exceptional person. There is nothing in this case to suggest that the young girl involved possessed such exceptional powers as that. I think, therefore, that the appeal must be dismissed.

Decree confirmed.

J. G. R

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

BALKRISHNA NARAYAN SAMANT AND ANOTHER (HEIRS OF ORIGINAL PLAINTIFF), APPELLANTS *v.* JANKIBAI KOM SITARAM VITHAL SAMANT AND OTHERS* (ORIGINAL DEFENDANTS), RESPONDENTS.*

1919. *September* 16.

Court Fees Act (VII of 1870), section 7, clause IV (c)—Suits Valuation Act (VII of 1887), section 8—Suit for declaration and injunction—Valuation of claim—Valuation for purpose of Court fees—Valuation for purpose of jurisdiction.

In a suit for a declaration and for an injunction by way of consequential relief, the plaintiff has the right to value his claim for the purpose of Court fees; and the value for the purpose of jurisdiction is the same.

The plaintiff brought a suit for a declaration and injunction in the Court of the First Class Subordinate Judge under his special jurisdiction, and valued his claim for the purpose of Court fees at Rs. 135 and for the purpose of jurisdiction at Rs. 16,000. The trial Court having dismissed the suit, the plaintiff preferred an appeal to the High Court. At the hearing, he raised a preliminary point that the appeal lay to the District Court and prayed for the return of memorandum of appeal so that it could be presented to that Court:—

Held, overruling the preliminary point, that on the special facts of the case, the plaintiff should be taken to have filed the suit properly in the Court below under its special jurisdiction, and to have filed the appeal properly in the High Court.

FIRST appeal from the decision of E. F. Rego, First Class Subordinate Judge at Ratnagiri.

First Appeal No. 172 of 1916.

1919.

BALKRISHNA NARAYAN v. JANKIBAI.

Suit for declaration and injunction.

The plaintiff filed a suit to obtain a declaration that he was the heir to the property of his brother Sitaram, who, he alleged, had died undivided from him ; and for an injunction restraining defendants Nos. 3 to 5, who were mere stake-holders of the property, from delivering the same to any one except himself ; and restraining Jankibai (Sitaram's widow, defendant No. 1) from interfering with their enjoyment of the property. The cause of action arose at Malwan. The plaintiff, however, instituted the suit in the Court of the First Class Subordinate Judge at Ratnagiri under his special jurisdiction, valuing his claim for the purpose of Court-fees at Rs. 135, and for the purpose of jurisdiction at Rs. 16,000, which he alleged to be the true value of the subject matter of the suit.

The trial Judge heard the suit, and dismissed it on its merits.

The plaintiff preferred an appeal to the High Court.

At the hearing, the plaintiff alone raised a preliminary point that the appeal lay to the District Court and not to the High Court, and prayed for return of the memorandum of appeal in order that it might be presented to the District Court.

G. S. Rao with *A. G. Desai*, for the appellant :—No appeal lies to this Court. The appeal lay to the District Court. The claim was valued for Court-fee purposes at Rs. 130 for the declaration prayed for and at Rs. 5 for the injunction. If so, the case will be governed by section 8 of the Suits Valuation Act, read along with section 7, sub-clause (iv) of the Court-Fees Act and the valuation for the purposes of jurisdiction will be the same as for Court-fee. There has been a long current of decisions on the point. They support my submission and have been referred to in terms of approval in the

Privy Council decision in *Sunderbai* v. *The Collector of Belgaum* [1]. No doubt the plaintiff valued the claim at Rs. 16,000 for jurisdiction. But this cannot override the provisions of section 8 of the Suits Valuation Act.

Jayakar with *G. S. Mulgaonkar*, for respondents Nos. 1 and 2 :—It will be clear from the plaint that the suit was filed under the special jurisdiction of the lower Court, and was valued for that purpose at Rs. 16,000. The lower Court raised no objection as to the valuation of Court-fees and we had no opportunity to set the matter right. The other side also raised no objection as to the valuation for Court-fee. The appeal filed by the other side has also been filed to this Court. Reference may, moreover, be made to section 11 of the Suits Valuation Act, and as to the decision in *Sunderabai's case* [1], it is clear that the above circumstances submitted by me, will distinguish the present case from the above case. The difficulty has been created owing to the appellant's default in not taking timely objection to the valuation for Court-fee.

P. B. Shingne and *T. N. Walavalkar*, for respondent No. 3.

V. S. Sanzgiri, for respondents Nos. 4 and 5.

SHAH, J. :—In this appeal, a preliminary point has been raised on behalf of the appellant that the appeal lies to the District Court, and not to this Court, and that the memorandum of appeal should be returned to him now to be presented to the District Court.

It will be convenient to state the facts bearing on this point. One Sitaram left his native place for Benares in 1902 : he has not been heard of since and is presumed to be dead. There were disputes as to his property in the hands of third persons : the claimants were his widow, Jankibai, his brother Narayan, and his nephew Balkrishna (Narayan's son).

[1] (1918) L. R. 46 I. A. 15.

1919.

BALKRISHNA NARAYAN v. JANKIBAI.

The widow claimed as an heir, the brother by survivorship on the footing that he and Sitaram were joint, and the nephew under the will of Sitaram. Jankibai filed a suit in 1913 on the Original Side of the High Court against the stake-holders, to which other claimants were added as parties later on. This suit was ultimately transferred to the Court of the First Class Subordinate Judge at Ratnagiri to be tried along with two other suits, which were filed in that Court by the brother and the nephew respectively. The brother filed Suit No. 319 of 1913 against the widow and the stake-holders for a declaration that he was jointly interested in the property of Sitaram and for an injunction restraining defendants Nos. 1 and 2 (the widow and her brother) from receiving, and defendants Nos. 3, 4 and 5 (the stake-holders) from handing over to them, the property of Sitaram. Other minor reliefs claimed by him are not material. He valued the claim for the declaration and the injunction at Rs. 135 (Rs. 130 for declaration and Rs. 5 for injunction) for the purpose of Court-fees. He stated that the value of the subject-matter for the purpose of jurisdiction was about Rs. 16,000. This suit was filed under the special jurisdiction of the First Class Subordinate Judge of Ratnagiri, and not under his ordinary jurisdiction. The other suit was filed by Balkrishna against the widow and other defendants. That also was a suit for a declaration and an injunction, the valuation for the purpose of Court-fees being Rs. 135, and the value of the subject-matter of the suit for the purpose of jurisdiction being over Rs. 5,000. This also was a suit filed under the special—and not the ordinary—jurisdiction of the First Class Subordinate Judge. These two suits and the widow's suit transferred to that Court were tried and decided together. Several appeals have been filed from the different decrees to this Court. Narayan, whose suit was dismissed,

has filed the present appeal, which, it is now contended, lies to the District Court. In Balkrishna's suit the widow has appealed to this Court on the merits, and Balkrishna has appealed as to costs. We are not concerned with the appeals in the widow's suit as regards this preliminary point.

It is significant that Narayan alone raises the point of jurisdiction in his appeal. The point, if good, equally affects the two appeals arising out of Balkrishna's suit. The appellants in those two appeals do not raise this point. On the contrary the widow contends that the appeals are properly filed in this Court. I shall deal with the preliminary point in this appeal in which it has been raised ; for if it fails here, it must fail as regards the appeals arising out of Balkrishna's suit.

There can be no doubt that it is open to the plaintiff to put his own valuation on the claim for the purpose of Court-fees under section 7, clause IV (*c*) and that in the present case he purported to value it at Rs. 135. It is also clear that under section 8 of the Suits Valuation Act, 1887, the same value must determine the value for the purpose of jurisdiction. The decisions of this Court are to the same effect : and the course of the decisions on this point has been approved by the Privy Council recently in *Sunderbai* v. *The Collector of Belgaum* [1]. An attempt has been made on behalf of the widow to show that the present case is governed by the decision in *Rachappa Subrao Jadhav* v. *Shidappa Venkatrao Jadhav* [2]. But I think that the injunction relates to the whole property, in respect of which the declaration is sought, and is a proper consequential relief. The suit, therefore, falls under clause IV (*c*) of section 7 of the Court-fees Act. I do not see how the present case can be treated on the same footing as the case of *Rachappa Subrao Jadhav* v. *Shidappa Venkatrao Jadhav* [2].

[1] (1918) L. R. 46 I. A. 15.

[2] (1918) L. R. 46 I. A. 24.

1919.

BALKRISHNA NARAYAN v. JANKIBAI.

If the matter rested there, it would follow that the appeal would lie to the District Court: and we would be bound to give effect to the contention that the appeal lies to the District Court, even though that conclusion would involve a further delay for no useful purpose in the disposal of these appeals.

The facts of the case are somewhat peculiar; and on the particular facts of the case, I think, the plaintiff should not be allowed to contend that the true value for the purpose of Court-fees is Rs. 135. It is clear from the plaint that he filed the suit in the Court of the First Class Subordinate Judge with a definite allegation that the suit was filed under the special jurisdiction of the Court as the value of the subject-matter for that purpose was about Rs. 16,000. The value for the purpose of Court-fees was stated to be Rs. 135. If the lower Court had considered the question of Court-fees and jurisdiction, as it should have, after the plaint was filed, the inconsistency between the two statements would have been realised; and the plaintiff would have been at once called upon either to amend the value for the purpose of Court-fees so as to bring the case within the special jurisdiction of the Court, or to take back the plaint to be presented to the Court of the Second Class Subordinate Judge at Malvan, which would have jurisdiction to entertain the suit on the basis of the value for Court-fees being Rs. 135. That was not done. The defendants raised no objection as to the deficiency of Court-fees or want of jurisdiction. The result was that the suit of 1913 was tried by the First Class Subordinate Judge and decided by him in 1916 on the footing that it was a suit within his special jurisdiction as contemplated by section 25 of the Bombay Civil Courts Act (XIV of 1869). The plaintiff took advantage of the trial of the suit by a Court of higher jurisdiction; and he followed it up

with an appeal to this Court in 1916, on the same basis. All these appeals are now ready for hearing; and for the first time it is urged on behalf of the plaintiff that the value of Court-fees as mentioned in the plaint is the true value for the purpose of jurisdiction also. The point now urged suggests not only want of jurisdiction in this Court to entertain the appeal, but also want of jurisdiction in the trial Court. Not only the plaintiff Narayan but other parties to this litigation and the lower Court have acted upon the allegation in the plaint that the true value of the subject-matter of the suit is over Rs. 5,000. It is inconsistent with the value of the claim for the purpose of Court-fees, being only Rs. 135. The inconsistency might have been removed if it had been noticed in time by the plaintiff amending the value of his claim for the purpose of Court-fees or that for the purpose of jurisdiction. Under the circumstances I think that the plaintiff can be fairly taken, and ought to be taken, to have really valued his claim for the purpose of Court-fees not at Rs. 135 as he has apparently done, but at a sum exceeding Rs. 5,000, as he has himself acted and induced others to act on that basis. He cannot be allowed to use either of these inconsistent valuations in different Courts according to his convenience. At this stage he can be properly held to have valued his claim for Court-fees and jurisdiction at Rs. 16,000 or at some figure exceeding Rs. 5,000. It may be that he has not paid sufficient Court-fees from this point of view: but we are not now concerned with the question of sufficiency of Court-fees either for the plaint or for the memorandum of appeal. We are concerned with the question of jurisdiction. On the special facts of this case I am of opinion that the plaintiff must be taken to have filed the suit properly in the Court below under its special jurisdiction, and to have filed the

1919.

BALKRISHNA NARAYAN v. JANKIBAI.

appeal properly in this Court. The appeal must, therefore, be heard on the merits. It follows that Appeals Nos. 177 and 218 of 1916 have been properly filed in this Court and must be heard on the merits.

I have reached this conclusion on the special facts of this case, and desire to make it clear that I do not mean to depart in the slightest degree from the recognised rule, to which I am bound to give effect, that the plaintiff has the right to value his claim for the purpose of Court-fees in a suit for a declaration and for an injunction by way of consequential relief, and that the value for the purpose of jurisdiction is the same. In this particular case I hold that the plaintiff must be taken to have really valued the claim for the purpose of Court-fees at about Rs. 16,000, though in terms he purports to put a different and lower value.

First Appeal No. 172 is not pressed on the merits, and is, therefore, dismissed.

Respondent No. 1 to get her costs from the appellant, the other respondents to bear their own costs.

We see no reason to disturb the order made by the trial Court as to costs of the stake-holders.

We dismiss the cross-objections of respondent No. 3 with costs.

HAYWARD, J. :—I concur with the conclusions and have only a few words to add to the reasons of my learned brother.

Narayan, the father, and Balkrishna, the son, both brought suits for declarations and injunctions against the widow of the last holder for property worth Rs. 15,000 in the hands of stake-holders. These suits were filed the same day and were Suits Nos. 319 and 321 of 1913 in the Court of the First Class Subordinate

Judge of Ratnagiri. They appear to have assessed their claims for declarations at Rs. 130 and injunctions at Rs. 5 and thereon to have paid Rs. 10-6-0 as Court-fees. But at the same time they stated definitely that the value of the property was some Rs. 15,000 and that the suits were therefore not within the jurisdiction of the Second Class Subordinate Court of Malwan, but were within that of the First Class Subordinate Court of Ratnagiri. It is difficult to follow the precise method by which they arrived at Rs. 10-6-0 as the appropriate Court-fees. If they had treated the claims for declarations separately, it would not have been necessary to have given them any value. If, however, they had valued them and did so at Rs. 130 for the purposes of *ad valorem* fees, then the appropriate fees would have been Rs. 9-12-0, while the *ad valorem* fees for claims for injunctions valued at Rs. 5 would have been annas 6, making a total of Rs. 10-2-0 as the appropriate Court-fees. If on the other hand they had treated, as they ought logically to have done, the claims as claims for declarations with injunctions valued at total sums of Rs. 135, then Rs. 10-8-0 would have been the appropriate *ad valorem* Court-fees. But they neither paid Rs. 10-2-0 nor Rs. 10-8-0. They fixed on the intermediate sums of Rs. 10-6-0 and they paid those sums without specific explanations as the Court-fees, so that even on their own showing they did not pay the right Court-fees in accordance with section 7, clause IV, and Schedule II, Article 17, clause III of the Court-Fees Act, 1870.

They then proceeded apparently to make a further mistake and to overlook the provision that the valuation for Court-fees must be deemed the same as the valuation for jurisdiction under section 8 of the Suits Valuation Act, 1887. For they valued their suits at Rs. 15,000 for the purposes of jurisdiction and upon

1919.

BALKRISHNA NARAYAN v. JANKIBAI.

that valuation they deliberately brought their suits not in the Court of the Second Class Subordinate Judge of Malvan, but, as no doubt suited them better, in the Court of the First Class Subordinate Judge of Ratnagiri. They must have been aware at the time they selected the trial Court that an appeal from the former would lie to the District Court of Ratnagiri and an appeal from the latter would lie to this High Court. It is clear that they did realize this and that they had deliberately filed their suits accordingly, because Narayan, the father, proceeded to file Appeal No. 172 of 1916 in this High Court, and no objection was taken by Balkrishna, the son, to the widow filing her Appeal No. 177 of 1916 also in this High Court. It is only now some three years later that they have denied practically the jurisdiction both of the trial Court and the appellate jurisdiction of this High Court. It seems to me that in these circumstances the only possible course is to hold that they were wrong in their statements as to the valuations for Court-fees which in any case were incorrect according to the amounts actually paid as Court fees and which were directly opposed to the actual valuation of the property in the suits upon which valuation they had deliberately brought their suits in the superior Court of the First Class Subordinate Judge of Ratnagiri and had brought their appeals or suffered the appeals to be brought in this High Court. The proper course, therefore, in my opinion, must be to hold that the valuation in both the suits was incorrectly stated for Court-fees and correctly stated for the purposes of jurisdiction both of the trial Court and of this High Court.

It seems to me, further, to hold otherwise would lead to a most unfortunate result. Owing to the technical course which would have to be followed in order eventually to bring these appeals for final

decision in this High Court, there would ensue a further serious delay which might extend to years before the widow would succeed, if she be entitled to succeed, in establishing her rights to this large sum of money in this High Court. To allow such a result would, in my opinion, be encouraging an abuse of the proceedings both of the First Class Subordinate Court of Ratnagiri and of this High Court, and it is, in my opinion, our incumbent duty to prevent any such abuse under the powers inherent in us under section 151 of the Civil Procedure Code.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

PANDURANG NARAYAN SAMANT AND OTHERS (ORIGINAL DEFENDANTS NOS. 1, 3, 5 TO 7), APPELLANTS *v.* BHAGWANDAS ATMARAMSHET AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANTS NOS. 2 TO 4), RESPONDENTS.*

Hindu law—Debts—Debts by father—Antecedent debts binding on the sons—Debts must be antecedent to the transaction—Joint family property—Alienation of his share for consideration by a co-parcener.

The defendants' father passed a mortgage of ancestral property to plaintiffs' father for Rs. 1,499, out of which Rs. 700 were due by the mortgagor to the mortgagee, and the sum of Rs. 799 was received in cash by the former to pay off debts which he owed to others. The mortgagee having sued to recover the mortgage amount, the defendants contended that the debt not having been an antecedent debt of their father they were not bound under Hindu law to pay it:

Held, that the defendants were liable to pay the mortgage debt contracted by their father, inasmuch as the object of the mortgage was to pay off the antecedent debts created by him prior to the mortgage.

* Second Appeal No. 460 of 1916.