

### APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Agha Haidar.

BUDHA MAL, (DEFENDANT) Appellant

*versus*

RALLIA RAM AND OTHERS (PLAINTIFFS)

Respondents.

1927

Oct. 26.

Civil Appeal No. 180 of 1923.

*Suits Valuation Act, VII of 1887, section 11 (a), (b) and (2)—Jurisdiction—belated objection to—whether entertainable—where undervaluation has not prejudicially affected the disposal of the case on the merits.*

A suit for dissolution of partnership and rendition of accounts, which was valued by the plaintiff at Rs. 1,100, was sent for trial to a Subordinate Judge of the 2nd class who passed a preliminary decree declaring the shares of the parties and, with their consent, appointed a local commissioner to go into the accounts. An appeal from this preliminary decree (on the merits) having been dismissed, the commissioner examined the accounts and submitted his report shewing that the profits of the partnership business exceeded the pecuniary jurisdiction of the trial Judge, who thereupon had the case transferred to a Court of higher jurisdiction. Objection was then raised for the first time (in the Court of the Senior Subordinate Judge) that as the case was not triable by the Subordinate Judge, 2nd class, all the proceedings in his Court and the appointment by him of the commissioner were null and void and that the case should be tried *de novo*.

*Held*, that as the undervaluation had not prejudicially affected the disposal of the suit on the merits, section 11 (a), (b) and (2) of the Suits Valuation Act provided a complete answer to the objection ; and that, even if the argument were open to the appellant that after the passing of the preliminary decree and the receipt of the commissioner's report, such objection was in fact raised, the Senior Subordinate Judge had in the circumstances rightly overruled it.

*Sardar Khan v. Mst. Aishae Bibi* (1), and *Khudaijatul Kubra v. Amina Khatun* (2), followed.

*Radha Kishen v. Kidar Nath* (1), and *Prabhakarbhat v. Vishwambhar Pandit* (2), distinguished.

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BUDHA MAL  
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*First appeal from the decree of H. B. Anderson, Esquire, Senior Subordinate Judge, Gurdaspur, dated the 13th November, 1922, directing that the defendant do pay to the plaintiffs the sum of Rs. 11,189-1-8, etc.*

BADRI DAS and KIDAR NATH CHOPRA, for Appellant.

MOTI SAGAR and MEHR CHAND MAHAJAN, for Respondents.

#### JUDGMENT.

AGHA HAIDER J.—This appeal arises out of a suit for dissolution of partnership and rendition of accounts. A preliminary decree was passed as long ago as the 5th of July, 1920, and the present appeal is from the final decree.

It appears that on the 28th of October, 1916, three persons, namely, Ganga Ram, now represented by plaintiffs Nos. 1 and 2, Fakir Chand, plaintiff No. 3, and Budha Mal, defendant, entered into a partnership for dealing in building materials, etc. The present suit with a valuation of Rs. 1,100 was brought on the 1st of August, 1919, by the plaintiffs, and, as already stated, a preliminary decree was passed which declared the shares of the parties to be one-third each. It was further decided that the partnership included a certain liquor business as well. The suit seems to have been instituted originally in the Court of the Senior Subordinate Judge, Gurdaspur. On the 2nd of August, 1919, the Senior Subordinate Judge made an order to the effect that "the plaint be made over to the Court of Maulvi Barkat Ali, Subordinate Judge." Ultimately the case was tried by Mr. Ram

(1) 96 P. R. 1912.

(2) (1881) I. L. R. 8 Bom. 313 (F.B.).

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Kanwar, Subordinate Judge, 2nd class, who passed the preliminary decree on the 5th of July, 1920. An appeal was lodged by the defendant in the Court of the District Judge against that decree. This appeal was dismissed. In the meantime on the 7th of July, 1920, the learned Subordinate Judge of the second class, Mr. Ram Kanwar, made an order appointing Pandit Bishambar Nath, Pleader, as a commissioner for examining the accounts. On the 3rd of May, 1921, the commissioner submitted his report wherein he arrived at a sum of Rs. 14,369-15-9 which was to be distributed as nett profits among the three partners.

It appears that on receipt of this report Mr. Ram Kanwar, Subordinate Judge, submitted the case to the District Judge for transfer to the proper Court having jurisdiction, because he considered that he could not grant a decree for a sum which was beyond his pecuniary jurisdiction. The case was accordingly transferred to the Court of the Senior Subordinate Judge on the 22nd of June, 1921.

Objections were filed against this report by the defendant, Budha Mal, on the 25th of August, 1921, in which, among other things, it was urged that the case was not triable by the Court of the second class Subordinate Judge and that all the proceedings taken in the Court of Mr. Ram Kanwar were null and void and that the case should be tried *de novo*. On the 19th of October, 1921, this objection was again repeated under the heading of "preliminary objections" where we find the plea of jurisdiction taken in a more crystallized form. It runs as follows:—

"1. The late Presiding Officer of the Court had no jurisdiction to hear the case. For this reason this case has been made over to this Court.

2. All the previous proceedings are null and void. According to law, proceedings should be taken *de novo*."

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The learned Senior Subordinate Judge overruled these objections by an order dated the 30th of November, 1921. He ultimately came to the conclusion that the total amount of profits of the partnership amounted to Rs. 15,619/12/9 which was distributable among the parties in certain specified sums according to their respective shares.

The defendant has come up in appeal to this Court, and his learned Counsel has repeated with considerable earnestness the plea of jurisdiction. He has also urged that the defendant was entitled to more interest on his outlay. He further pleaded that the total figure arrived at by the learned Subordinate Judge should be reduced by a sum of Rs. 6,263/9/6 which, according to the defendant, represented the expenses which had been incurred in the partnership business but which had not been taken into account by the commissioner.

As to the plea of jurisdiction, as already stated, the suit was valued at Rs. 1,110. No objection whatsoever was taken by the defendant to this figure, with the result that the parties proceeded to trial and ultimately a preliminary decree was passed. In appeal against the preliminary decree no such objection was taken. In the course of the argument it was faintly suggested by the learned Counsel for the appellant that, as a result of the commissioner's report, the preliminary decree had also become a nullity. Ultimately, however, he seems to have dropped this contention and concentrated his attack upon what took place in

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the Court of the Subordinate Judge, 2nd class, immediately after the preliminary decree was passed. He contended that the appointment of the commissioner was without jurisdiction and consequently the whole of the proceedings, including the commissioner's report, should be discarded. He relied upon the ruling in *Radha Kishan v. Kidar Nath* (1). That case, however, is quite different from the present case and does not support the contention of the appellant. In that case a suit was instituted in the court of the Munsif for dissolution of partnership and accounts. The Munsif in order to ascertain whether the suit was within his pecuniary jurisdiction, issued a commission for the examination of certain account books. As a result of this commission the Munsif came to the conclusion that he had no jurisdiction to try the suit. The Subordinate Judge, 1st class, before whom the case ultimately came for disposal, refused to treat as evidence in the case the proceedings taken by the Munsif with the object of ascertaining whether the subject-matter of the suit was cognizable by him. On these facts the learned Chief Judge held that the findings of the Munsif could not be treated as a finding on the merits. He further held that the proceedings before the Munsif were *coram non iudice* so far as the eventual decision of the liability of the parties was concerned and that under these circumstances the order of the Subordinate Judge was correct. It may be noted that this case purports to follow *Prabhakurbhat v. Vishwambhar Pandit*, (2) a ruling which was delivered at a time when the Suits Valuation Act (VII of 1887) had not been placed upon the Statute Book. Mr. Moti Sagar on behalf of the respondents relied upon section 11 of the Suits Vali-

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ation Act and quoted the Full Bench decision in *Sardar Khan v. Mussammat Aisha Bibi* (1). The provisions of section 11 of the Suits Valuation Act are clear and provide a complete answer to the appellant's contention. As already stated, no objection was taken as regards pecuniary jurisdiction as required by section 11 (a) of the Suits Valuation Act. And if the argument were open to the appellant that after the passing of the preliminary decree and the receipt of the commissioner's report such objection was raised, the answer is supplied by section 11 (b) and (2) of the Suits Valuation Act, for it has not even been suggested that the undervaluation has prejudicially affected the disposal of the suit on its merits. I may quote here the following sentence from the Full Bench judgment in *Sardar Khan v. Mussammat Aisha Bibi* (1)—

“ The object of the Legislature in both cases is the same, namely, that the defect of jurisdiction on territorial or pecuniary grounds should not render proceedings in a case abortive if such objection was not taken at the earliest opportunity and there has been no consequent failure of justice.”

I may also refer to *Khudaijatul Kubra v. Amina Khatun* (2) and the observations at page 125 of the report. The inanity of the objections raised by the defendant would further appear from the fact that the commissioner, Pandit Bishambar Nath, had been appointed by the Court with the consent of parties and even in the objection (dated the 25th August, 1921) to the commissioner's report the defendant himself asked for the retention of Pandit Bishambar Nath as commissioner.

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I accordingly overrule the plea of jurisdiction raised by the appellant.

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(His Lordship then proceeded to deal with other matters not required for the purposes of this report ; and the Bench concurred in dismissing the appeal as regards the plea of jurisdiction.)

BROADWAY J.—I agree in the order proposed.

*N. F. E.*

*Appeal dismissed,  
except in part.*

### REVISIONAL CRIMINAL.

*Before Mr. Justice Tek Chand.*

DASONDHI AND OTHERS, PETITIONERS

*versus*

THE CROWN, RESPONDENT.

1927

Nov. 16.

**Criminal Revision No. 1454 of 1927.**

*Indian Penal Code, 1860, section 225-B—Resistance to apprehension—under unsealed warrants for non-payment of illegal tax—Tax on incomes of trades and professions made without sanction of Governor-General—District Boards Act, XX of 1883, section 30.*

The District Board, Jullundur, with the permission of the Local Government imposed a *haisiyat* tax on the total income derived by all persons carrying on any trade or following any profession or calling within the district. The accused, goldsmiths, refused to pay the tax and warrants were issued, under section 69, Punjab Land Revenue Act, for their arrest. The execution of the warrants was resisted by them and their friends, and they were convicted under section 225B of the Penal Code.

*Held* (following *District Board, Sialkot v. Sultan Muhammad Khan* (1)) that the *haisiyat* tax being in the nature of a tax on incomes could, under section 30 of the District Boards Act, be imposed with the previous sanction of the