

KALENTHAR
ANMAL
v.
MA MI
AND ONE.
BAGULEY,
J.

may be in a position to pass final orders without further delay.

Costs of the appeal to be costs in this case as ultimately decided.

YOUNG, J.—I concur.

APPELLATE CIVIL.

Before Sir Sydney Robinson, Kt., Chief Justice, and Mr. Justice Brown.

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June 20.

HARDAYAL AND ONE

v.

RAM DOO.*

Account, suit for an—Estimated value within the jurisdiction of the Sub-divisional Court—Decree for an amount within the jurisdiction of that Court—Appeal claiming an amount without the jurisdiction of that Court—Forum of appeal whether the District Court or the High Court—Burma Courts Act, 1923, section 9 (1) (b)—Lower Burma Courts Act, 1900—Burma Courts Act, 1923, section 7 (b), provisos 1 and 2—Suits Valuation Act (VII of 1887), section 8.

A suit for an account, the plaintiff making an approximate valuation of the relief claimed at Rs. 3,100, was decreed by the Subdivisional Court in the amount of Rs. 2,128-2-9. The plaintiff appealed claiming that he was entitled to an amount exceeding Rs. 11,000. The District Court to which the appeal was filed returned it to be presented to the High Court under proviso 2 to section 7(b) of the Burma Courts Act, 1923.

Held, that the appeal, being from a Subdivisional Court, which has not been specially empowered under section 7 (b), proviso (1) of the Burma Courts Act, lies to the District Court.

Held, also, that the appellants, by increasing the valuation on appeal, cannot change the venue of appeal.

Held, further, that where, in a suit for accounts, the Court entertaining it on the preliminary valuation finds that the final valuation would be outside its jurisdiction, the proper procedure would be to return the plaint for presentation in the proper Court.

Bhupendra Kumar Chakravarti v. Purna Chandra Bose, 43 Cal., 650 ; *Gulam Singh v. Indra Coomar Haera*, 13 O.W.N., 493 ; *Hirjibhai Navroji Anklesaria*

* Civil First Appeal No. 103 of 1923 against the decree of the Subdivisional Court of Toungoo in Civil Regular No. 84 of 1922.

v. *Jamshedji Nassarwanji Givalla*, 15 Bom., 1021; *Ma Ma v. Ma Hmon*, 4 L.B.R., 279; *Saroda Sundari Bosa v. Akramanessa Khadun*, 28 C.W.N., 710; *Thein Yin v. Foucar Brothers & Co., Ltd.*, 4 L.B.R., 120—*followed*.

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This was an appeal against the judgment and decree of the Subdivisional Court of Toungoo for Rs. 2,128-2-9 passed in its Civil Regular Suit No. 84 of 1922 which was a suit for an account. The appellant claiming that on the accounts taken he was entitled to over Rs. 11,000, preferred his appeal in the District Court. The District Court, however, misapprehending the provisions of the Burma Courts Act, 1923, came to the conclusion that the appeal lay to the High Court and returned it to be presented to the proper Court. The facts appear from the judgment of their Lordships reported below.

Halker—for the Appellants.

Anklesaria—for the Respondent.

ROBINSON, C.J. AND BROWN, J.—The plaintiff-appellant brought a suit for an account of a joint family business. He has estimated the value of the suit for purposes of Court-fee at Rs. 3,100 and the value of the suit for purposes of jurisdiction is, by section 8 of the Suits Valuation Act, deemed to be the same amount. At the time the plaint was filed, the Subdivisional Court had jurisdiction up to Rs. 3,000 only. The suit was filed in the District Court, and there is very little doubt that the figure Rs. 3,100 was selected to enable it to be filed in that Court.

At the time the suit came on for hearing, however, the Burma Courts Act had been enacted. By section 7(b) thereof it is enacted that the Subdivisional Court shall have jurisdiction to hear and determine any suit of a value not exceeding Rs. 5,000. Then follows a proviso giving the Local Government power, by notification, to extend the jurisdiction of any

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Subdivisional Court to suits without restriction as regards the value. The learned District Judge, on taking up the case, transferred the suit for hearing to the Subdivisional Court, which then had jurisdiction to hear and determine the suit, as it was valued at Rs. 3,100 only.

A preliminary decree was passed for accounts, and they were referred to a Commissioner who decided that nothing was due to the plaintiff.

Objections were filed to his report, and, after hearing them, the report was varied and a final decree was passed, giving plaintiff Rs. 2,128-2-9. From this decree, which was within the pecuniary jurisdiction of the Subdivisional Court, an appeal was filed by the plaintiff, claiming that he is entitled to the full amount of items 1 to 6 in the accounts, minus that Rs. 2,000 odd, which had been awarded to him.

His claim amounted to over Rs. 11,000. The Court-fee on the appeal was based on a difference between the original tentative claim, namely, Rs. 3,100 and the 2,128-2-9 which had been decreed.

How this can be correct we do not see. The point was noticed by the learned District Judge, but he held, after considering the provisions of the Burma Courts Act, that the appeal lay to the High Court. He passed no order as to the Court-fees, but returned the appeal to be presented in this Court.

We have called upon counsel to satisfy us that the appeal does lie in this Court, and not in the District Court.

In a suit for an account it is open to the plaintiff to value his suit for purposes of Court-fee at any figure he chooses, and, having done so, the value for purposes of jurisdiction is automatically fixed by reason of the provisions of section 8 of the Suits Valuation Act.

The value fixed by the plaintiff was approximate and tentative only. It gives the Subdivisional Court jurisdiction to take up the case, but it does not give the Subdivisional Court jurisdiction to pass a decree for more than Rs. 5,000. If, after enquiry, it is found that the tentative value is not correct, and that the real value of the subject-matter of the suit is over Rs. 5,000, the proper course would be, in our opinion, for the Subdivisional Court to return the plaint for presentation to the proper Court.

The words of section 7(b) give the Subdivisional Court jurisdiction to determine only suits not exceeding Rs. 5,000 in value, and "value" is defined in section 2(f) to mean "the amount or value of the subject-matter of the suit."

This appears to be the view taken by the learned Judges in *Bhupendra Kumar Chakravarty v. Purna Chandra Bose* (1), which view is repeated in *Saroda Sundari Bosu v. Akramanessa Khatun* (2). With this view we agree.

The same view was taken in *Golap Singh v. Indra Coomar Hasra* (3), and again in *Hirjibhai Navroji Anklesaria v. Jamshedji Nassarwanji Ginvalla* (4).

The question before us is as to the forum of appeal, and this must be decided with reference to section 9(1)(b) of the Burma Courts Act. It is there enacted that an appeal from a decree or order of a Subdivisional Court shall lie to the District Court.

Primâ facie, therefore, the appeal from this decree which was one passed by a Subdivisional Court for an amount that was within its pecuniary jurisdiction, would lie to the District Court.

There are, however, two provisos to sub-clause (b).

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(1) (1916), 43 Cal., 650.

(3) (1908), 13 C.W.N., 493.

(2) (1923), 28 C.W.N., 710.

(4) (1891), 15 Bom., 1021.

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The first enables the Local Government, by notification, to direct that appeals from original decrees of any specified Subdivisional Court shall lie to the High Court. There has been no notification under this power with reference to the Subdivisional Court with which we are concerned; nor, indeed, has this power been exercised in any instance so far.

The second proviso lays down that an appeal from a decree or order in any suit or original proceeding of a value exceeding Rs. 5,000 shall lie to the High Court. It is urged that, under this proviso, the present appeal lies to this Court; and a question has been raised as to whether the value there mentioned refers to the value of the decree or to the value of the suit, *i.e.*, the value of the subject-matter of the suit.

Under the Lower Burma Courts Act, which was superseded by the Burma Courts Act on the creation of the High Court, a similar provision was made as to an appeal from a decree of a District Court, but any such provision is now unnecessary, because all appeals from a District Court lie to the High Court. There was, under the Lower Burma Courts Act, a Divisional Court, and the provision therein made was to enact that in suits of value under Rs. 5,000 the appeal should lie to the Divisional Court, and that, when the value is over Rs. 5,000 to the Chief Court.

As regards Subdivisional Courts under the present Act, there being no Subdivisional Court having jurisdiction in excess of Rs. 5,000, there can be no appeal to which this proviso would apply, unless it be held that a Subdivisional Court, given jurisdiction by the valuation put upon the suit by the plaintiff, could pass a decree for an amount in excess of its ordinary pecuniary jurisdiction.

That, we have held, no Subdivisional Court can do. There can be, in our opinion, no doubt whatever that the intention of the legislature was in this proviso to make provision for appeals from a decree of a Subdivisional Court the jurisdiction of which had been extended by the Local Government by notification to more than Rs. 5,000 in exercise of the powers conferred by section 7(b) of the Act.

In the present case, the Subdivisional Court, having jurisdiction owing to the valuation put upon his claim by the plaintiff, passed a decree which was within the limits of the Court's pecuniary jurisdiction. The appeal lies from that decree, and there is no finding at present that the value of the subject-matter of the suit is more than Rs. 2,128.

We see no reason, therefore, for holding that, because the plaintiff now in appeal chooses to increase his claim, that alters the course of the appeal. This was held by the late Chief Court in the case of *Ma Ma v. Ma Hmon* (5).

The same view was taken in *Thein Yin v. Foucar Brothers & Co., Ltd.* (6)

For the above reasons we must hold that the appeal lies to the District Court, and must be returned for presentation to that Court.

As to Court-fees we pass no orders; but it will be for the District Court to take such action as it thinks necessary on this matter.

As to costs, the appeal, having been filed in this Court under the orders of the District Court, we think that costs should abide the result of the appeal.

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(5) (1908), 4 L.B.R., 279.

(6) (1907), 4 L.B.R., 120.