

to as one of the ordinary Courts of the country", and following the view taken by the Privy Council in *Secretary of State for India v. Chelikani Rama Rao*,⁽¹⁾ a second appeal would lie to the High Court as was held in *Jamsang Devabhai v. Goyabhai Kikabhai*.⁽²⁾ For these reasons I agree that we are not bound by the full bench decision in *Amarsangji's* case⁽³⁾ and that a second appeal lies to this Court.

On the merits of the case I have nothing to add to the judgment delivered by my learned brother and agree with the orders proposed to be passed by him.

PER CURIAM. In view of the orders passed with regard to the amendment of the plaint, we think that the appellants must bear the costs of the respondents in this appeal and the costs hitherto incurred in the District Court.

Appeal allowed.

Y. V. D.

⁽¹⁾ (1916) L. R. 43 L. A. 192, s. c. 39
Mad. 617.

⁽²⁾ (1891) 16 Bom. 408.

⁽³⁾ (1924) 49 Bom. 442, F. B.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

JAMNADAS VRIJLAL (ORIGINAL DEFENDANT), APPLICANT v. CHANDULAL JAMNADAS (ORIGINAL PLAINTIFF), OPPONENT.*

Indian Court-fees Act (VII of 1870), section 7, clause (iv) (c)—Suit for declaration and injunction—Value of subject-matter exceeding Rs. 15,000—Suit filed in Second Class Subordinate Judge's Court—Bombay Civil Courts Act (Bom. Act XIV of 1869), section 24—Claim for court fees and jurisdiction to be the same—Swiss Valuation Act (VII of 1887), section 8—Preliminary issue involving consideration of jurisdiction—High Court's power to interfere—Civil Procedure Code (Act V of 1908), section 115.

Where the subject-matter of a preliminary issue in a case involves a consideration of the jurisdiction of the Court, the High Court has, under section 115 of the Civil Procedure Code, 1908, jurisdiction to interfere with the decision of the lower Court on a preliminary issue.

* Civil Revision Application No. 164 of 1936.

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Senaji v. Pannaji,⁽¹⁾ commented on.

Secretary of State for India v. Narsibhai Dadabhai,⁽²⁾ followed.

The value of the subject-matter in a suit for declaration and injunction was admittedly more than Rs. 15,000. The plaintiff, however, started the suit in the Court of a Second Class Subordinate Judge and he valued the claim at Rs. 230. The defendant having objected to the pecuniary jurisdiction of the Court:—

Held, that the learned Judge was right in holding that he had jurisdiction to entertain the suit.

Ishwarappa v. Dhanji Bhanji,⁽³⁾ *Balkrishna Narayan v. Jankibai*⁽⁴⁾ and *Dagdu v. Totaram*,⁽⁵⁾ followed.

CIVIL REVISION APPLICATION from an order passed by I. C. Munsiff, Joint Subordinate Judge, Ahmedabad, in suit No. 1168 of 1931.

The material facts appear sufficiently from the judgment of the Court.

M. R. Jayakar, with *B. G. Thakor*, for the applicant.

U. L. Shah, for the opponent.

BEAUMONT C. J. This is a revision application made by the defendant. The plaintiff, who is a son of the defendant, alleges in the plaint that the defendant is wasting the joint family property, and misappropriating it, and he asks in the plaint for a declaration that he is entitled along with the defendant and a cousin to the joint possession, enjoyment and management of the joint family property, and then he asks for injunctions, both prohibitory and mandatory, against the defendant. The claims were valued for the purposes of the Court-fees Act at Rs. 230, but it is admitted by the pleaders on both sides, in a purshis which they signed, that the value of the immoveable and moveable properties in suit is more than Rs. 15,000. The suit was started in the Court of the Second Class Subordinate Judge, and two preliminary issues were raised, the first one, as to whether the plaint was adequately stamped, and, secondly, whether

⁽¹⁾ (1931) 33 Bom. L. R. 1596.

⁽²⁾ (1923) 48 Bom. 43.

⁽³⁾ (1931) 56 Bom. 23.

⁽⁴⁾ (1919) 44 Bom. 331.

⁽⁵⁾ (1909) 33 Bom. 658.

the Court had pecuniary jurisdiction to try the suit. The learned Judge answered both the preliminary issues in the affirmative. It is contended on this revision application that the answer to the second preliminary issue, which goes to jurisdiction, is wrong, but in the first instance Mr. Shah on behalf of the respondent has taken the preliminary objection that no revision application lies under section 115 of the Civil Procedure Code, and for that contention he relies particularly on a decision of this Court in *Senaji v. Pannaji*,⁽¹⁾ where Mr. Justice Baker reviewed the authorities. That was a case in which the preliminary issue was one as to *res judicata*, whereas in the present case the preliminary issue goes to the jurisdiction of the Court, and this Court in *Secretary of State for India v. Narsibhai Dadabhai*⁽²⁾ held that a revision application under section 115 was competent in respect of a preliminary order passed by a Judge where that preliminary order went to the jurisdiction of the Court. The subject-matter of the preliminary issue in that case was whether the Secretary of State was a necessary party, but the basis of the decision was that the preliminary issue involved a consideration of the jurisdiction of the Court. In my opinion that case was rightly decided, and in any case it binds me. Section 115 of the Civil Procedure Code provides that the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

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(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

⁽¹⁾ (1931) 33 Bom. L. R. 1596.

⁽²⁾ (1923) 48 Bom. 43.

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the High Court may make such order in the case as it thinks fit. I think that Mr. Justice Baker in *Senaji v. Pannaji*⁽¹⁾ went too far when he held that a finding on an interlocutory matter followed by an order is not a case decided within section 115. That view would really involve this, that "a case decided" within section 115 means a case finally decided and that the section has no application to interlocutory orders. The case of *Secretary of State for India v. Narsibhai Dadabhai*⁽²⁾ seems to me inconsistent with that view, and I have myself acted in revision in more than one case in respect of interlocutory orders, although I entirely agree with the caution which has been laid down many times that this Court should be very slow to interfere in its revisional jurisdiction with orders which are merely interlocutory. But, in my view, there is jurisdiction to do so, and the jurisdiction can be exercised in a proper case. I think, therefore, on the authority of *Secretary of State for India v. Narsibhai Dadabhai*,⁽²⁾ I have jurisdiction in this case to deal with the matter in revision.

Now on the merits the contention of the applicant is that under section 24 of the Bombay Civil Courts Act the jurisdiction of a Second Class Subordinate Judge is limited to suits wherein the subject-matter does not exceed in amount or value Rs. 5,000, and he says that admittedly here the subject-matter of the suit, that is the property which is the subject-matter of the suit, exceeds Rs. 5,000. But then one has to read the Bombay Civil Courts Act in conjunction with the Suits Valuation Act of 1887, which again has to be read in conjunction with the Court-fees Act of 1870. Section 7, clause (iv) (c), of the Court-fees Act provides that the amount of fee payable under this Act in suits to obtain a declaratory decree or order where consequential relief is prayed or (d) an injunction is sought shall be computed according to the amount at which the relief sought is valued in the plaint. Now here the relief sought appears to be no more than

⁽¹⁾ (1931) 33 Bom. L. R. 1596.⁽²⁾ (1923) 48 Bom. 43.

a declaration and an injunction, and the value of that relief is placed in the plaint at Rs. 230, though, no doubt, the property which is the subject-matter of the declaration and injunction is worth over Rs. 15,000. Then one comes to section 8 of the Suits Valuation Act of 1887, which provides :—

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“ 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*), ‘ (and this case does not fall within any of those paragraphs),’ Court-fees are payable *ad valorem* under the Court-fees Act, 1870, ‘ (and here the Court-fees are payable *ad valorem* under the First Schedule),’ the value as determinable for the computation for Court-fees and the value for purposes of jurisdiction shall be the same.”

No doubt the result is rather startling, but the effect of it seems to be that inasmuch as the plaintiff has valued his relief for declaration and an injunction at Rs. 230, that necessarily governs the value of the subject-matter of the suit for the purposes of jurisdiction. I should point out that the preamble to the Suits Valuation Act states that “ it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts, with respect thereto.” So that clearly the Act is dealing with valuation of suits for the purposes of jurisdiction, and therefore must affect the construction of section 24 of the Bombay Civil Courts Act, which deals with the same subject. In my opinion, therefore, the learned Subordinate Judge was right in holding that he had jurisdiction to entertain this suit. The decision seems to me to be in accordance with the view which has been adopted by this Court in a good many cases which were cited to me, particularly *Ishwarappa v. Dhanji Bhanji*,⁽¹⁾ *Balkrishna Narayan v. Jankibai*,⁽²⁾ and *Dagdu v. Totaram*.⁽³⁾ The application must be dismissed with costs.

Application dismissed.

Y. V. D.

⁽¹⁾ (1931) 56 Bom. 23.

⁽²⁾ (1919) 44 Bom. 331.

⁽³⁾ (1909) 33 Bom. 658.