto Krishna Ray* v. *The Barakar Coal Company*(2) and *Dhupati Srinivasacharlu* v. *A. Perinde Vamma*(3). The decision in *Faizullah Khan* v. *Mauladad Khan*(4) is not against me. The observation made by Lord Tomlin in that case is merely obiter dictum. It is not open to the defendant to put an arbitrary valuation on the memo. of appeal, and, in

(1) (1924) I. L. R. 4 Pat. 336, 351, F. B.
(2) (1930) I. L. R. 10 Pat. 458.
(3) (1915) I. L. R. 39 Mad. 725, F. B.
(4) (1929) L. R. 56 I. A. 232.

any case, before he can be allowed to change the valuation he must satisfy the court that the plaint was unreasonably overvalued or undervalued.

Manohar Lal, in reply.

S. A. K.

Cur. adv. vult.

WORT, J.—This matter has been referred to this Bench under section 5 of the Court-fees Act. Section 7(*iv*) (*f*) provides the amount of fee payable under the Act; in the suits next hereinafter mentioned the amount shall be computed as follows:

" (*f*) for accounts—according to the amount at which the relief sought is valued in the plaint or memorandum of appeal ".

The circumstances were these. The plaintiff brought an action for dissolution of partnership accounts, valuing his suit at Rs. 70,000. The Subordinate Judge passed a preliminary decree for accounts. The defendant appealed, placing the valuation on the memorandum of his appeal at Rs. 10,000. The Taxing Officer held that it was insufficient and referred the matter to the Taxing Judge who decided that it was not within the jurisdiction of the Taxing Judge to permit reduction of the valuation (for such appears to have been the substance of the defendant's application), and he therefore referred the matter to a Divisional Bench for the purpose of the defendant's application to reduce the valuation. The matter was referred by the Divisional Bench for reference to a Bench under section 5 of the Act.

The learned Government Pleader raises a preliminary objection that this Bench has no jurisdiction to determine the question. Section 5 of the Court-fees Act is in Chapter II and provides that when any difference arises between the officer whose duty it is to see that any fee is paid under this Chapter..... when the difference arises in any of the said High Courts it shall be referred to the Taxing Officer, whose decision thereon shall be final except when the question

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is of general importance in which instance the matter shall be referred for final decision of the Chief Justice or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf. I have stated only the substance of the section.

WORT, J.

Section 12 of the Act provides that every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed and such decision shall be final as between the parties to the suit. Sub-clause (*ii*) of the section, however, provides that whenever the matter comes before a Court of Appeal, reference or revision, if it is considered that the matter has been wrongly decided to the detriment of the revenue, that Court of Appeal may interfere and require the additional fee to be paid. Again I have stated the substance of sub-clause (*ii*).

The argument is that section 5 is in the Chapter dealing with High Courts while section 12 deals with Courts other than the High Courts and that when section 12(*1*) refers to decision by the Court in which the plaint or memorandum is filed, it refers to a Court other than High Courts. Alternatively, if that is not so and section 12(*1*) applies to High Courts, the procedure in the High Court is governed by section 5 contained in Chapter II of the Act. It is admitted that this is not a case in which the matter has come before a Court of Appeal and the Court has wrongly decided the question to the detriment of the revenue. In my judgment the objection is well-founded only to the extent that it is only under section 5 that this Court has jurisdiction in the matter. The short answer to the question of the preliminary objection in my judgment is that although the singular is used in section 5 when reference is made to the Judge of the High Court, there is nothing in the section to prevent

a reference in any particular case, that is, to use the words of the section, 'specially in this behalf', to more than one Judge, in other words, to a Bench.

On the main question it seems to me that the construction of section 7(*iv*)(*f*) is plain. The Court-fees Act was no doubt passed at a time when in actions for accounts there was no preliminary decree and an appeal was filed against the final decree and therefore at a stage when the amount due had been ascertained. In the event of the plaint in the first instance there was no doubt that the plaintiff had to value his plaint according to the amount of his claim. When it came to memorandum of appeal if filed by the defendant against a decree which had been made against him from which he desired to get a relief that amount would be the valuation he would place on his appeal. But under the present Civil Procedure Code a preliminary decree is made as in this case, and, if such a decree is made and the defendant wishes to appeal, the amount in which the defendant would be ultimately involved if he fails can only be a matter of estimate as in the majority of cases in the plaint itself. It has been argued that the defendant is not entitled to place his own valuation on the memorandum of appeal but to place the valuation being the potential liability in which he might be involved in the event of the plaintiff ultimately succeeding, and recovering that amount which he has tentatively placed as the valuation of his suit. But the words of the section seem to me to be plain as I have said :

> " according to the amount at which the relief sought is valued in the plaint or memorandum of appeal ",

and it is upon that amount that the court-fee is payable. There seems to be little to be said on the construction of the section itself; and applying the rule of construction which is applicable to a taxing statute, that is to say, that it must be construed strictly against the Crown, there seems to me to be no way out of holding that the section as it at present

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stands entitles the defendant to place his own valuation upon the memorandum of appeal. It must be remembered that this matter is being determined only for the purpose of deciding whether the memorandum of appeal is to be accepted at this valuation or not. But it does not preclude a Court hereafter from deciding on sufficient materials that the memorandum has in fact been undervalued and calling upon the defendant to correct his valuation. This power seems to me to be given by the legislature under sub-clause (*ii*) of section 12 of the Act and also under section 149 of the Code of Civil Procedure, as was pointed out by Lord Shaw in *Faizullah Khan* v. *Mauladad Khan*(1). The construction seems to me to be the only practicable one in the circumstances. The figure given by the plaintiff can be at most a mere estimate of what he would recover if he succeeds. There seems to me to be no reason why the defendant should be bound by the tentative valuation which the plaintiff places upon his claim. That the construction will lead to some difficulties in some instances there appears to be little doubt; but with the power in the hands of the Court to call upon the defendant to correct his valuation the difficulties that may arise are very largely minimised. This brings me to the authorities on the point.

In the case of *Chuni Lal* v. *Sheo Charan Lal Lalman*(2) the Allahabad High Court held that in the defendant's appeal in an action for dissolution of partnership the defendant was at liberty to place his own valuation upon his memorandum of appeal. In *C. K. Ummar* v. *C. K. Ali Ummar*(3) the Chief Justice of the Rangoon High Court in delivering the judgment of the Court held that the meaning of the section was plain and that the defendant was entitled to place his own valuation on his memorandum of appeal, observing that "no other construction.....

(1) (1929 L. R. 56 I. A. 232.
(2) (1925) I. L. R. 47 All. 756.
(3) (1931) I. L. R. 9 Rang. 165, F. B.

would be consistent with the language in which the terms of the sub-section are couched ". But he proceeded to hold that the statement by Lord Tomlin in the case of *Faizullah Khan* v. *Mauladad Khan*(1) to which I have made reference was conclusive of the matter. This statement which appears to have been made in the course of the argument before the Judicial Committee but which has not been reported was: " In section 7 the amount of the fee is to be computed, in suits for accounts, according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. If, therefore, the appellant values the relief in the memorandum of appeal and pays a fee thereon, that is the amount of fee properly payable. Of course, if the appellant recovers more, he pays the extra fee under section 11 of the Act. But you cannot complain that the amount valued in memorandum of appeal is not the proper amount. In suits for accounts it is impossible to say at the outset what exact amount the plaintiff will recover. The Legislature, therefore, leaves it open to him to estimate the amount. That is the scheme of the Act ". Dealing with this statement of Lord Tomlin I might state that the appellant in this case contends, as was held in the Rangoon High Court, that the decision in *Faizullah Khan's* case(1) is conclusive of the matter. In that case a suit was brought by the plaintiff who valued it for the purpose of court-fee at Rs. 3,000. They asked for an account and a decree for that amount. The defendant asked for a decree on the contrary for Rs. 29,000. The defendant succeeded in the suit to the extent of obtaining a decree for Rs. 19,000. In appealing the plaintiffs valued the suit at Rs. 19,991. The Court of the North-West Frontier Province which was the last Court in India granted a remand in the action but held that the court-fee paid on Rs. 19,000 was only a 'sectional' fee and not covering all the reliefs sought. Therefore one item, the claim for Rs. 3,000, finally dropped out

(1) (1929) L. R. 56 I. A. 232.

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of the case, the plaintiffs being entitled to no remedy. Their Lordships of the Privy Council found no reason for treating the payment of the court-fee (which had been put in by the plaintiff-appellants) either as under-value or as a split fee, holding that the memorandum of appeal did state in terms of the Act the amount at which the relief was sought. At any rate by inference their Lordships desired to leave that question although not perhaps expressly and the argument in this respect is well-founded. Two cases have been mentioned, one of Bombay and the other of the Calcutta High Court. In the Bombay case of *Khatija* v. *Sheikh Adam Husenally*(1) in a suit for administration and accounts of the estate it was held that the plaintiff was entitled to value his claim at Rs. 130 for the purposes of court-fee and at Rs. 30 lakhs for the purposes of jurisdiction, the plaintiffs being the appellant in that case. The learned Judges who decided that case had not brought to their notice section 8 of the Suits Valuation Act which specifically provides that the valuation should be the same for both purposes. The same view was taken by the Calcutta High Court in the case of *Sarju Bala Dasi* v. *Jogemaya Dasi*(2) where again in an administration suit the valuation for account was fixed at Rs. 100 and for the purposes of jurisdiction at Rs. 30,000. In this case also no mention was made of section 8 of the Suits Valuation Act. The principle upon which the matter was decided enables the appellant in this case to rely upon the former authorities for this specific point before us. Coming to the decision of our own Court, in *Kuldip Sahay* v. *Harihar Prasad*(3) the Taxing Judge, in a reference under section 5 of the Court-fees Act, held that the defendant-appellants were not bound by the valuation stated by the plaintiffs in the plaint and that they were at liberty to fix their own valuation on the relief sought—an authority

(1) (1915) I. L. R. 39 Bom. 545.
(2) (1917) I. L. R. 45 Cal. 634.
(3) (1923) I. L. R. 3 Pat. 146.

directly in point. In point of date, the next decision which, however, is not strictly relevant to this question, is the Full Bench decision of this Court in *Krishna Mohan Sinha* v. *Raghunandan Pandey*(1) to the effect that the Court cannot review the decision of the Taxing Judge in a case referred to it under section 5. Again in *Butto Krishna Ray* v. *The Barakar Coal Company*(2) in a reference under section 5 of the Court-fees Act, James, J. held that where the liability which has been found by the trial court is denied by the defendant or where a part of it is denied which has been definitely valued in the plaint, it is not open to the defendant appellant to value his appeal other than at the value which was given by the plaintiff. But the decision is explained by the fact that the appeal of the defendant was confined to that claim by the plaintiff which was a definite sum and not, as in this case, a merely tentative or estimated amount, although it is true that the learned Judge at the end of his judgment goes on to say that, had the suits been converted by the order of the Judge or by the decree of the Judge into suits for accounts, the valuation would still have been the same, that is to say, that which was given by the plaintiff in his plaint.

I am clearly of opinion that the defendant was not bound by the valuation given by the plaintiff and that he was entitled to place his own valuation upon the relief which he sought although by decisions of this Court that could not be an arbitrary sum. In my judgment, therefore, the memorandum of appeal should be accepted.

KHAJA MOHAMAD NOOR, J.—I agree. In my opinion under section 7(*iv*)(*f*) a defendant appealing against a preliminary decree in a suit for account need not accept the tentative valuation of the plaintiff. He may put his own value on the appeal. But this valuation should not be arbitrary. I have read the

(1) (1924) I. L. R. 4 Pat. 336 (356), F. B.
(2) (1930) I. L. R. 10 Pat. 458.

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judgment which my brother James is about to deliver and I agree with him that ordinarily the value of the claim as given by the plaintiff in his plaint is to be the basis of the appeal. There may, however, be cases, the present is one of those, where the defendant's valuation should be accepted. The Court can always call upon the appellant to correct the valuation and pay additional court-fee.

JAMES, J.—I agree that in this case the memorandum of appeal should be admitted. This is one of the rare cases in which the appellant has been able to make out a ground to support his argument that the plaintiff has set an unduly high valuation on his suit, possibly for the purpose of embarrassing the defendant if he desires to appeal from the preliminary decree. Such cases must necessarily be rare because it is not often that a plaintiff will voluntarily pay more court-fee than he need pay on his plaint. I do not consider that the decisions in *C. K. Ummar* v. *C. K. Ali Ummar*(1) or in *Nukala Venkatanandam's* case(2) warrant a revision of the view expressed in *Butto Krishna Ray* v. *The Barakar Coal Company*(3) which was based on the decision of the Full Bench of the Madras High Court in *Dhupati Srinivasacharlu* v. *A. Perindevamma*(4). I do not think that any ground for varying the practice of this Court is to be found in the decision of the Judicial Committee of the Privy Council in *Faizullah Khan* v. *Mauladad Khan*(5). That decision was not based on the view that an appellant was entitled to place any value which he might please on a memorandum of appeal governed by section 7(*iv*) (*f*) of the Court-fees Act: it rather, in my judgment, supports the contrary view. It was pointed out that in that appeal the valuation in question could not be regarded as an under-valuation or as a split valuation; and that the value of the ultimate decree was not

(1) (1931) I. L. R. 9 Rang. 165, F. B.
(2) (1932) I. L. R. 56 Mad. 705.
(3) (1930) I. L. R. 10 Pat. 458.
(4) (1915) I. L. R. 39 Mad. 725.
(5) (1929) L. R. 56 I. A. 232.

likely to exceed the value which the appellant had placed on his memorandum of appeal. I do not consider that a casual remark of Lord Tomlin, made in the course of argument, ought properly to be treated as if it were a part of the considered judgment ultimately delivered by the Judicial Committee; and since the ultimate decision was not based on the view that the appellant was entitled to place an arbitrary value on his memorandum of appeal, it should I think be considered that that view was not accepted by the Judicial Committee. The plaintiff in a suit for accounts places a tentative valuation on his suit, roughly estimating the amount which he is likely to get as a result of his litigation; but it is obvious that if the defendant considers that apart from the merits of the case, the suit has been heavily over-valued he should take the objection at once. He is vitally interested in the matter, since the court-fee paid on the plaint will form part of the costs which he himself will have to bear if the preliminary decree is given against him. If the defendant appeals from the preliminary decree, the value of the appeal is not what would be the value of the decree to the plaintiff if the appeal should succeed; it is what would have been the value of that decree if no appeal had been preferred at all. It appears to me to be clear that the value placed on the memorandum of appeal must not be an arbitrary valuation: and that in all ordinary cases coming under section 7(*iv*) (*f*) of the Court-fees Act, a defendant preferring an appeal from the preliminary decree should not be permitted to value his appeal at anything less than the valuation of the plaint (provided of course that he is appealing from the whole decree), unless he can demonstrate that there is valid ground for holding that the plaint was deliberately over-valued. In the present case, since it does appear that there is ground for holding that the plaint was valued at an unnecessarily high figure, I would admit this memorandum of appeal.

Order accordingly.