

1903  
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APPELLATE  
CIVIL.  
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## [301] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K. C. I. E., Chief Justice, Mr.  
Justice Hill and Mr. Justice Stevens.

HARI MOHAN MISSER v. SURENDRA NARAIN SINGH.\*  
[15th December, 1903.]

*Appeal to Privy Council—Valuation of suit—“ Value of subject-matter of suit ”—Civil Procedure Code (XIV of 1882), s. 596—Court-fees Act (VII of 1870) s. 7, cl. IV (d)—Value of the relief sought.*

In a suit for an injunction it is open to the applicant for leave to appeal to His Majesty in Council to show what the real value of the subject-matter of the suit is, notwithstanding the fact that for the purposes of the Court-fees Act (VII of 1870), the value of the suit was fixed at a sum less than the appealable amount.

[Ref. 39 I. C. 911=(1917) M. W. N. 422.]

APPLICATION by the defendants, Hari Mohan Misser and others, for leave to appeal to His Majesty in Council.

The plaintiffs instituted this suit praying for a perpetual injunction restraining the defendants from altering the character of a plot of land by erecting thereon buildings for the manufacture of indigo and by excavating the land for the purpose of constructing indigo-vats in it. It was also prayed in the plaint that certain vats and excavations, ditches, etc., made by the defendants should be ordered to be filled up by them within a time to be fixed by the Court. In the plaint the suit was valued at Rs. 1,500.

The defendants alleged that they were co-sharers with the plaintiffs of the land in dispute, that they constructed the factory and other necessary buildings at a cost of more than Rs. 16,000 with the knowledge and consent of the plaintiffs, and that the character of the land was not in any way changed and the plaintiffs were not therefore entitled to an injunction.

The Subordinate Judge decreed the suit, granting the injunction. On appeal the District Judge reversed the decree of the first Court and dismissed the suit. The plaintiffs appealed to the High [302] Court which reversed the appellate decree of the District Judge and gave a decree† for the plaintiffs. The defendants applied for leave to appeal to His Majesty in Council. In support of their application they filed an affidavit for the purpose of showing that the value of the subject-matter of the suit was more than Rs. 10,000 though in the plaint the amount, at which the relief sought was valued, was Rs. 1,500 only. In the affidavit it was stated as follows :—

“ That the defendants began to construct vats and other structures for the manufacture and storage of indigo with the knowledge of the plaintiffs, and spent a capital of about Rs. 16,000 on the indigo cultivation and manufacturing business, which, if stopped, would entail a loss of Rs. 25,000.

“ That the entire cost of such construction, structures and other matters connected with the said indigo factory far exceeded the amount of Rs. 10,000.

“ That from the account (annexed to the affidavit) it would appear that Rs. 7,039-8-9 were spent for building structure on the land, Rs. 3,069-13-6 for implements for manufacturing indigo, Rs. 241-13 on account of wages given to ploughmen for *khas* cultivation of indigo lands, Rs. 138-13-6 on account of riding expenses for inspection of indigo lands, Rs. 5-4 on account of *daftar saranjam* (contingency

\* Application for leave to appeal to His Majesty in Council, No. 24 of 1903.

† *Ante*, p. 174.

charges), Rs. 827-2 on account of the pay of the servants, Rs. 84-1-9 on account of the advances given to the China pump-coolies, Rs. 795-12-6 on account of the *khās* cultivation of indigo lands, Rs. 178-7-3 on account of the expenses of sowing indigo, Rs. 1,743-4-6 on account of buying indigo seeds, Rs. 51 on account of the advances given to the coolies, who beat the vats, Rs. 36-10-6 on account of expenses given to *satadōo* ryots, Rs. 21 on account of making pools in low lands, Rs. 20 on account of the advances given to the press coolies, and Rs. 5-13 on account of the advances given to the tailor, making a total of Rs. 14,258-8-3.

“ That the above items were actually spent, and the cultivation of the indigo for the year 1896-97 directly involved the expenditure of the said amount, inasmuch as such cultivation would have been of no practical utility to the defendants without the construction and erection of the said works, involving the said expenditure, and the said cultivation would not have gone on without incurring the said items of expenditure.

“ That the real value of the relief claimed in the suit, judged from the practical result thereof to the defendants, is much over Rs. 10,000, and the decree of this Honourable Court directly and indirectly involves questions respecting property of more than Rs. 10,000.”

The *Advocate-General* (Hon'ble Mr. J. T. Woodroffe) (Babu Jogesh Chandra Dey and Babu Joy Gopal Ghose with him) for the applicant. The suit being one for injunction the valuation of the relief sought is only for the purpose of computing the amount of [303] Court-fees payable under s. 7, cl. IV (d) of the Court-fees Act, and that does not preclude a party from showing what the real or market value of the subject-matter of the suit in the Court of first instance is: Babu Lekraj Roy v. Kanhya Singh (1), Mohun Lall Sookul v. Bebee Doss (2), Gourmonev Debia v. Khaja Abdool Gunny (3). Under s. 596 of the Civil Procedure Code the real market value of the matter in dispute is the test as to whether or not an appeal lies to the Privy Council: Pichayee v. Sivagami (4).

Babu Golap Chandra Sarkar, Dr. Rash Behary Ghose, Babu Jogen-dra Nath Bose and Babu Dwarka Nath Mitter with him) for the opposite party. The valuation given in the plaint is conclusive. The defendants appealed to the District Judge, and in their memorandum of appeal they valued the appeal at Rs. 1,500; they cannot now say that the value of the subject-matter of the suit is more than Rs. 10,000: Nagendra Nath Mozumdar v. Bussik Chandra Rai (5).

The *Advocate-General* (in reply). The defendants when appealing to the District Judge were bound to adopt the value of the suit as in plaint. S. 8 of the Suits Valuation Act (VII of 1887) says that the value as determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same: see s. 21 of the Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887) and the case last cited by the other side.

MACLEAN, C. J. Notwithstanding the fact that, having regard to section 7 of the Court-fees Act, VII of 1870, sub-section 4, the value of this suit was fixed at Rs. 1,500, I think it is open to the petitioner, having regard to the nature of the relief sought, to show what was the real value of the subject-matter in the case. It is perhaps a little difficult, where a perpetual injunction is asked for against a person carrying on a business such as the manufacture of indigo to restrain him from erecting buildings which are essential to that business, to appreciate exactly what the real value of the subject-matter may be. As I have

(1) (1874) L. R. 1 I. A. 317.

(2) (1860) 7 Moo. I. A. 428.

(3) (1860) 8 Moo. I. A. 268.

(4) (1891) I. L. R. 15 Mad. 237.

(5) (1901) 6 C. W. N. 246.

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said before, it is competent to the petitioner to show what the real value was.

[304] I agree with the criticism addressed to us on behalf of the respondent, that many of the items mentioned in paragraph 7 of the affidavit filed in support of the petition cannot be included in the value of the subject-matter of the dispute. But Rs. 7,000 is said to have been expended on the building structures, and a portion at any rate of what is said to have been expended on implements for the manufacture of indigo might, I think, be fairly included.

Paragraph 9 says this:—"The real value of the relief claimed in the suit, judged from the practical result thereof to the defendants, is much over Rs. 10,000." If the plaintiffs are entitled to a perpetual injunction practically restraining the defendants from carrying on the indigo business, it must be obvious that the defendants may sustain a loss far greater than the mere cost of the buildings.

Under these circumstances the petitioner is entitled to a certificate.  
HILL, J. I concur.

STEVENS, J. I also concur.

— Certificate granted.

31 C. 305 (=31 I. A. 24=8 C. W. N. 225.)

[305] PRIVY COUNCIL.

AMAR CHANDRA KUNDU v. SHOSHI BHUSHAN ROY.\*  
[11th November and 10th December, 1903.]

[On appeal from the High Court at Fort William in Bengal.]

*Manager, powers of—Bengal Tenancy Act (VIII of 1885) ss. 93, 98—Mortgage by manager—Restraint on powers of co-owners while estate under management—Mortgage by co-owner of his share, effect of—Appeal to Privy Council—Sufficiency of certificate of leave to appeal—Civil Procedure Code (Act XIV of 1882) ss. 595, 596, 600.*

The powers given by s. 98 of the Bengal Tenancy Act to a manager of joint property appointed under s. 93 "for the purposes of management" include the power to mortgage or to sell the property.

The restraint put upon the co-owners by s. 98, sub-s. (B) of the Act, whilst the estate is under management, is co-extensive with the power conferred on the manager; it does not extend to the exercise of individual rights.

Where one of the co-owners of an estate under management mortgaged his share which in execution of a decree on the mortgage was purchased by the mortgagee:—

*Held*, that the mortgagee thereby became a co-owner under the manager, and as such was entitled to the benefit of a decree for redemption in a suit on a mortgage of the estate by the manager.

On an objection taken that the appeal had not been properly admitted:—

*Held* that the case was governed by *Webb v. Macpherson* (1) and that the certificate of leave to appeal was sufficient.

[Rel. cit.: 28 C. W. N. 208=29 C. L. J. 297=50 I. C. 790; 2 L. W. 1057.]

APPEAL from a decree (16th July 1900) of the High Court at Calcutta, which affirmed a decree (4th March 1898) of the District Judge of Chittagong decreeing the respondents' suit.

One of the defendants, Amar Chandra Kundu, appealed to His Majesty in Council.

\* Present: Lord Macnaghten, Lord Lindley, Sir Andrew Scoble, Sir Arthur Wilson and Sir John Bonser.

(1) (1903) *Ants.* p. 57; L. R. 30 I. A. 288.