

FULL BENCH (CIVIL).

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Das and Mr. Justice Maung Ba,

C. K. UMMAR

v.

C. K. ALI UMMAR.*

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Feb. 23.

Courts Fees Act (VII of 1870), s. 7 (IV) (f)—Suit for accounts—Appeal by defendant against whole preliminary decree—Valuation of relief—Persons entitled to value.

In a suit for accounts under Clause (IV) (f) of s. 7 of the Court-fees Act the plaintiff in the trial Court, and the appellant in the Court of Appeal, is the person to make an estimate of the value of the relief that is claimed.

Chunni Lal v. Sheo Charan Lal, I.L.R. 47 All. 756; *Faizullah v. Mauldad*, 31 Bom. L.R. 841 (P.C.); *Kuldip v. Harihar*, I.L.R. 3 Pat. 146—referred to.

Dhupali v. A. Perindevanma, I.L.R. 39 Mad. 725; *Samiya v. Minamma*, I.L.R. 23 Mad. 490—dissented from.

Respondent who is the sister of the appellant sued him in the District Court of Pegu for dissolution of an alleged partnership in the business of a shop, for accounts, and for her share of the partnership property. She valued her share at Rs. 15,000 but in giving evidence she valued her share at Rs. 30,000 and on the trial Court's order she paid additional Court-fees. The trial Court found that there was a partnership and passed a preliminary decree for dissolution, accounts and appointment of a receiver. Appellant appealed against the whole decree on the grounds that the suit was barred by limitation and that there was no partnership. He stamped his memorandum of appeal on a valuation of Rs. 3,000 only. Respondent took the preliminary objection that the appeal had been undervalued. The appeal came on before Heald and Mya Bu, JJ.,

* Civil Reference No. 2 of 1931 arising out of Civil First Appeal No. 48 of 1930 from the judgment of the District Court of Pegu in Civil Regular No. 43 of 1928.

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who referred to a Full Bench the question of Court-fees which is set out in the judgment reported below.

Hay for the appellant. Where the Legislature leaves the valuation of the reliefs sought to parties, each party is entitled to put his own valuation. The language of the section is clear and must be given effect to. The defendant in appealing against the decree is not bound by the plaintiff's valuation which may be entirely arbitrary. The Privy Council case of *Faizullah Khan v. Mauladad Khan* (31 Bom. L.R. 841) is conclusive on the point. See also *Chunni Lal v. Sheo Charan Lal* (I.L.R. 47 All. 756) and *Kuldip Sahay v. Harihar Prasad* (I.L.R. 3 Pat. 146). The Madras decisions are wrong.

K. C. Bose for the respondent.

PAGE, C.J.—But for the fact that a construction contrary to that which I am disposed to put upon section 7 (iv) (f), Court-fees Act (VII of 1870), has commended itself to the Madras High Court, I should have thought that this was a plain case.

The question which has been referred is as follows : —

“Whether in a suit coming under clause (iv) (f) of section 7 of the Court-fees Act, when the plaintiff has valued the relief prayed for and the trial Court has amended that valuation under the provisions of section 12 of the said Act, and the plaintiff has obtained a preliminary decree for accounts and the defendant appeals against the whole decree the defendant is bound by the valuation of the plaint in the trial Court or is at liberty to make a fresh valuation for the purposes of the appeal.”

The answer to the question propounded depends upon the construction of section 7 (iv) (f) of the Court-fees Act, which is in the following terms :—

“The amount of fee payable under this Act
 In suits

(f) for accounts,—according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. In all such suits the plaintiff shall state the amount at which he values the relief sought."

It is to be borne in mind that in suits falling within section 7 (iv) it is difficult, if not impossible, *a priori* to ascertain with accuracy the value of the relief sought in the suit. The valuation, therefore, must, to some extent, be arbitrary, and the Legislature when enacting section 7 (iv) had to consider who should estimate the value of the relief sought in the suit for the purpose of the payment of Court-fees. In its wisdom it determined that the plaintiff in the first instance should make the estimate, and if in the event it turned out that the Court-fees paid upon the estimate of the plaintiff were less than ought to have been paid having regard to the decree that was passed, under section 11 provision was made for payment of the additional Court-fees that were due.

The High Court of Madras in *Samiya Mavali v. Minammal* (1) held that the value of the relief sought both in the suit and in any appeal from the decree passed therein, was to be determined by the valuation which the plaintiff had put upon the relief sought in the plaint. No reasons were given for the decision of the High Court, and, with all due respect to the learned Judges who decided it, in my opinion no reasons can be found to justify the interpretation which in that case was placed upon section 7 (iv).

In *Dhupati Srinivasacharlu v. A. Perindevamma and six others* (2) a Full Bench of the Madras High Court affirmed the decision in *Samiya Mavali v. Minammal* (1). Again no reasons were given to justify the decision at which the Full Bench arrived.

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(1) (1899) I.L.R. 23 Mad. 490.

(2) (1915) I.L.R. 39 Mad. 725.

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In my opinion the construction of section 7 (iv) (f) is free from difficulty. The intention of the Legislature in enacting section 7 (iv) was that in cases where it is impossible *a priori* to ascertain with accuracy the value of the relief that is sought, the plaintiff in the trial Court and the appellant in the Court of Appeal should be the *persona designata* to make an estimate of the value of the relief that is claimed. No other construction, in my opinion, would be consistent with the language in which the terms of the sub-section are couched. Further, the construction which I put upon this sub-section is confirmed by authority. In the course of the argument before the Judicial Committee of the Privy Council in *Faizullah Khan v. Mauladud Khan* (1), Lord Tomlin, one of the members of the Committee, observed that :—

"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 the 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."

The view expressed by Lord Tomlin was in consonance with the judgment of the Judicial Committee which was delivered by Lord Shaw, and in my opinion *Faizullah Khan's* case is conclusive upon the question that has been referred. In that case the estimated value of the relief sought set out in the plaint differed from the value in the memorandum

(1) (1927) 56 I.A. 232 ; 31 Bom. L.R. 841 at p. 142.

of appeal filed by the plaintiff, but their Lordships held that the memorandum of appeal "did state in terms of the Act the amount at which the relief was sought. This determines the appeal."

The same view was taken by the Allahabad High Court in *Chunni Lal and others v. Sheo Charan Lal and another* (1). Sulaiman, J., observed :—

"In cases coming under section 7, sub-section (iv), the valuation made by the plaintiff of the subject-matter in dispute is often an arbitrary one, and particularly in a case falling under sub-clause (iv) (f) the valuation is a tentative one, it not being known at the time what would be the exact amount found due to either party after the accounts are taken. If under such circumstances, the plaintiff fixes a figure arbitrarily and at haphazard which he considers may be found due on account being taken, there is no just ground why the defendant, when appealing, should be tied down to this haphazard estimate when on the face of it, the valuation is merely tentative."

I respectfully agree with those observations, and it would be an easy matter to enumerate instances in which any other construction than that which we place upon the sub-section might result in great injustice to one or other of the parties; see also *Kuldip Sahay v. Harihar Prasad* (2).

For these reasons the question propounded is answered in the negative. Advocate's fee, three gold mohurs, appellant's costs in the appeal.

DAS, J.—I agree.

MAUNG BA, J.—I agree.

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(1) (1925) I.L.R. 47 All. 756 at p. 761.

(2) (1924) I.L.R. 3 Pat. 146.