APPELLATE CIVIL.

Before Mr. Justice Patkar, Acting Chief Justice, and Mr. Justice Barlee.

1931
July 8

SHIVASANGAPPA IRSANGAPPA KUPPASAD (ORIGINAL PLAINTIFF), APPELLANT *v.* MUCHKHANDEPPA IRSANGAPPA KUPASAD, MINOR BY HIS NEXT FRIEND BASAPPA GIRMALLAPPA PAWADESHETTI (ORIGINAL DEFENDANT), RESPONDENT.*

Court-fees Act (VII of 1870), Schedule II, Article 17, clause iii—Suits Valuation Act (VII of 1887), section 8—Valuation of suit—Suit for declaration with no consequential relief—Declaration affecting property in plaintiff's possession—Real value of property determines valuation for purposes of jurisdiction—Court having jurisdiction—Bombay Civil Courts Act (XIV of 1869), section 25.

Plaintiff brought a suit in the Second Class Subordinate Judge's Court at Bagalkot for a declaration that the defendant was not the lawfully begotten son of plaintiff's father, Irsangappa. The declaration sought by the plaintiff was in reference to the property which was in plaintiff's possession and which was admittedly worth more than Rs. 5,000. Plaintiff valued the claim for the purposes of court-fees and for jurisdiction at Rs. 200 and paid Rs. 15 as court-fees. The question being raised whether the Second Class Subordinate Judge's Court at Bagalkot had jurisdiction to try the suit,

Held, that as the suit was one for a mere declaration that the defendant was not the lawfully begotten son of Irsangappa it was the real value of the property which would be affected by the decree that determined the valuation for purposes of jurisdiction and that as that property was admittedly worth more than Rs. 5,000, it was the Court of the First Class Subordinate Judge and not that of the Second Class Subordinate Judge that had jurisdiction under section 25 of the Bombay Civil Courts' Act (XIV of 1869).

Rachappa Subrao v. *Shidappa Venkatrao*[1] and *Vasireddi Veeramma* v. *Butchayya*,[2] followed.

Bai Machhbai v. *Bai Hirbai*,[3] distinguished.

APPEAL against the order passed by K. B. Wassoodew, District Judge at Bijapur, reversing the decree passed by N. D. Upponi, Subordinate Judge at Bagalkot.

Suit for declaration.

The plaintiff was the son of one Irsangappa by his first wife. The defendant's mother, Nilgangawa, was the second wife of Irsangappa. After Irsangappa's death, which occurred

*Appeal from order No. 61 of 1929.

(1) (1918) 43 Bom. 507. (2) (1926) 50 Mad. 646.
(3) (1911) 35 Bom. 264.

on February 6, 1926, Nilgangawa went to reside at her parents' house at Athni and there gave birth to defendant on January 4, 1927. She got the defendant's name certified in Municipal records of Athni as the son of Irsangappa. Plaintiff thereupon sued for declaration that the defendant was not the lawfully begotten son of Irsangappa since he was born 332 days after Irsangappa's death. Plaintiff valued the claim for the purposes of court-fees and for jurisdiction at Rs. 200 and paid Rs. 15 as court-fees.

Defendant contended *inter alia* that he was the lawfully begotten son of Irsangappa ; that the plaint was not properly valued ; and that the Court of the Second Class Subordinate Judge, Bagalkot, had no jurisdiction as the property in respect of which declaration was sought was worth over Rs. 5,000.

The Subordinate Judge held on the preliminary issue as to jurisdiction that the suit was maintainable in the Bagalkot Court for the following reasons :—

"This suit as framed is for a mere declaration about the status of defendant : and the question to be considered is whether he is or is not the son of Irsangappa the father of plaintiff. There is no other relief sought and hence it is clear that it is a suit for a mere declaration with no consequential relief.

Such a suit is for purposes of court-fees and jurisdiction governed by Court-fees Act, Schedule II, Article 17, and section 8 of the Suits Valuation Act. Under these the value for court-fees and jurisdiction is the same ; and it has to be determined from the valuation given by plaintiff. Plaintiff has valued it at Rs. 200 ; and this only determines the jurisdiction. The case would have been different if consequential relief was claimed ; as in *Rachappa Subrao* v. *Shidappa Venkatrao*,[1] which is mainly relied on by defendant. But such is not the case here.

In *Rachâppa Subrao* v. *Shidappa Venkatrao*,[1] there was a prayer for declaration and also one for injunction which was in the nature of consequential relief ; and admittedly also the declaration was with respect to property exceeding Rs. 60,000 in value. But such is not the case here."

On the merits the Judge held that the defendant was not the lawfully begotten son of Irsangappa and accordingly made the declaration prayed for.

On appeal the District Judge agreed with the Subordinate Judge that the Court of a Second Class Subordinate Judge

[1] (1918) 43 Bom. 507.

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had jurisdiction to try the suit, but he held that it could not be validly instituted in the Bagalkot Court as defendant was born in Athni and was staying with his mother within the jurisdiction of Athni Court when the suit was instituted. The learned Judge accordingly directed that the plaint be returned to the plaintiff for presentation to the proper Court, namely, that of the Second Class Subordinate Court, Athni.

The plaintiff appealed to the High Court.

R. A. Jahagirdar, for the appellant.

H. B. Gumaste, for the respondent.

PATKAR, AG. C. J.:—This was a suit brought by the plaintiff for a declaration that the defendant was not the natural born son of Irsangappa bin Muchkhandeppa Kupsad.

The plaintiff is the son of Irsangappa by his first wife and the defendant is the son of Nilgangawa, the second wife of Irsangappa. Irsangappa died on February 6, 1926, and the defendant was born to Nilgangawa on January 4, 1927, that is, 332 days after the death of her husband. The defendant in the written statement contended that the property in respect of which the declaration was sought was worth more than Rs. 5,000, and therefore the suit would not lie in the Court of the Second Class Subordinate Judge at Bagalkot.

The learned Subordinate Judge held that the Court had jurisdiction to try the suit but on the merits decided in favour of the plaintiff, and gave a declaration that the defendant was not the natural born son of Irsangappa bin Muchkhandeppa Kupsad.

On appeal, the learned District Judge held, with respect to the objection to jurisdiction on the ground of the pecuniary value of the subject-matter of the suit, that though the decision of the Bombay High Court in *Bai Machhbai* v. *Bai*

Hirbai[1] might require to be reviewed in the light of the observations of the Privy Council in the case of *Rachappa Subrao* v. *Shidappa Venkatrao*[2] he was bound by the decision in *Bai Machhbai's* case,[1] and held that the suit was maintainable in the Court of the Second Class Subordinate Judge [His Lordship after discussing the provisions of sections 20 and 21 of the Civil Procedure Code continued :—]

It is, however, contended on behalf of the respondent that the view of the learned District Judge deciding the question of jurisdiction depending on the pecuniary value of the subject-matter of the suit is erroneous. It is contended that the case of *Bai Machhbai* v. *Bai Hirbai*[1] turned on the peculiar facts of that case, and that in any event the view of the Privy Council in *Rachappa Subrao* v. *Shidappa Venkatrao*[2] ought to prevail, and that where the plaintiff brings a declaratory suit relating to property worth more than Rs. 5,000, the First Class Subordinate Judge at Bijapur would have jurisdiction to try the suit and not the Second Class Subordinate Judge at Bagalkot.

Under section 25 of the Bombay Civil Courts Act, a Subordinate Judge of the First Class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature, wherein the subject-matter exceeds five thousand rupees in amount or value, as may arise within the local jurisdiction of the Courts in the district presided over by Subordinate Judges of the Second Class. The question for determination in the case is whether the value of the subject-matter in the present suit exceeds five thousand rupees. A suit where the relief prayed for is a declaration and a consequential relief would fall under section 7 (iv) (*c*) of the Court-fees Act, and the valuation for the purposes of court-fees and for the purposes of jurisdiction would be the same under section 8 of the Suits Valuation Act VII

[1] (1911) 35 Bom. 264. [2] (1918) 43 Bom. 507.

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of 1887. The valuation for the purpose of court-fees in a simple declaratory suit is governed by Schedule II, Article 17, clause iii, which prescribes a fixed fee of Rs. 10 subsequently raised to Rs. 15. Under section 8 of the Suits Valuation Act, where in suits other than those referred to in the Court-fees Act, 1870, section 7, paragraphs v, vi and ix, and paragraph x, clause (*d*), court-fees are payable *ad valorem* under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same. It would, therefore, follow that in a declaratory suit in which no consequential relief is asked, section 8 of the Suits Valuation Act would have no application as the court-fees are not paid *ad valorem*. Under section 4 of the Suits Valuation Act, where a suit mentioned in the Court-fees Act, 1870, Schedule II, Article 17, relates to land or an interest in land of which the value has been determined by rules under the preceding section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules. It appears that no rules have been framed by the Local Government under section 3 of the Suits Valuation Act, and in the absence of such determination the value will have to be determined judicially by the Court according to the decision in *Dayaram* v. *Gordhandas*.[1] It was observed (p. 79):—

"There is no express provision in the Suits Valuation Act making the valuation for the purposes of jurisdiction *prima facie* determinable by the plaintiff in any suit which can be valued lower for the computation of court-fees.

"On the other hand section 4 of the Suits Valuation Act seems . . . to indicate that the principle adopted by the legislature for valuing a suit mentioned in Schedule II, article 17, which relates to land or an interest in land is that the value of such a suit for purposes of jurisdiction shall be governed by the value of the land or interest in land."

In the present case it is contended on behalf of the appellant that the declaration sought by the plaintiff does

[1] (1906) 31 Bom. 73.

not relate to any property worth more than five thousand rupees within the meaning of section 25 of the Bombay Civil Courts Act. In the plaint the plaintiff states that this suit for a declaration is instituted in the Bagalkot Court because the plaintiff lives at Bagalkot and because the legitimacy of the defendant would affect the right to the property which is now in the plaintiff's possession and situate in Bagalkot. The declaration, therefore, sought by the plaintiff was in reference to the property which was in the plaintiff's possession, and it is common ground that the land in the possession of the plaintiff is worth more than Rs. 5,000, and that even the share to which the defendant would be entitled in case he is held to be a legitimate son would exceed in value Rs. 5,000.

In *Rachappa Subrao* v. *Shidappa Venkatrao*[1] it was held by their Lordships of the Privy Council that the practice in the Bombay Presidency of valuing a prayer for a declaratory decree at Rs. 130 as being the value on which the fee nearest to Rs. 10 would be leviable was illegal and misconceived, and that it was contrary to the scheme of the Court-fees Act that there should be any valuation of such a suit. It was observed (p. 516):—

"This practice has no warrant in law, but has been followed from a misconceived notion of what caution requires. But never was caution more misplaced, and their Lordships feel strongly that they ought not to allow the true facts to be distorted out of deference to an erroneous practice. And here it may be noted that the Rs. 130 cannot have been treated as the measure of the fee, for on such a value Rs. 9-12-0 and not Rs. 10 would have been paid."

Though the plaint in that case prayed for a declaration together with consequential relief, it was held that no consequential relief could have been prayed, and that the injunction which was prayed was demurrable in the sense that no cause of action was disclosed which could have supported this relief. The suit, therefore, was treated

[1] (1918) 43 Bom. 507.

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simply as for a declaration with regard to the property involved in the suit, and it was observed as follows (p. 516) :—

"If regard be had to the real as distinct from the imputed value of the property the suit was properly instituted in the Court of the First Class Subordinate Judge, and if any part of the fee payable and paid was a fixed fee under Schedule II of the Act, then the notional value of the property or any part of it could not displace its real value for the purposes of jurisdiction."

It would, therefore, follow from the remarks of the Privy Council that in a simple declaratory suit it is the real value of the property and not the notional value that would determine the valuation for jurisdiction apart from the valuation for purposes of the court-fees. In the present case the notional value of Rs. 200 which was put as being the value on which the increased fixed court-fee of Rs. 15 would be leviable would not determine the valuation for purposes of jurisdiction, but the real value of the property, the subject-matter of the suit, likely to be affected by the declaration must be taken to be the value for the purposes of jurisdiction.

The same view was taken in the case of *Vasireddi Veeramma* v. *Butchayya*,[1] which turned upon the valuation for the purposes of jurisdiction on the terms of section 12 of the Madras Civil Courts Act, and it was held that a suit for a mere declaration of the factum and validity of an adoption, without any consequential relief regarding lands or houses likely to be affected by the declaration, has, for purposes of jurisdiction, to be valued on the basis of the market value of the lands or houses likely to be affected by such declaration and not either according to plaintiff's pleasure, or according to the valuation under the Court-fees Act as if it were a suit for possession of such lands or houses.

It would also appear from section 4 of the Suits Valuation Act that in a suit mentioned in Schedule II, Article 17, which does not ask for a consequential relief and relates

[1] (1926) 50 Mad. 646.

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to land or interest in land the value for purposes of jurisdiction shall be governed by the value of the land or interest in land. According to the allegations made in the plaint to which I have referred, the declaration was sought in respect of the lands in the plaintiff's possession. The case of *Bai Machhbai* v. *Bai Hirbai*[1] can be distinguished on the ground that there was no dispute in that case with respect to land or interest in land, as it was a suit brought by one Mahomedan widow against another widow for a declaration that the adoption made by one of them was invalid, and that the adopted son was not a party to the suit and no question relating to land or interest in land arose in that case. If, however, the decision in *Bai Machhbai* v. *Bai Hirbai*[1] be considered to have decided that in a declaratory suit the valuation for purposes of jurisdiction is to be determined by the valuation based on the Court-fees Act, the remarks of the Privy Council to which I have referred are inconsistent with that decision. We must, therefore, follow the decision of the Privy Council in *Rachappa Subrao* v. *Shidappa Venkatrao*,[2] and hold that in the present case the Bagalkot Court had no jurisdiction to try the suit, and that the First Class Subordinate Judge at Bijapur had jurisdiction to entertain the suit under section 25 of the Bombay Civil Courts Act, XIV of 1869.

We think, therefore, that the order passed by the lower appellate Court in form is correct, and though we confirm the order of the lower appellate Court returning the plaint to be filed in the proper Court, we think that the proper Court is not the Second Class Subordinate Judge's Court at Athni but the First Class Subordinate Judge's Court at Bijapur. Costs of this appeal will be costs in the suit.

BARLEE, J.—I agree and I have nothing to add.

Order modified.

J. G. R.

[1] (1911) 35 Bom. 264.

[2] (1918) 43 Bom. 507.