

present where the attachment was withdrawn, that the plaintiff is not required to institute a suit under section 283 of the previous Code to establish his right to the property in dispute.

Decree confirmed.

J. G. R.

1920.

MANILAL
GIRDHAR
v.
NATHALAL
MAHASUKH-
RAM.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

GOVINDA BIN KRISHNA SATHE (ORIGINAL PLAINTIFF), APPELLANT v.
HANMAYA LINGAYA FULMALI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS².

1920.

August 4.

Court Fees Act (VII of 1870), section 7 (iv) (a)—Suits Valuation Act (VII of 1887), section 8—Suit for injunction—Valuation of claim.

The plaintiff, in a suit for injunction, valued his claim for Court-fee purposes at Rs. 10 and for purposes of jurisdiction at Rs. 500. The lower appellate Court accepted the valuation for both purposes at Rs. 500 and asked the plaintiff to pay Court-fees on that amount. On appeal to the High Court,

Held, reversing the order, that, under section 7, clause 4 (a) of the Court Fees Act, 1870, the plaintiff was entitled to value his claim at Rs. 10 for Court-fee purposes, and that it was wholly unnecessary for him to fix any value for the purposes of jurisdiction as by section 8 of the Suits Valuation Act the value determinable for the computation of Court-fees and the value for the purposes of jurisdiction shall be the same.

SECOND appeal from the decision of J. D. Dikshit, District Judge of Sholapur, dismissing an appeal from a decree passed by T. N. Desai, Joint Subordinate Judge at Sholapur.

Suit for injunction.

The plaintiff sued to obtain an injunction against the defendants restraining them from obstructing the

² Second Appeal No. 972 of 1919.

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plaintiff in the enjoyment of his right of way. He valued the claim at Rs. 10 for Court-fee purposes and at Rs. 500 for purposes of jurisdiction.

The trial Court dismissed the suit on merits.

The plaintiff appealed and valued his claim as in the trial Court.

The District Judge was of opinion that the memorandum of appeal was not properly stamped ; and that the plaintiff having valued his claim at Rs. 500 for purposes of jurisdiction, was bound to pay Court-fees upon that amount. He, therefore, called upon the plaintiff to pay the additional amount and as the amount was not paid, he dismissed the suit.

The plaintiff appealed to the High Court.

S. R. Golchale, for the appellant.

P. V. Kane, for respondents Nos. 1 and 2.

MACLEOD, C. J. :—The plaintiff sued for an injunction. Such a suit comes within section 7, para. IV of the Court-Fees Act and the Court-fee had to be computed according to the amount at which the relief sought was valued in the plaint, which valuation the plaintiff was entitled to fix himself.

He valued the claim at Rs. 10 but also added another valuation of Rs. 500 for purposes of jurisdiction. The memorandum of appeal was valued in the same way. The District Judge holding that under section 8 of the Suits Valuation Act there could not be two valuations in a suit of this nature, one for Court-fees and another for jurisdiction, ordered the plaintiff to pay the balance of Court-fees as if the claim had been valued at Rs. 500. On the plaintiff failing to comply with this order the appeal was rejected.

As the plaintiff was entitled under clause (iv) of section 7 of the Court-Fees Act to value his claim at Rs. 10 it was wholly unnecessary for the plaintiff to fix any value for the purposes of jurisdiction, as by section 8 of the Suits Valuation Act the value determinable for the computation of Court-fees and the value for the purposes of jurisdiction shall be the same: *Bai Hiragavri v. Gulabdas*⁽¹⁾.

This principle was approved of by the Privy Council in *Sunderabai v. The Collector of Belgaum*⁽²⁾.

In *Raj Krishna Dey v. Bipin Behari Dey*⁽³⁾ the Court considered that the Legislature never intended that the plaintiff should be at liberty to assign any arbitrary value to the relief claimed and thus be free to choose capriciously the forum of trial or appeal. Whatever the Legislature may have intended, that is the meaning which has been given to section 7 of the Court-Fees Act by the Privy Council.

The appeal must be allowed, and the District Judge must be directed to take appeal No. 96 of 1919 in his Court on to his file and dispose of it according to law. The costs of this appeal will be costs in the appeal to the lower Court.

Appeal allowed.

R. R.

⁽¹⁾ (1913) 15 Bom. L. R. 1123.

⁽²⁾ (1918) 43 Bom. 376 at p. 382.

⁽³⁾ (1912) 40 Cal. 245.

1920.

GOVINDA
C.
HANMAYA.