

## FULL BENCH (CIVIL).

*Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, Mr. Justice Leach,  
and Mr. Justice Spargo.*

## A.K.A.C.T.V. CHIDAMBARAM CHETTIAR

*v.*

## A.L.P.R.S. MUTHIA CHETTIAR.

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*Appl.* 27.

*Jurisdiction of the Court—Plaintiff's valuation of his relief—Determination of jurisdiction—Decree in excess of pecuniary jurisdiction—Suit for an account—Valuation—Court Fees Act (VII of 1870), s. 7 (4) (f)—Suits Valuation Act (VII of 1887), s. 8—Civil Procedure Code (Act V of 1908), s. 15.*

It is the plaintiff's valuation in his plaint which fixes the jurisdiction of the Court and not the amount which may be found and decreed by the Court. The purpose and intention of the Legislature as well as the provisions of the Suits Valuation Act, the Court Fees Act and the Code of Civil Procedure contemplate the passing of a decree in excess of the pecuniary jurisdiction of the Court in a case where the precise amount could not be ascertained at the time of the institution of the suit or filing of the plaint.

*Arogya v. Appachi*, I.L.R. 25 Mad. 543; *Bidyadhar v. Das*, I.L.R. 53 Cal. 14; *Dinanath v. Mayawati Kuer*, 6 Pat. L.J. 54; *Jhanda Singh v. Gulab*, I.L.R. 13 Lah. 788; *Krishnaji v. Molital*, 31 Bom. L.R. 476; *Madho Das v. Ranji*, I.L.R. 16 All. 287; *Muhammad Abdul Majid v. Ala Bakhsh*, I.L.R. 47 All. 534; *Rameswar v. Dilu Mathon*, I.L.R. 21 Cal. 550; *Ramchandra v. Janardan*, I.L.R. 14 Bom. 19; *Shamran v. Nilogi*, I.L.R. 10 Bom. 200; *Urakhan v. Kabutri*, I.L.R. 13 Pat. 344, followed.

*Bhupendra Kumar v. Bose*, I.L.R. 43 Cal. 650; *Golap Singh v. Indra Coomar*, 13 C.W.N. 493; *Hardayal v. Ram Deo*, I.L.R. 2 Ran. 408 (*dicta*), dissented from.

*Per LEACH, J.*—The plaintiff in a suit for an account is entitled to place his own value on the relief sought. This value determines the value of the suit for purposes of jurisdiction. A Court is bound to accept a plaint in a suit for accounts which is valued within the pecuniary limits of its jurisdiction, to hear and determine the suit and to pass a decree for the amount found at the trial to be due to the plaintiff, whatever the amount may be.

*C. K. Ummar v. C. K. Ali Ummar*, I.L.R. 9 Ran. 165; *Faizullah Khan v. Mauladad Khan*, 31 Bom. L.R. 841; *Sunderabai v. Collector of Belgaum*, I.L.R. 43 Bom. 376, referred to.

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\* Civil Revision Nos. 322 and 369 of 1936 from the judgments of the District Court of Maubin in Civil Misc. Appeal No. 12 of 1936.

*Hay* (with him *Venkatram*) for the applicant. It is the plaintiff's valuation in his plaint which *prima facie* determines the jurisdiction of the Court and not the amount which may be found or decreed by the Court. See ss. 6 and 15 of the Civil Procedure Code, and Sir Dinshah Mulla's notes at pp. 21 and 101 of his work (10th Ed.). See also Burma Courts Act, s. 7, Suits Valuation Act, s. 8 and Court Fees Act, ss. 7 (4) (f) and 11. The *dicta* in *Har Dayal v. Ram Deo* (1) are wrong. The learned Judges purport to follow the decisions of Mookerjee J. in *Bhupendra Kumar Chakravarty v. Purna Chandra Bose* (2), and in *Golap Singh v. Indra Coomar Hasra* (3), but these decisions have been dissented from by the Calcutta High Court itself, and all the High Courts are agreed that the jurisdiction is determined by the plaintiff's valuation and not by the amount of the decree.

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*Ma Thin On v. Ma Ngwe Hmon* (+); *Maung Nyi Maung v. The Mandalay Municipal Committee* (5); *C. K. Ummar v. C. K. Ali Ummar* (6).

The case of *Rameswar Mahton v. Dilu Mahton* (7) was decided prior to *Bhupendra Kumar's* case where the Court took the view that a Court has jurisdiction to ascertain the mesne profits notwithstanding that the amount may exceed the pecuniary limits of the Court. In the later cases of *Pancharam Tekadar v. Kinoo Haldar* (8), and in the Full Bench case of *Bidyadhar Bacher v. Manindra Nath Das* (9) Mookerjee J.'s view was not accepted, and the Court followed the view taken in *Rameswar's* case. In Bombay the opinion of Beaman J. in *Hirjibhai N. Ankelsaria v. Jamshedji N. Ginvalla* (10) is regarded as *obiter dicta* and was not

(1) I.L.R. 2 Ran. 408.

(2) I.L.R. 43 Cal. 650.

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

(4) I.L.R. 12 Ran. 512.

(5) I.L.R. 12 Ran. 335.

(6) I.L.R. 9 Ran. 165, 168.

(7) I.L.R. 21 Cal. 550.

(8) I.L.R. 40 Cal. 56.

(9) I.L.R. 53 Cal. 14.

(10) 15 Bom. L.R. 1021.

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accepted in *Ishwarappa v. Dhanji* (1). See also *Shamrav Pandoji v. Nilagi* (2); *Ramchandra Baha v. Janardhan* (3); *Krishnaji Vinayak v. Motilal Gujarati* (4); *Arogya Udayan v. Appachi Rowthan* (5); *Madho Das v. Ramji* (6); *Sundarshan Das v. Ram Prasad* (7); *Muhammad Abdul Majid v. Ala Bakhsh* (8); *Sheikh Mohammed v. Mahtab Chowdhury* (9); *Dinanath Sahai v. Mayawati Kuer* (10); *Musammal Urakhan Kuer v. Kabutri* (11); *Jhanda Singh v. Gulab Mal* (12); *Kalu Ram v. Hanwant Ram* (13); *Ganga Ram v. Hakim Rai* (14).

No appearance for the respondent.

ROBERTS, C.J.—This is an application for revision of a case in which the plaintiff filed a suit for accounts in relation to a partnership between himself and the defendant's father one Chockalingam Chettiar who died on the 28th May 1935. The plaintiff claimed a three-quarter share in the partnership and he valued his share, that is to say the surplus of assets over liabilities that had become due to him, at a sum of Rs. 1,500. After a preliminary decree by the Subdivisional Judge a receiver was appointed and later on a Commissioner took accounts and sales took place. It was then discovered that the assets were insufficient to pay the partnership liabilities and the surplus of liabilities over assets was Rs. 3,13,598. After a final adjustment of accounts it was ascertained that there was due to the plaintiff the sum of Rs. 95,605 odd, and the Subdivisional Judge felt himself bound by the case of *Hardayal*

(1) I.L.R. 56 Bom. 23.

(2) I.L.R. 10 Bom. 200.

(3) I.L.R. 14 Bom. 19.

(4) 31 Bom. L.R. 476, 481.

(5) I.L.R. 25 Mad. 543.

(6) I.L.R. 16 All. 287.

(7) I.L.R. 33 All. 97.

(8) I.L.R. 47 All. 534.

(9) 2 Pat. L.J. 394.

(10) 6 Pat. L.J. 54.

(11) I.L.R. 13 Pat. 344.

(12) I.L.R. 13 Lah. 788.

(13) I.L.R. 15 Lah. 151.

(14) I.L.R. 15 Lah. 512.

v. *Ram Deo* (1) and to be in consequence unable to give a decree for a sum exceeding his pecuniary jurisdiction, namely, Rs. 5,000. He therefore directed that the plaint should be taken back to the District Court, and the sales, except so far as it concerned one sale to a stranger, be treated as though they had not taken place.

We have considered the decision of the Bench of this Court in *Hardayal v. Ram Deo* (1) with great care : but it is clear from a study of that case first of all that the *dicta* by which the learned Subdivisional Judge felt himself bound were *obiter* merely, and secondly that in so far as they purport to lay down a rule that the decretal amount is one which can possibly fix the jurisdiction of the Court they are in contravention of most of the authorities. It is, in the words of Sir Dinshaw Mulla in his notes to the Code, the plaintiff's valuation in his plaint which fixes the jurisdiction of the Court and not the amount which may be found and decreed by the Court. The decision in *Hardayal v. Ram Deo* (1) is expressed to follow the view taken by the learned Judges in *Bhupendra Kumar Chakravarty v. Purna Chandra Bose* (2) and *Saroda Sundari Basu v. Akramanissa Khatun* (3). Reference is also made to *Golap Singh v. Indra Coomar Hazra* (4) and *Hirjibhai Navroji Anklesaria v. Jamshedji Nassarwanji Ginvalla* (5). These cases have all been carefully examined by the Court, and we have come to the conclusion that the views expressed by Mookerjee J. in *Bhupendra Kumar Chakravarty v. Purna Chandra Bose* (2) cannot be deemed to be correct.

The history of this matter in the different provinces is one of increasing weight of authority in favour of the contention that the jurisdiction is determined by the

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(1) (1924) I.L.R. 2 Ran. 408.

(3) 28 C.W.N. 650.

(2) (1910) I.L.R. 43 Cal. 650.

(4) 13 C.W.N. 493.

(5) 15 Bom. L.R. 1021.

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valuation in the plaint and not by the result of the decree, whatever it may be. Thus in Allahabad the case of *Madho Das v. Ramji Patak* (1) is directly in point, for it was there held that the pecuniary jurisdiction of the Civil Court was ordinarily governed by the value stated by the plaintiff in his plaint, and if the suit, having regard to the valuation in the plaint, is within the jurisdiction, that jurisdiction is not ousted by a finding that a decree for a sum exceeding the limit of the Court's pecuniary jurisdiction should be given to the plaintiff. A decision to a similar effect was arrived at in the case of *Sudarshan Das Shastri v. Ram Prasad* (2): and in *Muhammad Abdul Majid v. Ala Bakhsh* (3) a Bench followed the two cases which I have just cited and expressly dissented from the case of *Golap Singh v. Indra Coomar Hazra* (4) upon which the Judges in the Rangoon High Court relied.

When we pass to consider the decisions of the Bombay High Court we first notice that in *Shamrav Pandoji v. Nilogi Ramaji* (5) and *Ramchandra Baba Sathe v. Janardan Apaji* (6) the same principle was followed. In *Hirjibhai Navroji Anklesaria v. Jamshedji Nassarwanji Ginvalla* (7) there was a decision of a Bench the judgment of which was given by Beaman J. pointing to a contrary conclusion. The matter to be determined in this case, however, did not directly concern the precise question before us, and Beaman J.'s observations were pointed out to be *obiter dicta* in the case of *Ishwarappa Malleshappa Manvi v. Dhanji Bhanji Gujar* (8) where Patkar J. referred to the two earlier Bombay cases—*Shamrav Pandoji v. Nilogi Ramaji* (5) and *Ramchandra Baba Sathe v. Janardan*

(1) (1894) I.L.R. 16 All. 287.

(2) (1910) I.L.R. 33 All. 97.

(3) (1925) I.L.R. 47 All. 534.

(4) 13 C.W.N. 493.

(5) (1885) I.L.R. 10 Bom. 200.

(6) (1889) I.L.R. 14 Bom. 19.

(7) 15 Bom. L.R. 1021.

(8) (1931) I.L.R. 56 Bom. 23.

*Apaji* (1)—which I have just remarked upon, and it is pointed out by Tyabji J. that Beaman J. delivering judgment in *Hirjibhai's* case (2) was dealing with a matter in which leave was sought to appeal to the Privy Council under section 110 of the Civil Procedure Code, and Tyabji J. adds "As my learned brother has pointed out, the remarks of Mr. Justice Beaman, so far as they apply to the present matter, must be taken to be *obiter*." The case of *Krishnaji Vinayak Belapurkar v. Motilal Magandas Gujarati* (3) is also authority for the proposition contended for by the applicant. And it must be considered that the weight of Bombay authorities is in favour of his contention.

In Calcutta the case of *Rameswar Mahton v. Dilu Mahton* (4) shows that there may be jurisdiction to ascertain mesne profits despite the fact that the amount due may be found to be in excess of the pecuniary jurisdiction of the Court, and upon the same principle the Madras case of *Arogya Udayan v. Appachi Rowthan* (5) appears to have been decided. In two later cases, however,—*Golap Singh v. Indra Coomar Hazra* (6) and *Bhupendra Kumar Chakravarty v. Purna Chandra Bose* (7)—as I have already remarked, Mookerjee J. took the contrary view. The case of *Panchuram Tekadar v. Kinoo Haldar* (8), in which judgment was delivered later than in *Bhupendra Kumar's* case (7), appears to be based upon a contrary view, and it must be observed that in the Full Bench case of *Bidyadhar Bachar v. Manindra Nath Das* (9) five Judges in the majority of four to one took the view impliedly contrary to Mookerjee J. and in favour of the view taken in *Rameswar Mahton v. Dilu Mahton* (4).

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(1) (1889) I.L.R. 14 Bom. 19.

(2) 15 Bom. L.R. 1021.

(3) 31 Bom. L.R. 476.

(4) (1894) I.L.R. 21 Cal. 550.

(5) (1901) I.L.R. 25 Mad. 543.

(6) 13 C.W.N. 493.

(7) (1910) I.L.R. 43 Cal. 650.

(8) (1912) I.L.R. 40 Cal. 56.

(9) (1925) I.L.R. 53 Cal. 14.

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The Patna authorities proceed upon lines favourable to the applicant. *Sheikh Mohammad Abdul Ghafoor v. Mahtab Chowdhury* (1), *Dinanath Shahai v. Mussammat Mayawati Kuer* (2) and *Mussammat Urakhan Kuer v. Mussammat Kabutri* (3) are all decisions in support of the proposition that the value of the jurisdiction in the suit is fixed by the plaintiff in his plaint and that a decree can be passed when an amount has been ascertained though that is in excess of the pecuniary jurisdiction of the Court.

In *Jhanda Singh v. Gulab Mal-Bhagwan Das* (4) the Lahore High Court appears to have taken the same view, though it is right to say that in *Kalu Ram v. Hanwant Ram* (5) Tek Chand J. gives expression to some *obiter dicta* which can hardly be reconciled with it.

Speaking for myself upon an examination of the authorities I have no longer any doubt but that we must decline to follow the view taken by the learned Judges in the case of *Hardayal v. Ram Deo* (6), and that case can no longer be regarded as good law. It appears to me clear that the purpose and intention of the Legislature as well as the express rules laid down in the Suits Valuation Act, Court Fees Act and the Code of Civil Procedure contemplate that there shall on different occasions be decrees passed in excess of the pecuniary jurisdiction of the Court when a figure has been reached which could not well be ascertained at the time of the institution of the suit or filing of the plaint. I therefore think that although the Sub-divisional Judge no doubt rightly felt himself bound to act upon the case which was cited to him we

(1) [1917] 2 Pat. L.J. 394.

(2) [1921] 6 Pat. L.J. 54.

(3) [1933] I.L.R. 13 Pat. 344.

(4) (1932) I.L.R. 13 Lah. 788.

(5) (1933) I.L.R. 15 Lah. 151.

(6) I.L.R. 2 Ran. 408.

ought to declare that it is no longer of binding authority and that the case should go back to the Subdivisional Judge to proceed with it upon that basis.

SPARGO, J.—I agree.

LEACH, J.—The question which we are called upon to decide is whether a Court in a suit for an account can lawfully pass a decree for a sum which exceeds the pecuniary limit of its jurisdiction. The suit out of which the present applications arise was filed in the Subdivisional Court of Maubin which is empowered by section 7 of the Burma Courts Act, 1922, to hear and determine suits where the value of the relief sought does not exceed Rs. 5,000. The account was valued at Rs. 1,500 but after it had been taken it was found that the defendant owed the plaintiff Rs. 95,305-6-4. The learned Subdivisional Judge feeling himself bound by an opinion expressed in the judgment of a Bench of this Court (Robinson C.J. and Brown J.) in *Hardayal v. Ram Deo* (1) held that he had no jurisdiction to pass a decree for the amount due by the defendant and directed the plaintiff to take back the plaint and file it in the District Court. This decision was challenged by the plaintiff in an appeal which was heard by the District Judge of Maubin. The learned District Judge agreed with the Subdivisional Court and dismissed the appeal. The Court is now asked to set aside the decree of the District Court in the exercise of its powers of revision, and direct the Subdivisional Court to proceed with the suit.

The plaintiff in a suit for an account is entitled to place his own value on the relief sought. This

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is clear from the provisions of the Court-Fees Act itself, but if authority is needed there is ample available. Section 7 (4) (f) provides that in suits for accounts the amount of Court-fee payable shall be computed according to the amount at which the relief is valued in the plaint, and in passing it may be mentioned that by virtue of section 8 of the Suits Valuation Act, 1887, this value also determines the value of the suit for purposes of jurisdiction. With regard to authority for the statement that the plaintiff in such a suit is left to value the relief which he seeks I need only refer to three cases—*Sunderabai v. The Collector of Belgaum* (1), *Faizullah Khan v. Mauladad Khan* (2) and *C. K. Ummar v. C. K. Ali Ummar* (3). In *Sunderabai v. The Collector of Belgaum* (1) the Privy Council held that the Bombay High Court had rightly decided that where a plaintiff sues for a declaratory decree and asks for consequential relief, and puts his own valuation upon that consequential relief, then for the purposes of Court-fee, and also for the purposes of jurisdiction, it is the value that the plaintiff puts upon the plaint that determines both. In *Faizullah Khan v. Mauladad Khan* (2), which was also decided by the Judicial Committee, Lord Tomlin pointed out that in suits for accounts it is impossible to say at the outset what amount the plaintiff will recover. The Legislature therefore leaves it open to him to estimate the amount, and this is the scheme of the Court-fees Act. In *C. K. Ummar v. C. K. Ali Ummar* (3) a Full Bench of this Court consisting of Page C.J., Das J. and Maung Ba J. held that in a suit for accounts under clause (iv) (f) of section 7 of the Court-fees

(1) (1918) I.L.R. 43 Bom. 376.

(2) 31 Bom. L.R. 841.

(3) (1931) I.L.R. 9 Ran, 165.

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.

The valuation being left entirely to the plaintiff, and as his valuation fixes the valuation for purposes of jurisdiction a Court is bound to accept a plaint in a suit for accounts which is valued within the pecuniary limits of its jurisdiction. It is then required by law to hear and determine the suit. This being the case it must of necessity have the power of passing a decree for the amount found at the trial to be due to the plaintiff, whatever the amount may be. Section 15 of the Code of Civil Procedure states that every suit shall be instituted in the Court of the lowest grade competent to try it. Therefore when a plaintiff has valued his relief he cannot choose his forum. The value stated by him compels him to go to a particular Court. Is it reasonable to suppose that in these circumstances the Legislature contemplated compelling a litigant to start proceedings *de novo* in another Court should it appear, after all the evidence had been recorded by the Court appointed to try the case, that the plaintiff was entitled to a greater sum than that estimated by him at the time of the institution of the suit? The answer to this question must surely be in the negative. I find the same difficulty in accepting the argument which has sometimes been advanced and accepted that if a litigant chooses to proceed with his suit in the original Court he must be compelled to sacrifice all that is due to him in excess of the limits of the Court's jurisdiction. I consider that the Legislature could never have contemplated putting a litigant in such a position.

The contrary opinions expressed by Beaman J. in *Hirjibhai Navroji Anklesaria v. Jamshedji Nassarwanji Ginvalla* (1) and Mookerjee J. in *Golap Singh v. Indra*

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*Coomar Hazra* (1) and *Bhupendra Kumar Chakravarty v. Purna Chandra Bose* (2) no longer find acceptance in the High Courts of Bombay and Calcutta. Those High Courts, in common with the High Courts of Madras, Lahore and Patna, accept the contention that a Court in a suit of the nature of the one now under discussion has power to pass a decree for an amount beyond the limit of its ordinary jurisdiction. It is not necessary for me to refer to the cases as the learned Chief Justice has done so in his judgment.

It follows that in my opinion the dictum of Robinson C.J. and Brown J. in *Hardayal v. Ram Deo* (3), to the effect that a Court has no power in a suit for accounts to give a decree beyond the pecuniary limit of its jurisdiction, is erroneous and, therefore, should not be followed. The result is that the applications before us succeed, and the Subdivisional Judge must be directed to proceed with the suit and pass a decree in accordance with law.

I might add that this decision does not involve any loss to Government in Court-fees as by section 11 of the Court-fees Act the decree cannot be executed until the difference between the fee actually paid and the fee which would have been payable had the suit been properly valued in the first instance has been paid to the proper officer.

(1) 13 C.W.N. 493.

(2) (1910) I.L.R. 43 Cal. 650.

(3) (1924) I.L.R. 2 Ran. 403.