

do with what the liquidator, the contributories and the creditors of the company do amongst themselves.

I, therefore, agree that the appeal should be dismissed with costs on the preliminary point.

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Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Patkar and Mr. Justice Tyabji.

ISHWARAPPA MALLESHAPPA MANVI (ORIGINAL PLAINTIFF), APPLICANT v. DHANJI BHANJI GUJAR AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.*

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July 23.

Civil Procedure Code (Act V of 1908), sections 6, 15—Bombay Civil Courts Act (XIV of 1869), section 24—Court-fees Act (VII of 1870), section 7 (iv) (f)—Suits Valuation Act (VII of 1887), section 8—Suit for accounts—Jurisdiction of Court to pass decree exceeding its pecuniary jurisdiction.

In a suit for accounts it is for the plaintiff to fix, under section 7 (iv) (f) of the Court-fees Act, 1870, the value of the relief sought in his plaint and under section 8 of the Suits Valuation Act, 1887, it is the value so fixed that determines the jurisdiction of the Court and not the amount which may be found and decreed by the Court.

Lakshman Bhatkar v. Babaji Bhatkar,⁽¹⁾ *Krishnaji v. Motilal,*⁽²⁾ *Mahabir Singh v. Behari Lal*⁽³⁾ and *Madho Das v. Ramji Patak,*⁽⁴⁾ followed.

Hirjibhai v. Jamshedji,⁽⁵⁾ doubted and explained.

Suit for dissolution of partnership and for accounts.

The facts are set out in the judgment of Patkar J.

H. C. Coyajee, with *R. A. Jahagirdar*, for the applicant.

G. N. Thakore, with *H. B. Gumaste*, for opponent No. 2.

PATKAR, J. :—In this case the plaintiff filed Suit No. 72 of 1925 in the Court of the Second Class Subordinate Judge of Gadag against the opponents defendants for dissolution of the partnership and for accounts. On July 31, 1926,

*Civil Revision Application No. 100 of 1930.

⁽¹⁾ (1883) 8 Bom. 31.

⁽²⁾ (1891) 13 All. 320.

⁽³⁾ (1928) 31 Bom. L. R. 476.

⁽⁴⁾ (1894) 16 All. 286.

⁽⁵⁾ (1913) 15 Bom. L. R. 1021.

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a preliminary decree was passed dissolving the partnership and ordering accounts.

It is alleged on behalf of the plaintiff that on September 6, 1926, the parties entered into a compromise and made an application to the Court praying that a decree in terms of the compromise be passed. The terms of the compromise are said to be that opponent No. 1 was to pay Rs. 6,000 and opponent No. 2's father Rs. 5,000 to the applicant. The learned Subordinate Judge being of opinion that he could not pass a decree exceeding the pecuniary jurisdiction of his Court, ordered the plaint to be returned to the applicant for presentation to the proper Court.

Three years afterwards the present plaintiff, who was a minor and attained majority on November 29, 1928, made an application on September 3, 1929, to the Court of the First Class Subordinate Judge of Dharwar praying that a decree might be passed in terms of the compromise. The learned First Class Subordinate Judge relying on the decisions in the cases of *Lakshman Bhatkar v. Babaji Bhatkar*,⁽¹⁾ *Mahabir Singh v. Behari Lal*,⁽²⁾ and *Madho Das v. Ramji Patak*,⁽³⁾ held that it was the plaintiff's valuation in the plaint which fixed the jurisdiction of the Court and not the amount eventually found due and decreed by the Court. He, therefore, was of opinion that he had no jurisdiction to pass a final decree in the case and therefore rejected the application; but instead of ordering the plaint to be returned to the plaintiff for presentation to the proper Court, directed that the plaint be returned to the Gadag Court together with the compromise purshis.

It is urged on behalf of the plaintiff that the First Class Subordinate Judge alone had jurisdiction to deal with the compromise application under Order XXIII, rule 3, and reliance is placed on the decision of Beaman J. in *Hirjibhai*

⁽¹⁾ (1883) 8 Bom. 31.

⁽²⁾ (1891) 13 All. 320.

⁽³⁾ (1894) 16 All. 286.

v. *Jamshedji*⁽¹⁾ where it was held that the value of the subject-matter of a suit could not be larger than the pecuniary jurisdiction of the Court. Reliance is also placed on the decision in *Golap Singh v. Indra Coomar Hazra*.⁽²⁾

Under the Bombay Civil Courts Act (XIV of 1869), section 24, a Second Class Subordinate Judge has jurisdiction to try suits in which the value of the subject-matter does not exceed Rs. 5,000. Under section 7, clause (iv) (f) of the Court-fees Act, the valuation for the purposes of court-fees in a suit for accounts lies in the discretion of the plaintiff. According to section 8 of the Suits Valuation Act, VII of 1887, in a suit for accounts the value for the purposes of the court-fees and the value for the purposes of jurisdiction shall be the same. It would, therefore, follow that in suits for accounts the valuation for the purposes of court-fees and for the purposes of jurisdiction shall be that which has been fixed by the plaintiff in the plaint. Under section 15 of the Civil Procedure Code the suit must be brought in the Court of the lowest grade. The valuation in the present case put by the plaintiff was Rs. 130, and therefore the valuation under section 8 of the Suits Valuation Act determined the valuation not only for the purposes of court-fees but also for the purposes of jurisdiction, and under section 15 of the Civil Procedure Code it was obligatory on the plaintiff to bring the suit in the Court of the Second Class Subordinate Judge of Gadag as it was the Court of the lowest grade to try it. Section 6 of the Civil Procedure Code refers to powers of the Court to entertain a suit, and a Court cannot entertain jurisdiction where the amount or value of the subject-matter exceeds the pecuniary jurisdiction which has been prescribed by the Bombay Civil Courts Act. But it does not interfere with the power of the Court to pass any decree in a suit for accounts although it might exceed its pecuniary jurisdiction. Section 6 of the Civil Procedure Code saves any express provision to the contrary

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and must be read subject to the provisions of the Suits Valuation Act VII of 1887 which is enacted to prescribe the mode of valuing certain suits for purpose of determining jurisdiction of Courts with respect thereto. It is, therefore, the plaintiff's valuation in the plaint which fixes the jurisdiction of the Court and not the amount which may be found and decreed by the Court: see *Lakshman Bhatkar v. Babaji Bhatkar*,⁽¹⁾ *Mahabir Singh v. Behari Lal*,⁽²⁾ and *Madho Das v. Ramji Patak*.⁽³⁾

The case of *Hirjibhai v. Jamshedji*⁽⁴⁾ proceeded on the consideration of the question as to whether leave should be granted to appeal to the Privy Council, and at page 1025 it was observed as follows:—

“We are ready to assume that the amount or value of the subject-matter of the suit, within the meaning and intention of section 110 is not determined by the valuation for purposes of Court-fees and jurisdiction.”

It would, therefore, follow that the rest of the judgment of Beaman J. must be considered to be *obiter* so far as the question under consideration is concerned. The decision in the case of *Ambadas Harirao v. Vishnu Govind*⁽⁵⁾ seems to be inconsistent with the view of Beaman J. in *Hirjibhai v. Jamshedji*.⁽⁶⁾ It was held in *Ambadas'* case⁽⁶⁾ that the mere fact that the decree is for an amount exceeding the pecuniary limit of the jurisdiction of the Court passing it, is not sufficient to establish that it was beyond its jurisdiction and a nullity. The jurisdiction of a Court is determined under the Bombay Civil Courts Act by the valuation in the plaint and not by the result of the decree whatever it might turn out to be.

In *Krishnaji v. Motilal*⁽⁷⁾ it was held, following the decisions in *Shamrav Pandoji v. Niloji Ramaji*⁽⁸⁾ and *Ramchandra Baba Sathe v. Janardan Apaji*,⁽⁹⁾ that the

⁽¹⁾ (1883) 8 Bom. 31.

⁽²⁾ (1891) 13 All. 320.

⁽³⁾ (1894) 16 All. 286.

⁽⁴⁾ (1913) 15 Bom. L. R. 1021.

⁽⁵⁾ (1926) 50 Bom. 839.

⁽⁶⁾ (1913) 15 Bom. L. R. 1021.

⁽⁷⁾ (1928) 31 Bom. L. R. 476.

⁽⁸⁾ (1885) 10 Bom. 200.

⁽⁹⁾ (1889) 14 Bom. 19.

jurisdiction of the Subordinate Judge depended on the valuation of the claim as made in the plaint, and that especially in a suit for accounts, the jurisdiction to pass a decree for more than Rs. 5,000 was not excluded when it was found on taking accounts that a sum of more than Rs. 5,000 was due. In *Shamrav Pandoji v. Niloji Ramaji*⁽¹⁾ it was held that the subject-matter of the suit, which was the sum due on the mortgage sought to be redeemed, was within the jurisdiction of the Second Class Subordinate Judge and his jurisdiction would continue, whatever might be the result of the suit. To the same effect is the decision of Sir Charles Sargent in *Ramchandra Baba Sahe v. Janardan Apaji*⁽²⁾ where it was held that in a suit on a mortgage where the sum due upon the mortgage was unknown, what determined the value of the subject-matter was the amount of the mortgage which was less than Rs. 5,000 and not the amount decreed which was over Rs. 13,000.

In a suit for accounts or mesne profits the plaintiff does not get more than what he asks for in the plaint, viz., whatever amount the plaintiff is eventually found entitled to, and the amount is stated in the plaint for determining the Court which has jurisdiction to try the suit. It is difficult to hold that a Court having jurisdiction to try a suit loses jurisdiction after a preliminary decree is passed. The real value of the subject-matter of the suit is in some cases different from the notional or statutory value which conclusively determines the Court which has jurisdiction, e.g., in suits on mortgage, or suits for possession by landlord against his tenant, and suits for declaration and injunction, and suits for accounts.

Section 11 of the Court-fees Act prescribes the procedure in suits for mesne profits and accounts when the amount decreed exceeds the amount claimed.

The other case cited on behalf of the applicant is *Golap Singh v. Indra Coomar Hazra*,⁽³⁾ which is dissented from in

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⁽¹⁾ (1885) 10 Bom. 200.⁽²⁾ (1889) 14 Bom. 19.⁽³⁾ (1909) 13 Cal. W. N. 493.

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Sudarshan Das Shastri v. Ram Prasad,⁽¹⁾ and must be considered to have been overruled by the Full Bench decision of the Calcutta High Court in *Bidyadhar Bachar v. Manindra Nath Das*.⁽²⁾ This view is consistent with that taken by the Madras High Court in *Arogya Udayan v. Appachi Rowthan*⁽³⁾ and *Kannayya Chetti v. Venkata Narasayya*.⁽⁴⁾ We think, therefore, that the jurisdiction of the Second Class Subordinate Judge is not ousted after he has made a preliminary decree for accounts by the fact that on taking accounts a sum more than his pecuniary jurisdiction has been found to be due.

I think, therefore, the order passed by the Second Class Subordinate Judge in returning the plaint for presentation to the proper Court is erroneous, and the view taken by the First Class Subordinate Judge is correct, and this rule must be discharged with costs. The learned First Class Subordinate Judge instead of ordering the plaint to be returned to the plaintiff for being presented to the proper Court thought it proper under the circumstances of the present case to order the plaint to be returned to the Second Class Subordinate Judge at Gadag together with the compromise purshis. We think that it is not necessary to interfere with that order. After the plaint is received by the Gadag Court in pursuance of the order of the First Class Subordinate Judge passed on November 29, 1929, it would be open to the plaintiff to make an application to the Second Class Subordinate Judge to revive his application under Order XXIII, rule 3, for passing a decree in terms of the compromise. It would then be open to the defendants to raise objections to the application, if any, and if the Second Class Subordinate Judge finds that there are no valid objections to entertain the application for passing a decree in terms of the compromise, he shall proceed to consider whether the compromise is lawful within the

⁽¹⁾ (1910) 33 All. 97.

⁽²⁾ (1925) 53 Cal. 14.

⁽³⁾ (1901) 25 Mad. 543.

⁽⁴⁾ (1916) 40 Mad. 1 F. B.

meaning of Order XXIII, rule 3, and decide the application on the merits.

TYABSI, J.:—I am of the same opinion. The question is, whether the learned Subordinate Judge of the second class had no jurisdiction to proceed to make a final decree in the suit before him. The learned Judge held that, as his jurisdiction extended only to suits and proceedings, wherein the subject-matter did not exceed in amount or value five thousand rupees, and that, as a compromise had been arrived at between the parties, involving payments amounting to Rs. 11,000, and the decree would be for that sum in the aggregate, he had lost jurisdiction.

The jurisdiction of a Subordinate Judge of the second class is derived from the Bombay Civil Courts Act, section 24: that section, it is true, limits it to suits and proceedings, wherein the subject-matter does not exceed in amount or value Rs. 5,000. The Bombay Civil Courts Act must, however, be read in the light of the Suits Valuation Act, 1887,—which (as indicated by its preamble) prescribes the mode of valuing certain suits, for the purpose of determining the jurisdiction of Courts, with respect thereto. In section 8 of the Suits Valuation Act, it is provided that (except in regard to certain suits to which I need not refer) where Court-fees are payable *ad valorem* under the Court-fees Act, 1870, the value, for the purposes of jurisdiction, shall be the same as the value for the determination of Court-fees. Therefore, by the Act which prescribes how the subject-matter of suits shall be valued for the purpose of determining the jurisdiction of Courts, we are referred to the Court-fees Act.

The relevant portion of the Court-fees Act is contained in section 7, sub-section (iv), clause (f),—which, read continuously, is as follows:—

“The amount of fee payable under this Act in suits for accounts shall be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. In all such suits the plaintiff shall state the amount at which he values the relief sought.”

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Reading, therefore, the Suits Valuation Act and the Court-fees Act together (as the former Act requires to be done), the value of a suit for accounts, for the purpose of determining the jurisdiction of Courts with respect thereto, is the amount at which the relief is valued in the plaint or memorandum of appeal,—and that value the plaintiff is ordered to state.

By reason of this, the jurisdiction of the Second Class Subordinate Judge, under section 24 of the Bombay Civil Courts Act, extends to “all original suits for accounts wherein the relief sought is valued, in the plaint, or memorandum of appeal, at an amount that does not exceed Rs. 5,000.”

If this reasoning is correct, the Second Class Subordinate Judge had jurisdiction to try this suit, and to proceed to make the final decree referred to, unless there is some other provision of law which has the effect of adding a proviso to the rule I have deduced,—a proviso in some such terms as the following:—“Provided that a Second Class Subordinate Judge shall have no jurisdiction, in any such suit to make a decree for a sum in excess of Rs. 5,000.” In my opinion there is no warrant for adding such a proviso.

The matter may be considered in another way. What ground is there for saying: that, for determining whether or not a Court has jurisdiction, the subject-matter of the suit shall be valued, not in accordance with the method laid down in the Suits Valuation Act, but on a different basis, viz., by considering the value of the subject-matter of the suit to be equal to the amount or value of the decree: and not by considering it (as the Act requires) to be equal to the amount at which the relief is valued in the plaint?

I need not refer to such considerations as a fraud upon the law, by which a trial is sought to be obtained in a Court not intended by the Legislature to have jurisdiction: see *Lakshman Bhatkar v. Babaji Bhatkar*.⁽¹⁾ Nothing of the kind is alleged in this case.

⁽¹⁾ (1883) 8 Bom. 31.

Section 6 of the Civil Procedure Code does not affect the question. That section prevents anything contained in the Code from operating so as to give any Court jurisdiction over suits, the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction. The section speaks of "the amount or value of the subject-matter of the suit": that has to be determined in accordance with the provisions of the special enactment relating thereto, viz., the Suits Valuation Act. The pecuniary limit of the ordinary jurisdiction is determined by the Civil Courts Act. Neither the pecuniary limit nor the method of valuing the suit is disturbed by section 6 of the Civil Procedure Code.

Doubt has been thrown on the view that I have expressed, on the strength of two decisions, one of the Bombay High Court, and the other of the Calcutta High Court. In *Hirjibhai v. Jamshedji*⁽¹⁾ Mr. Justice Beaman, delivering the judgment of himself and Sir Basil Scott C. J., considered the question with great care; but that decision had reference to a matter in which leave was sought to appeal to the Privy Council, under section 110 of the Civil Procedure Code. That section also refers to the subject-matter of the suit in the Court of first instance, and the amount or value of the subject-matter; but, that section does not attract to itself the clause of the Court-fees Act, section 7, referring to suits for accounts. It is, therefore, obvious that considerations, which affect,—

(1) the valuation of the subject-matter of a suit claiming accounts,—such valuation being made for the purpose of determining the jurisdiction of a Subordinate Judge of the second class under section 24 of the Bombay Civil Courts Act,

do not affect,—

(2) the valuation of the subject-matter of the suit for the purpose of section 110 of the Civil Procedure Code.

⁽¹⁾ (1913) 15 Bom. L. R. 1021.

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Nevertheless, Mr. Justice Beaman proceeded to discuss the question before him, as though there were no such distinction. 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 same cannot be said of the elaborate judgment of Mookerjee J. in *Golap Singh v. Indra Coomar Hazra*.⁽¹⁾ The gist of his Lordship's decision seems to be, that, where a Court has jurisdiction restricted to Rs. 1,000, it cannot make a decree for an amount in excess of Rs. 1,000. He derives this from first principles, which he considers must govern the question: since there is, according to him, no specific provision of statutory law governing it. With that view, with the utmost respect, I am unable to agree, for reasons which I proceed to state.

As I have pointed out, for the purposes of jurisdiction, the Legislature determines the value of the subject-matter of a suit for accounts, in a very special and artificial manner. The amount at which the relief sought is valued in the plaint or memorandum of appeal, may be very different from the value that the Court may itself put upon the subject-matter of the suit; the real value may not be ascertainable at the time the plaint is presented; it may alter from day to day, and may become definite and fixed at a later stage of the suit. That these possibilities were present to the mind of the Legislature, is evident from the Court-fees Act, section 11. During the proceedings, the subject-matter of certain suits may have accretions to it, in the way of mesne profits, or interest. It has never been suggested that there is any warrant for proceeding on the basis that the subject-matter of the suit must be valued from day to day.

The second part of Mookerjee J.'s reasoning involves the notion that, though the Court may initially have

⁽¹⁾ (1909) 13 Cal. W. N. 493.

jurisdiction to entertain a suit, events may take place by which it may have no jurisdiction to make an effective decree in that suit.

The proposition,—that a Court whose jurisdiction is not to exceed Rs. 1,000 cannot, on general principles, make a decree for an amount in excess of Rs. 1,000—seems to me, with all respect, to involve a *petitio principii*. The premise (as interpreted) is a direct assumption of the conclusion; to assume that the premise must be given that one of several possible interpretations, which includes the proposition, is no proof of the proposition. The premise being that the jurisdiction of the Court is not to exceed Rs. 1,000, if it must be interpreted as meaning that the Court is not to make a decree for over Rs. 1,000, then *cadit questio*. The whole point is, whether that is the true interpretation—whether the Legislature intended to lay down that a Subordinate Judge of the second class has no jurisdiction to pass a decree in excess of Rs. 1,000 in suits which are properly instituted in his Court; or whether the Legislature devised a means by which his jurisdiction should be finally fixed, irrespective of the amount for which the decree may have to be. Beaman J. saw the relevance of the converse consideration: though under section 15 of the Civil Procedure Code, every suit must be brought in the Court of the lowest grade competent to try it, it has never been suggested that a Court of higher grade in India has no jurisdiction to make a decree for a sum within the competence of a Court of lower grade, provided that the suit is, at the initial stage, correctly brought in the Court of higher grade.

The fundamental question according to Mookerjee J. is,—what is the highest amount for which a Court of restricted pecuniary jurisdiction is competent to make a decree; and he reasons, that, though the value of the suit must be taken to be determined by the value determinable for the computation of Court-fees—“the section does not say expressly that the value determinable for the purposes

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of jurisdiction is the value determinable for the purpose of the initial payment of Court-fees."—The argument is apparently based on the distinction between,

(1) the initial payment of Court-fees under section 7, and

(2) the additional fees payable under section 11, if, in a suit for accounts, the amount decreed is in excess of the amount at which the plaintiff valued the relief sought.

It is an ingenious argument. But it is surely too far-fetched to say that any doubt can exist as to the "value for the determination of Court-fees" referred to in section 8 of the Suits Valuation Act. The argument, that the jurisdiction of the Court may be ousted or restricted by a provision which provides for the execution of its decree (albeit on payment of additional Court-fees), seems to be on the verge of a contradiction in terms. If the Legislature had desired to limit the amount for which a Court of restricted jurisdiction is competent to make a decree, it could have, with great ease, provided in section 11 that the decree shall, in no event, be in excess of the pecuniary limits (if any) of the Court's ordinary jurisdiction: cf. section 6 of the Civil Procedure Code.

Section 11 of the Court-fees Act deals with one aspect of the case: where the contingency arises of the plaintiff not having valued the relief that he seeks, at the value or amount which the decree of the Court places upon it. The fact that the Legislature did not, at the same time, provide that this contingency affected the jurisdiction of the Court which it had derived under the existing statutory provisions, is an indication that those provisions were not intended to be disturbed.

Sir Charles Sargent C. J. in *Balwantrav Oze v. Sadrudin*⁽¹⁾ decided that the jurisdiction of the Court continues in all matters of execution, and is not ousted by the

⁽¹⁾ (1887) 13 Bom. 485.

circumstance that the value of the question in execution exceeds the limit of the value of the subject-matter of the suit, determined for purposes of instituting the suit. The same is indicated by Order XXIII, rule 3. It is not stated there that an agreement, compromise or satisfaction shall not be recorded, nor a decree passed in accordance therewith, unless it is less in value than the pecuniary jurisdiction of the Court.

A consideration of the law in England strengthens the view that we cannot fall back for guidance on first principles. The County Court in England has jurisdiction to entertain actions on balance of account, where the claim is not more than £100. On the one hand, this jurisdiction of the County Court does not oust the jurisdiction of the Supreme Court; and, on the other hand, the County Court may, by the consent of the parties, derive jurisdiction over all actions assigned to the King's Bench Division. Section 15 of the Civil Procedure Code is on an entirely different basis. Again, in England, if the action has been commenced in the High Court, it may be remitted for trial in the County Court, which then obtains complete derivative jurisdiction; (this is the converse case to which I referred above); while if the plaintiff persists in bringing his action in the High Court, though it is within the jurisdiction of the County Court, the costs may be ordered to be on the scale of the County Court, and not of the High Court. The scheme of this whole group of provisions is entirely different from that prevalent in India. The question in such matters really is, what scheme has been adopted by the Legislature.

For these reasons, I agree that the learned Subordinate Judge of the Second Class had jurisdiction to proceed with the suit, and that the order he made returning the plaint was a wrong order, and concur in the order proposed by my learned brother.

Rule discharged.

B. G. B.

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