1883

KIBÁNI AHMEDULA v. SUBABHAT.

pleader because of the telegraph signaller's illness and the consequent sudden closing of the Kárwár Telegraph Office for two days. Such a statement as the last, if false, would scarcely be made, and could easily be disproved. Looking to the unusual interruption and the ordinary regularity of the working of the telegraph, we think the District Judge ought to have accepted the reason given by the appellant as sufficient. For the reasons which we have given, we accept the reason which, we think, the Judge ought to have accepted, and we order that, if no other good and sufficient reasons exist, the District Judge do restore the appeal to his file, and dispose of it according to law.

The respondent to bear the costs of the appeal in the High Court.

Order reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

LAKSHMAN BHA'TKAR (ORIGINAL PLAINTIFF), APPELLANT, *v.* BA'BA'JI BHA'TKAR AND ANOTHER (ORIGINAL DEFENDANT), RESPONDENTS.* *November* 20.

Jurisdiction—Valuation of claims—Subject-matter—Act XIV of 1869, *Section* 25—*Partition.*

What *primâ facie* determines the jurisdiction of a Court is the claim, or subject-matter of the claim, as estimated by the plaintiff, and the determination having given the jurisdiction, the jurisdiction itself continues, whatever the event of the suit. And this is so notwithstanding a *bonâ fide* error in the estimate made by the plaintiff. But the plaintiff cannot oust the Court of its jurisdiction by making unwarrantable additions to the claim which cannot be sustained and which there is no reasonable ground for expecting to sustain.

The subject-matter of a claim, within the meaning of section 25 of Act XIV of 1869, is the specific thing sought by the plaintiff. In a partition suit, where the plaintiff seeks for a division and separate possession of his share in joint property, it is the share so claimed which is the subject-matter of the claim, and not the whole of the joint property which is sought to be divided.

THIS was an appeal from an order made by L. G. Fernandez, Subordinate Judge, (First Class,) Ratnágiri, returning the plaint on the ground that he had no jurisdiction.

* Appeal No. 12 of 1883 from order.

1883

LAKSHMAN BHÁTKAR v. BÁBÁJI BHÁTKAR.

The plaintiff sued to recover Rs. 5,199-2-6, which, he alleged, was the value of his share in the joint property of the family to which the plaintiff and the defendants belonged. The defendants contended that the value of the property was much smaller and the value of the plaintiff's share considerably less than Rs. 5,000, and that, therefore, the Subordinate Judge (First Class) had no jurisdiction to entertain the suit. The Subordinate Judge came to the conclusion that the plaintiff had intentionally valued his claim too high in order to bring the suit within the higher jurisdiction, and returned the plaint for presentation to the Court of the Subordinate Judge, Second Class. The plaintiff appealed to the High Court.

Máneksháh Jehángirsháh for the appellant:—In a partition suit the subject-matter of the claim is the whole of the property. The actual value of the estate to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff, is the value of the subject-matter, *Bái Mahkor* v. *Bulakhi Chaku*(1). The jurisdiction of a Court is determined by the value of this subject-matter, *Kálu* v. *Vishrám*(2). The point was raised in the Dákor case, *Manohar Ganesh* v. *Báwa Rámcharandás*(3), but was not decided, the Court merely directing attention to the distinction which has been taken between the valuation of a suit for the purposes of court-fees and the valuation of a suit for the purposes of jurisdiction. The valuation in the present case was *bonâ fide* and did not vitiate the jurisdiction, *Kondáji Bágáji* v. *Anáu*(4).

Hon'ble Ráo Sáheb V. N. Mandlik (Government Pleader) for the respondent.—The Judge below has distinctly found that the share of the plaintiff was much less than Rs. 5,000 and the value of the entire joint property was also less than Rs. 5,000. The cases cited do not show that where the value of the whole property is over Rs. 5,000 a suit to recover a portion of it should be brought in the Court of special jurisdiction. They rather negative the argument. In a partition suit the subject-matter of the suit within the meaning of section 25 of Act XIV of 1869

(1) I. L. R., 1 Bom., 538.
(2) *Ibid*, 543.
(3) I. L. R., 2 Bom., 219.
(4) I. L. R., 7 Bom., 448.

1883

LAKSHMAN BHÁTKAR v. BÁBÁJI BHÁTKAR.

is the share sought to be recovered or the share with respect to which the plaintiff seeks redress. The additions made by the plaintiff to his claim in this case were quite extravagant and fraudulent. The order of the First Class Subordinate Judge is therefore correct.

WEST, J.—The Subordinate Judge, First Class, has returned the plaint in this case for presentation in a Court of lower jurisdiction on the ground that the valuation of the suit was far below Rs. 5,000, though swollen to more than that amount by the wrong addition of items that ought not to have been included in the claim. Now, if a plaintiff by a very natural mistake, estimates the value of what he claims somewhat higher than a third party would do, and thus raises it to a sum which gives the Subordinate Judge, First Class, exclusive jurisdiction, the mere fact that after an investigation the Court does not award so much as Rs. 5,000 or its value is not at all conclusive that the suit was brought in the wrong Court. This point in another aspect was recently considered by the present Bench, and the conclusion arrived at was that a *bonâ fide* error of this kind did not make a particular mode of procedure based on it illegal. What *primâ facie* determines the jurisdiction is the claim, or subject-matter of the claim, as estimated by the plaintiff, and this determination having given the jurisdiction, the jurisdiction itself continues whatever the event of the suit, unless a different principle comes into operation to prevent such a result or to make the proceedings from the first abortive.

This principle is that the jurisdiction of the Court properly having cognizance of the cause is not to be ousted by unwarrantable additions to the claim. In the case of *Nanda Kumar Banerjee* v. *Ishan Chandra Banerjee*[1], Sir B. Peacock, C. J., says "the Small Cause Court cannot be ousted of its jurisdiction merely by asking for an alternative relief to which the plaintiff is not entitled." Neither by analogy ought the Court of minor jurisdiction to be deprived of its cognizance of a cause by the addition of claims which cannot be sustained and which there is no reasonable ground for expecting to sustain. An exaggerated

(1) I. B. L. R., 91, A. S. C.

1883

LAKSHMAN BHÁTKAR v. BÁBÁJI BHÁTKAR.

claim thus brought for the purpose of getting a trial in a different Court from the one intended by the Legislature is substantially a fraud upon the law, and must be rejected, whether it arises from mere recklessness or from an artful design to get the adjudication of one Judge instead of that of another.

The subject-matter of a suit is generally the specific thing sought in it. In a suit for damages for injuring a carriage, the subject-matter would, in one sense, be the carriage: but the object of the suit would be the amount demanded, and this is what subject-matter seems to mean for the purposes of litigation under section 25 of Act XIV of 1869. Where there is no material property concerned, as in a suit for slander, the subject-matter cannot possibly be identified with a tangible thing. Where, on the other hand, the claim is for a particular field, that field, as a material object, is sought and is regarded as the subject-matter of the suit. These meanings of the term are not inconsistent. They are at once reconciled by saying that the field is the subject-matter, in so far as it is conceived as embraced in the command or adjudication sought. Hence it is manifest that what is sought is the true measure of the subject-matter, not what the suit is about in a wider and vague sense.

It has been contended that the subject-matter of a partition suit by one who claims his share from the other co-parceners is the whole joint estate. In a sense this is so. The land and goods as a whole are the material substratum of the proprietary right, a part of which the plaintiff seeks to enforce. But in the sense of the Act, we think the subject-matter is the jural relation between the parties as alleged by one and denied by the other, and that, in the case of a single aliquot part, is the ownership of such part. Materially this is embraced in the aggregate estate, which is thus itself also the subject-matter, but more remotely, and not in a sense conformable to that in which subject-matter must be understood in analogous cases.

In the present instance, the valuation of the moiety sought by the plaintiff cannot, by any reasonable process, be raised much above Rs. 3,000. He cannot be allowed for ornaments, &c., as to which the evidence quite fails, and which artificially raised it

1883

LAKSHMAN BHATKAR v. BÁBÁJI BHÁTKAR.

above Rs. 5,000. The Subordinate Judge seems to have been under a misconception as to the wrong inclusion of a *padav* in the family property, as there was, in fact, a mortgage on it held by the defendant; but, after adding this to the ascertained value of the immoveables and such money claims of which there was any evidence, the result is as we have stated. The items seem to have been recklessly, if not fraudulently, overvalued, and the Court is bound to exact a reasonable regard and obedience to the intentions of the Legislature.

For these reasons, we confirm the order appealed against with costs.

Order confirmed.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice. On appeal before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice West.

1882
March 21, 23, 24, 25, 28, 30, 31; *April* 1, 3, 4, 15, 17, 18, 20, 21, 22, 24, 25, 27, 28, 29; *May* 1, 2, 5.

On Appeal,
1883
March 30; *April* 2, 5, 6, 9, 10, 12, 13, 16, 17, 18.

THE LAND MORTGAGE BANK OF INDIA (PLAINTIFFS), *v.* AHMEDBHOY HABIBBHOY AND KESOWRA'M RA'MA'NAND (DEFENDANTS).*

Nuisance—Noise—Smoke and fluff of mill—Injunction—Damages—Combination of injunction and damages—Specific Relief Act I (of 1877)—Delay—Acquiescence—Right of reversioners to sue.

The plaintiffs were owners of the Grant Buildings situated at Colába in Bombay. The said buildings comprised two three-storied blocks known respectively as the eastern block and the western block. Each block consisted of four divisions, those in the eastern block being numbered respectively Nos. 1, 2, 3, and 4, and those in the western block being numbered Nos. 5, 6, 7, and 8. Each block contained thirty-four sets of rooms. The plaintiffs became owners of the Grant Buildings in 1868, and had ever since derived a considerable income from the rooms by letting them as dwelling rooms to Europeans at an average rent of Rs. 50 a month.

The defendants were owners of an adjacent cotton mill known as the Nicol Mill, which was erected in 1873. Prior to 1873 the site of the mill was occupied by the buildings of the Hydraulic Press Company, which were erected in 1868. These premises were in 1873 purchased by the Nicol Press and Manufacturing Company, who thereupon proceeded to build the Nicol Mill. On the 3rd August, 1874, the erection of the mill having then just commenced, the plaintiffs' solicitor wrote to the Secretaries of the Nicol Press and Manufacturing Company as follows:—"It is rumoured that it is intended to carry on the business of spinning

* Suit No. 57 of 1881.