

FULL BENCH.

*Before Sir Shadi Lal Chief Justice, Mr. Justice Broadway,
Mr. Justice Harrison, Mr. Justice Fforde and Mr. Justice
Campbell.*

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June 24.

JASWANT RAM AND OTHERS (PLAINTIFFS),

Appellants

versus

MOTI RAM AND OTHERS (DEFENDANTS), Respondents.

Civil Appeal No. 669 of 1921.

Valuation of Suit for purposes of jurisdiction—Suit for redemption of a mortgage on payment of Rs. 790, decreed on payment of a sum exceeding Rs. 5,000—Whether appeal lies to District Court or High Court—Punjab Courts Act, VI of 1918, section 39 (1).

In this suit for redemption of a mortgage the plaintiff sought redemption on payment of Rs. 790, or such sum as may be found due on the mortgage, while the defendant (mortgagee) pleaded that the mortgage debt amounted to more than Rs. 20,000. The Subordinate Judge of the first class who adjudicated upon the dispute between the parties passed a decree for redemption on payment of a sum exceeding Rs. 5,000 and against this decree the plaintiff preferred an appeal to the High Court. The question for determination by the Full Bench was whether the appeal lay to the District Court or to the High Court.

Held, that in the absence of any legislative enactment or statutory rule the valuation of a suit depends upon the value of the subject matter which in a redemption suit is the amount which the mortgagor should, before recovering the mortgaged property, pay to the mortgagee, and this depends upon the adjudication of the Court and not on the valuation given by the plaintiff which can be regarded as only a tentative valuation and is subject to the decision of the Court.

Hazara Singh v. Lal Singh (1), and Muhammad Khan v. Ashak Muhammad Khan (2), overruled.

(1) 63 P. R. 1891.

(2) 106 P. R. 1895 (F. B.).

Mussammat Rajo v. Dasu (1), *Muhammad Afzal Khan v. Nand Lal* (2), and *Abdur Kahman v. Charag Din* (3), approved.

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Kedar Singh v. Matabadal Singh (4), and *Jalaldeen Marakayar v. Vijayaswami* (5), differed from.

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The value of the present suit being therefore in excess of Rs. 5,000, the appeal lay to the High Court, *vide* section 39 (1) of the Punjab Courts Act, 1918.

First appeal from the decree of Lala Ganesh Das, Subordinate Judge, 1st class, Muzaffargarh, dated the 13th December 1920, granting the plaintiff a decree for possession by redemption on payment of Rs. 2,226-5-9, and wheat valued at Rs. 15,811-14-0.

TEK CHAND and HARGOPAL, for Appellants.

KARM CHAND and SARDHA RAM, for Respondents.

The order of Mr. Justice Martineau and Mr. Justice Eforde, dated 16th November 1925, submitting the case to a Full Bench—

This was a suit for redemption of land, and the dispute is as to the amount due to the mortgagee, the plaintiffs seeking to redeem on payment of Rs. 790, while the defendant claims to be entitled to more than Rs. 21,000. The Subordinate Judge has passed a decree for redemption on payment of Rs. 2,226-5-0 and a certain quantity of wheat which is valued at Rs. 15,811-14-0. The plaintiffs have appealed to this Court.

After considerable time had been taken up in arguments on the merits of the case, Dr. Narang for the respondent raised the point of jurisdiction, contending that as the plaintiffs had alleged that the amount due to the mortgagee was less than Rs. 5,000, the appeal lay to the District Court, and he relies on

(1) 44 P. R. 1888 (F.B.).

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

(2) 16 P. R. 1908 (F.B.).

(4) (1908) L. L. R. 31 All. 44.

(5) (1915) I. L. R. 39 Mad. 447.

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a Full Bench ruling of the Chief Court reported in *Muhammad Khan v. Ashak Muhammad Khan* (1). Although that ruling supports his contention there is an earlier Full Bench ruling which appears to be opposed to it, *viz.*, *Mussammatt Rajo v. Dasu* (2), and that was cited in the later judgment as deciding authoritatively that in a suit for redemption of immovable property in the possession of a mortgagee the value for purposes of jurisdiction is the amount of the charge on the property. There is another case, *Hazara Singh v. Lal Singh* (3), also referred to in the judgment of 1895, in which it was held that the jurisdiction is to be determined with reference to the claim made, and not to the decision upon the claim, but that was a judgment of a Division Bench in which no reference was made to the Full Bench ruling of 1888. We are thus faced with two Full Bench rulings, which appear to be inconsistent, one of 1888 laying down that the value for purposes of jurisdiction in a redemption suit is the amount of the charge on the property, that is, apparently, the amount actually due to the mortgagee, while the judgment of 1895 lays down that the question of jurisdiction has to be determined with reference to the plaintiff's allegation as to the amount of the charge.

In order that it may be finally decided which rule is to be followed we refer to a Full Bench the question whether in a suit for redemption of immovable property the value for the purposes of jurisdiction is the amount found by the Court to be the amount of the mortgagee's charge on the property or the amount alleged by the plaintiff to be due to the mortgagee.

(1) 106 P. R. 1895 (F. B.).

(2) 44 P. R. 1888 (F. B.).

(3) 63 P. R. 1891.

The judgment of the Full Bench—

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SIR SHADI LAL C. J.—This reference to the Full Bench arises out of a suit for the redemption of a mortgage, and the question of law upon which we are invited to pronounce our opinion, is whether the value of such a suit for the purpose of jurisdiction is the sum found by the Court to be the amount of the mortgagee's charge on the property or the amount alleged by the plaintiff to be due to the mortgagee. The plaintiff sought to redeem the mortgaged property on payment of Rs. 790 or such sum as may be found to be due to the mortgagee; but the defendant pleaded that the mortgage debt amounted to more than Rs. 20,000. The Subordinate Judge of the first class, who adjudicated upon the dispute between the parties, passed a decree for redemption on payment of a sum exceeding Rs. 5,000; and against that decree the plaintiff has preferred an appeal to this Court. The point for determination is whether the appeal lay to the District Judge or to the High Court.

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Now, section 39, sub-section (1), of the Punjab Courts Act, VI of 1918, provides that an appeal from a decree or order of a Subordinate Judge shall lie to the District Judge where the value of the original suit, in which the decree or order was made, did not exceed Rs. 5,000; and to the High Court in any other case. What was the value of the suit in which the decree in question was passed? For this purpose we must turn to the Suits Valuation Act, VII of 1887, and see whether that statute lays down any rule for determining the value of a suit for redemption. It will be observed that paragraph IX of section 7 of the Court-fees Act, VII of 1870, furnishes a simple rule for ascertaining the amount of the court-fee payable on a suit against a mortgagee for

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the recovery of the property mortgaged, namely, that the court-fee must be computed according to the principal sum expressed to be secured by the instrument of mortgage. There is, however, nothing in the Suits Valuation Act or in the rules framed thereunder which governs the value of such a suit for jurisdictional purposes. Section 8 of the aforesaid Act no doubt makes the value of certain suits for purposes of jurisdiction identical with their value for the computation of court-fees, but it expressly excludes from its operation suits mentioned in paragraph IX of section 7 of the Court-fees Act, and, as stated above, redemption suits are referred to in that paragraph. Nor does section 9 of the Suits Valuation Act help us in the matter. That section empowers the High Court to frame rules for determining the value of certain suits, but no such rule has been framed for regulating the value of a redemption suit.

It is clear that a suit of the character dealt with by this reference does not come within the ambit of any legislative enactment or statutory rule, and we must have recourse to general principles in order to determine the question. Now, the ordinary rule governing the value of a suit for purposes of jurisdiction is that the valuation of a suit depends upon the value of the subject-matter thereof. What then is the subject-matter of a redemption suit? It is not the immoveable property mortgaged by the debtor to his creditor, for the property admittedly belongs to the mortgagor, and the dispute between the parties relates, not to the ownership of the property, but to the amount which the mortgagor should, before recovering the property, pay to the mortgagee. In other words, the subject-matter in controversy is the mortgagee's interest in the property, because the object of

the suit is to extinguish that interest. The value of the mortgagee's interest is measured by the amount of the charge on the property, and not by the market value of the property itself.

How is the charge on the property to be ascertained, when there is a conflict between the parties? Now, in the first instance, the plaintiff states in his plaint the amount which according to him is due on the foot of the mortgage, and he being the *dominus litis* has the privilege of fixing the value of the suit. But his valuation can be regarded as only a tentative valuation and is always subject to the decision of the Court. It is beyond dispute that the amount of the charge depends, not upon the *ipse dixit* of the plaintiff, but upon the adjudication made by the Court. There is, however, a divergence of judicial opinion as to whether the jurisdiction of the Court as fixed by the plaintiff's valuation in his plaint is ousted, if the amount ascertained by the Court exceeds the pecuniary limit of its jurisdiction. The High Courts of Calcutta and Bombay have answered the question in the affirmative, but the contrary view has been adopted by the Madras and Allahabad High Courts. A Full Bench of the Punjab Chief Court in *Muhammad Khan v. Ashak Muhammad Khan* (1), following apparently the judgment in *Hazara Singh and others v. Lal Singh and others* (2), have affirmed the proposition that jurisdiction in a suit for redemption is to be determined with reference to the claim made by the plaintiff, and not to the decision upon that claim; but I am unable to endorse the view that the assertion of the plaintiff should continue to be the basis of jurisdiction even if it is found to be incorrect. As observed by Plowden J. in *Mussammat Rajo and others v. Dasu*

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and another (1), the amount alleged by the plaintiff to be due to the mortgagee must be taken *prima facie* the value of the suit, but the learned Judge takes care to point out that the Court taking cognizance of the suit on the strength of that allegation cannot pass a decree if the amount found to be actually due goes beyond the limit of its pecuniary jurisdiction. In this province it has been repeatedly held that a Court cannot grant a decree for possession of immoveable property on payment of a sum of money which exceeds the pecuniary limit of its jurisdiction; *vide, inter alia, Muhammad Afzal Khan v. Nand Lal* (2) and *Abdur Rahman v. Charag Din and others* (3); and there is no cogent reason for departing from this rule which has been followed for many years.

If the amount found to be due to the mortgagee exceeds the pecuniary limit of the Court, it should either dismiss the suit for want of jurisdiction, or return the plaint for presentation to a proper Court. It must, however, be remembered that, while the Court is competent to decide that it has no jurisdiction to hear and determine the suit, because the amount due to the mortgagee exceeds its pecuniary jurisdiction, it has no authority to fix the *exact* amount due to him. Such an adjudication can be made only by a Court of competent jurisdiction, and not by one which, according to its own finding, is not competent to deal with any matter in controversy except the issue relating to its jurisdiction. If the Court, to which the plaint was presented in the first instance, returns it for want of jurisdiction, it may then be presented to a Court of superior jurisdiction, and the decision of the latter Court on the amount due to the mortgagee should de-

(1) 44 P. R. 1888 (F. B.).

(2) 16 P. R. 1908 (F. B.).

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

termine the value of the suit for purposes of jurisdiction, provided always that the amount thus ascertained, does not exceed its pecuniary limit.

Our attention has been invited to the judgment of the Allahabad High Court in *Kedar Singh and others v. Matabadal Singh and others* (1), and to that of the Madras High Court in *Jalaldeen Marakayar and others v. Vijayaswami alias Muthu Vijaya Raghunatha Annaswami Thevar and others* (2), which lay down the proposition that the value for purposes of jurisdiction of a suit for the redemption of a mortgage is the amount of the principal mortgage money. With due deference to the learned Judges, who decided those cases, I am unable to concur in their exposition of the law. As I have already pointed out, while the Court-fees Act contains an express direction that the court-fee in a suit for redemption must be computed on the principal mortgage money, there is no legislative authority for treating the amount of the principal mortgage money as the basis of the value for jurisdiction. Indeed, there appears to be a clear indication to the contrary. It is enacted by section 8 of the Suits Valuation Act that where in suits other than those referred to in the Court-fees Act, section 7, paragraphs V, VI and IX and paragraph X (d), court-fees are payable *ad valorem* under the Court-fees Act, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same. Now, one of the classes of suits referred to in paragraph IX of section 7 is the suit for redemption, and it is incontrovertible that the Legislature has expressly excluded the suit for redemption from the category of those suits in which the value for jurisdiction is assimilated to that

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for the levy of court-fee. Had the Legislature intended that the principal mortgage money, which fixes the amount of the court-fee payable in a suit for redemption, should determine also the value for jurisdiction, there is no reason why section 8 should have removed such suits from the operation of the rule contained therein.

The result is that there is no special rule governing the valuation of a suit for redemption, and, in the absence of such a rule, we must act upon the general rule that the valuation of a suit must follow the value of the subject-matter thereof. And the value of the subject-matter of a redemption suit is the amount of the mortgagee's charge on the property mortgaged to him. There can be no doubt that it is the decision of a competent Court, and not the assertion of either party, which fixes the sum actually due on the strength of the mortgage; and I consider that it is that sum which settles the jurisdiction of the trial Court and also furnishes the test for determining the *forum* of appeal.

My answer to the question submitted to us is that in a suit for the redemption of immoveable property the value for purposes of jurisdiction is the amount found by the Court to be the value of the mortgagee's charge on the property and not the amount alleged by the plaintiff to be due to the mortgagee.

BROADWAY J.

BROADWAY J.—I concur in the views expressed by my Lord the Chief Justice.

HARRISON J.

HARRISON J.—I agree with the learned Chief Justice and have nothing to add to his clear and exhaustive judgment.

FFORDE J.

FFORDE J.—I concur.

CAMPBELL J.

CAMPBELL J.—I agree.

A. N. C.