

present at Sial Sharif from 4th to 6th and that he heard the speeches made on these two nights," and the words "This Sub-Inspector's testimony therefore could not be relied on and it is a fit case, I think, in which the District Magistrate may call upon him to explain why he made such a false statement," and the passage towards the conclusion of his judgment, "As I find that the only independent witness had made a false statement in Court," be expunged from the record.

C. H. O.

Revision accepted.

FULL BENCH.

*Before Mr. Justice Martineau, Mr. Justice Moti Sagar and
Mr. Justice Zafar Ali.*

SUNDAR DAS (PLAINTIFF) Appellant,
versus

Mst. UMDA JAN AND OTHERS (DEFENDANTS)
Respondents.

Civil Appeal No. 829 of 1921.

1924

July 19.

Valuation of suit—for purpose of jurisdiction—Suit for possession of land in Killa Gujar Singh—Whether market value as determined by the Court or valuation as stated by plaintiff in his plaint.

The plaintiff bought 2 *kanals* 3 *marlas* of land from defendants for Rs. 4,300 in Gowal Mandi, in Killa Gujar Singh. He obtained possession of 1 *kanal* 12 *marlas* and paid Rs. 3,800, out of the price. He brought the present suit for possession of the remaining 11 *marlas* on payment of Rs. 500. The plaintiff valued his suit for purposes of Court-fees and jurisdiction at Rs. 5,500. The defendants objected to the valuation and alleged that the correct value was only Rs. 1,100. The question of the market value was put in issue and the trial Court's finding on the point was in favour of the defendants. The suit was dismissed and plaintiff appealed to the High Court. The defendant-res-

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pondents objected that the appeal lay to the District Judge and not to the High Court.

Held, following *Abdur Rahman v. Charag Din* (1), that for purposes of appeal the value of the suit is the market value of the land as ascertained by the Court and not the value as stated by the plaintiff in his plaint.

Durga Das (with him Nawal Kishore) for the appellant—The authorities are almost unanimous that the valuation put by the plaintiff, and not that fixed by the Court, should determine the course of appeal. See *Mahabir Singh v. Behari Lal* (2), *Nilmony Singh v. Jagabandhu Roy* (3), *Ijjatulla Bhuyan v. Chandra Mohan Banerjee* (4), *Hazara Singh v. Lal Singh* (5), *Imam Din v. Ghulam Muhammad* (6), *Muhammad Khan v. Ashak Muhammad Khan* (7), and *Chuni Lal v. Beli Ram* (8).

Tarakanta Das v. Kali Prasad Das (9), is on all fours with the present case. The question of good or bad faith of the plaintiff in stating his valuation was held to be immaterial. The reasoning of the learned Judges in *Imam Din v. Ghulam Muhammad* (6) remains unanswered in the case of *Abdur Rahman v. Charag Din* (1), relied on for the other side. In principle there is no distinction between the present case and cases of redemption or pre-emption.

Niaz Mohammad (with him Sagar Chand), for the respondents—The suit being similar to one for possession of a house, the Court-fees Act lays down that it is to be valued “according to the market value of the house,” and not “according to the amount at which the relief sought is valued in the plaint.” The plaintiff could no doubt fix a value in the plaint, but

(1) 19 P. R. 1908 (F. B.).

(2) (1891) I. L. R. 13 All. 320.

(3) (1896) I. L. R. 23 Cal. 536.

(4) (1907) I. L. R. 34 Cal. 954 (F. B.).

(5) 63 P. R. 1891.

(6) 101 P. R. 1900.

(7) 106 P. R. 1895 (F. B.).

(8) 229 P. L. R. 1913

(9) (1919) 53 I. C. 1001.

if the defendants objected to its correctness the Court had to determine the market value and then fix the correct valuation. Cases of redemption and pre-emption cited for the appellant have only an indirect bearing on the point at issue as remarked in the Full Bench ruling *Abdur Rahman v. Charag Din* (1). That case is on all fours with the present case. In *Dayaram v. Gordhan Das* (2), the learned Judges say that the value of a suit, where disputed, must be determined by the Court.

Nawal Kishore replied.

First appeal from the decree of Mir Ghulam Yazdani, Subordinate Judge, 1st Class, Lahore, dated the 10th February 1921, dismissing the claim.

The order of Mr. Justice Martineau and Mr. Justice Moti Sagar, dated 7th June 1924, referring the case to a Full Bench.

In 1914 the plaintiff bought 2 *kanals* 3 *marlas* of land from defendants 1 and 2 for Rs. 4,300. He obtained possession of 1 *kanal* 12 *marlas* and paid Rs. 3,800 out of the price and he has brought a suit for possession of the remaining 11 *marlas* on payment of Rs. 500. The suit has been dismissed and he has appealed to this Court.

The plaintiff valued his suit for purposes of court-fees and jurisdiction at Rs. 5,500. The defendants in their pleas objected to that valuation and said that the correct value was only Rs. 1,100. The question of the market value of the property was put in issue and the lower Court's finding on the point is in the defendants' favour. The latter take the objection that the appeal lay to the District Court and not to this Court, but for the appellant it is contended that even if he over-valued the property he was at liberty to do so and that for the purposes of determining the course of appeal the value of the suit is to be taken to be the value which he put on it and not the actual value of the property.

The appellant's contention appears to be supported by *Muhammad Khan v. Ashak Muhammad Khan* (3), in which

(1) 19 P. R. (1908) (F. B.). (2) (1906) I. L. R. 31 Bom. 73, 80.

(3) 106 P. R. 1895 (F. B.).

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the plaintiff had sued for redemption, alleging that the amount due on the mortgage was Rs. 2,000, but the Court decreed redemption on payment of Rs. 7,558. It was held by a Full Bench of the Chief Court that the appeal lay to the Divisional Judge, there being nothing in the plaint to show that the value exceeded Rs. 5,000, and the question of jurisdiction having to be determined with reference to the claim made and not to the decision upon the claim. That ruling was followed in *Chuni Lal v. Beli Ram* (1).

A case that is directly in point is *Tarakanta Das v. Kali Prasad Das* (2), in which the plaintiffs sued in the Court of a Subordinate Judge for a declaration of their right to land valuing the suit at Rs. 5,100. The defendants urged that the true value was not more than Rs. 1,000. The Subordinate Judge found that the value of the property was Rs. 1,385 and he returned the plaint for presentation in the Court of a Munsif empowered to try suits up to Rs. 2,000 in value. The plaintiffs appealed, and it was held that as they still maintained that the valuation exceeded Rs. 5,000, the appeal lay to the High Court notwithstanding the Subordinate Judge's adjudication.

On the other hand in *Abdur Rahman v. Charag Din* (3), where the plaintiff had valued the suit, which was for possession of a house, at Rs. 90, but the Munsif gave a decree for possession on payment of Rs. 634, the value of the improvements made to the house by the defendant, it was held that the value of the suit for the purposes of appeal was the market value of the house as ascertained by the Court. Lal Chand J. observed that the test of the value for purposes of appeal ought to be *prima facie* the value as determined by the Court rather than as alleged by the plaintiff, and that it would be anomalous to hold that in a case dependent on valuation of the subject matter for purposes of jurisdiction the plaintiff could arbitrarily choose his own Court by an arbitrary valuation of the property. *Dayaram v. Gordhan Das* (4) also supports the respondents' contention that the value of the suit is the value determined by the Court and not the value which the plaintiff has chosen to put upon it.

(1) 229 P. L. R. 1913.

(2) (1919) 53 I. C. 1031.

(3) 19 P. R. 1908 (F. B.).

(4) (1906) I. L. R. 31 Bom. 73, &c.

In view of the conflict of authority we refer to a Full Bench the question whether for the purpose of determining the course of appeal in the present case the value of the suit is to be taken to be the value placed by the palintiff on the property which he claims or the actual value of the property as determined by the Court.

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The order of the Full Bench was delivered by—

MARTINEAU J.—The facts have been stated in the referring order. It is contended on behalf of the plaintiff-appellant that the value of the subject matter of the suit should be taken to be the value stated by him in his plaint, and not the value as determined by the Court, and a large number of rulings have been cited in support of this contention. It appears to us unnecessary to discuss any of these as the whole matter was fully considered by a Full Bench of the Chief Court in *Abdur Rahman v. Charag Din* (1), in which it was held that the value, for purposes of appeal, of a suit for possession of a house was the market value of the house as ascertained by the Court, and not the value as stated by the plaintiff in his plaint. We entirely agree with that decision. It is pointed out that in that case the value put by the plaintiff on the property was less, while in the present case it is greater, than the amount found by the Court to be the value, but this difference is immaterial, for whether the plaintiff has under-valued or over-valued the suit the test for determining the value for purposes of jurisdiction remains the same.

We would hold on the question referred that for the purpose of determining the course of appeal in the present case the value of the suit is to be taken to be the actual value of the property as determined by the Court.

A. N. C.