

32 C. 734 (=9 C. W. N. 690.)

[734] APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Woodroffe.

HARI SANKER DUTT v. KALI KUMAR PATRA.*

[9th March, 1905.]

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Jurisdiction—Valuation of suit—Valuation for purposes of jurisdiction—Declaratory decree, suit for—Consequential relief—Court fees—Court Fees Act VII of 1870, s. 7 para. 4, cls. (c), (d)—Suits Valuation Act (Act VII of 1887), s. 8.

A suit by a plaintiff in possession for declaration of his title to land, and for an injunction restraining defendants from interfering with his possession by cutting trees thereon, and for damages, falls within s. 7, para. IV, cls. (c) and (d) of the Court Fees Act.

In such a suit the Court must accept the value of the relief stated in the plaint for the purposes of the Court-fees as well as for the purposes of jurisdiction.

Sardarsingji v. Ganpatsingji (1) *Bai Varanda Lakshmi v. Bai Manegavri* (2), *Ostoché v. Hari Das* (3), *Jogal Kishor v. Tale Singh* (4), *Sheo Deni Ram v. Tulshi Ram* (5), *Velu Goundan v. Kumaravelu Goundan* (6), approved.

Kirty Churn Miller v. Anath Nath Deb (7), and *Boidya Nath Adya v. Makhan Lal Adya* (8) distinguished.

[Fol. 33 Bom. 307=11 Bom. L. R. 30=5 M. L. T. 230; 62 I. C. 69; Ref. 11 C. W. N. 705=5 C. L. J. 427; 36 All. 500; 13 I. C. 903=11 M. L. T. 155=1912 M. W. N. 199; Dist. 17 C. W. N. 160=15 I. C. 46; 36 I. C. 615; 14 C. L. J. 47=15 C. W. N. 823=10 I. C. 465; Expl. 6 C. L. J. 427=11 C. W. N. 705.]

SECOND APPEAL by the plaintiff, Hari Sanker Dutt.

The plaintiff alleged that a certain Mouza was owned and held by him in *durmocurruri* right under the defendants, and that the latter, with the object of depriving him of the said mouza, cut and misappropriated a number of trees growing in the jungle within the said mouza, and that they were holding out threats that they would "misappropriate to themselves the said jungle and the trees."

[735] He therefore instituted the present suit in the Court of the Munsif of Khatra praying for the following reliefs:—

(1) That his *durmocurruri* right to the jungle in the mouza be declared; (2) that the defendants be prohibited by perpetual injunction from cutting down and appropriating the trees in the jungle; (3) damage amounting to Rs. 79 on account of the trees misappropriated; and (4) any other relief.

The plaintiff valued his claim at Rs. 209 made up as follows: Rs. 130, being the value of the claim for injunction on declaration of his title to the whole jungle, and Rs. 79, the amount of damages claimed. He paid Rs. 10 on account of Court-fees on the claim valued at Rs. 130 and Rs. 6 on the other claim.

The defendants pleaded *inter alia* that the value of the jungles mentioned in the plaint was not less than Rs. 1,300, and that the Court had no jurisdiction to try the suit.

* Appeal from Appellate Decree No. 2294 of 1902, against the decree of Jogendra Nath Ghose, Subordinate Judge of Bankura, dated the 17th of July 1902, reversing the decree of Mohendra Nath Dutt, Munsif of Khatra, dated the 17th of June 1901.

(1) (1892) I. L. R. 17 Bom. 56.

(2) (1893) I. L. R. 18 Bom. 207.

(3) (1880) I. L. R. 2 All. 869.

(4) (1882) I. L. R. 4 All. 320.

(5) (1893) I. L. R. 15 All. 373.

(6) (1896) I. L. R. 20 Mad. 289.

(7) (1882) I. L. R. 8 Cal. 757.

(8) (1890) I. L. R. 17 Cal. 680.

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The plaintiff objected to the raising of an issue as to the value of the jungle. The Munsif however overruled the objection and framed an issue, "Is the value of the jungle of the mouza at present more than Rs. 1,000, and if so has the Court jurisdiction to try this suit?" A Commissioner was appointed to determine the value. The plaintiff declined to adduce any evidence on the point, and the Commissioner reported that the value was Rs. 1,765. The Munsif however found that the value was not more than Rs. 400 and overruled the objection as to jurisdiction. He found the remaining issues in favour of the plaintiff and granted a perpetual injunction as prayed and awarded Rs. 58 as damages.

On appeal by the defendants the Subordinate Judge found the value of the jungle to be Rs. 1,200, and holding that this amount together with Rs. 79 claimed as damages should be the value of the suit for purposes of jurisdiction, allowed the appeal and ordered the plaint to be returned for presentation to the proper Court after amendment of the value.

The plaintiff appealed to the High Court.

Babu Nalini Ranjan Chatterjee (Babu Joy Gopal Ghose with him), for the appellant. The Subordinate Judge was wrong in saying that for purposes of jurisdiction the subject-matter of the present suit is the market value of the property; that would be [736] so if the suit was for possession. If the construction put upon s. 8 of the Suits Valuation Act, namely, that the valuation for jurisdiction is to be determined by the market value of the property and that valuation is to be taken for the purposes of Court-fees, were correct, the effect would be to nullify the provisions of s. 7 of the Court-fees Act. The right construction of s. 8 of the Suits Valuation Act, is that the valuation for the purpose of jurisdiction should in the cases mentioned there follow and be the same as the valuation for Court-fees: *Velu Goundan v. Kumaravelu Goundan* (1); *Bai Varunda Lakshmi v. Bai Manegavari* (2). Assuming that the Munsif had no jurisdiction, s. 11 of the Suits Valuation Act would cure the defect; the Lower Appellate Court has not found the matters referred to in sub-s. (2) of the section: *Dinesh Chandra Roy Choudhury v. Sarnamoyi Debi* (3); *Hamidunessa Bibi v. Gopal Chandra Nalakar* (4).

The following cases were also referred to:—*Sardarsingji v. Ganpat-singji* (5); *Ostoche v. Hari Das* (6); *Jogal Kishor v. Tale Singh* (7); *Sheo Deni Ram v. Tulshi Ram* (8).

Babu Khetra Mohan Sen, for the respondents. Under s. 7, para. 4 of the Court-Fees Act, the Court-fee must be paid on the value of the relief: plaintiff cannot put an arbitrary value. There must be a proper valuation: *Boidya Nath Adya v. Makhhan Lal Adya* (9). The remarks in the case apply to all the clauses of para. 4 of s. 7. Under s. 19 of the Bengal Civil Courts Act a Munsif has jurisdiction only, if the value does not exceed Rs. 1,000. Here it is found that the value is over Rs. 1,000. The value for purposes of Court-fees and the value for purposes of jurisdiction are calculated on different principles: *Kirty Churn Mitter v. Ananath Nath Deb* (10); s. 8 of the Suits Valuation Act means that the value for purposes of jurisdiction should be first determined and the value for Court-fees should follow that. In this case the plaintiff has, not paid *ad-valorem* Court-fee on Rs. 130, at which he valued his claim; he paid Rs. 10, which is the

- (1) (1896) I. L. R. 20 Mad. 289.
(2) (1893) I. L. R. 18 Bom. 207.
(3) (1896) I C. W. N. 136.
(4) (1897) I C. W. N. 556.
(5) (1892) I. L. R. 17 Bom. 56.

- (6) (1880) I. L. R. 2 All. 869.
(7) (1882) I. L. R. 4 All. 320.
(8) (1893) I. L. R. 15 All. 378.
(9) (1890) I. L. R. 17 Cal. 680.
(10) (1882) I. L. R. 8 Cal. 757.

[737] fixed-fee for declaratory suits. *Velu Goundan v. Kumara Velu Goundan* (1) is opposed to *Boidya Nath Adya v. Makhan Lal Adya* (2). Section 11 of the Suits Valuation Act does not apply to a case like the present: *Vasudeva v. Madhava* (3).

Babu *Nalini Ranjan Chatterjee* in reply: *Boidya Nath Adya v. Makhan Lal Adya* (2) was not governed by s. 8 of the Suits Valuation Act.

BRETT AND WOODROFFE, JJ. The present appeal arises out of a suit brought by the plaintiff alleging that he was in possession of certain jungle and that the defendants had interfered with his possession by cutting certain trees from it. He sought in the suit a declaration of his title to the whole jungle and damages for the trees, which the defendants had cut from it and an injunction restraining the defendants from cutting any more trees.

He valued the trees cut at 79 rupees, and the relief otherwise claimed at 130 rupees. He, therefore, valued the whole suit at 209 rupees.

The defendants raised the objection that the suit was undervalued; and the Munsif appointed a Coramissioner to ascertain what the value of the jungle, of which the plaintiff claimed to be in possession, was. The Commissioner reported the value to be over 1,000 rupees, but the Munsif being of opinion that the Commissioner had been misled by the defendants formed his own estimate of the value, and came to the conclusion that it was not in excess of the value stated by the plaintiff in his plaint. It is to be observed that the plaintiff objected to any valuation being made, on the ground that the valuation which he had given in his plaint was sufficient for the purposes of jurisdiction.

The Munsif proceeded, after trying the preliminary point, to decide the case, and gave the plaintiff a decree for relief claimed.

On appeal the Subordinate Judge has set aside the judgment and decree of the Munsif on the ground that the Munsif had no jurisdiction to entertain the suit. He lays down the proposition that in a case like the present, the value of the suit for the [738] purposes of jurisdiction is to be determined as if possession of the whole property were sought, and, making an estimate of the profits to be derived from the jungle, he arrives at the conclusion that the market value of the jungle was over 1,200 rupees; and, accordingly he held that the value of the suit, taking the amount claimed as damages also into consideration, was 1,279 rupees. He accordingly decreed the appeal, and directed that the plaint be returned to the plaintiff with directions to present it to the proper Court after amendment of its value.

The plaintiff has appealed; and, in support of his appeal, it is contended that the Subordinate Judge has erred in law in the view which he has taken of the question as to how the value of the property was to be determined for the purposes of jurisdiction. It is contended that the present suit is one which clearly falls under paragraph IV, section 7, clauses (c) (d) of the Court-fees Act (Act VII of 1870). That section provides that in such a suit the value for the purposes of Court-fees is to be determined according to the amount at which the relief as sought is valued in the plaint or the memorandum of appeal.

In this case the plaintiff claimed to have been in possession of the whole of the jungle in question, and the relief which he sought was not delivery of possession of the jungle, but merely a declaration of his title and

(1) (1896) I. L. R. 20 Mad. 289.

(2) (1890) I. L. R. 17 Cal. 680.

(3) (1892) I. L. R. 16 Mad. 326

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an injunction to prevent an interference with his possession, and damages for the wood taken from the jungle; and he valued the relief sought at 209 rupees. It is contended that under the provisions of section 8 of the Suits Valuation Act (VII of 1887), the value for the purposes of jurisdiction should have been taken to be the same as the value for the purposes of determining the Court-fees.

We have read the two sections carefully, and, in our opinion, the present case falls clearly within those two sections.

The learned vakeel has referred us to certain cases in the Bombay, Allahabad and Madras High Courts, in which it has been distinctly laid down that in a case like the present the valuation for the purposes of jurisdiction is to be determined by the value of the relief stated by the plaintiff, and that it is no part of the duty of the Court to ascertain the value for the purposes of jurisdiction. The cases referred to are *Sardarsingji [739] v. Ganpatsingji* (1); *Bai Varunda Lakshmi v. Bai Manegavri* (2); *Ostoche v. Hari Das* (3); *Jogal Kishor v. Tale Singh* (4); *Sheo Devi Ram v. Tulshi Ram* (5); and *Velu Goundan v. Kumaravelu Goundan* (6). These authorities certainly support the view for which the learned vakeel has contended.

On behalf of the respondent, it has been urged that the view taken by the Subordinate Judge is correct, and that for the purposes of jurisdiction the value of the property ought to have been ascertained as if possession were sought in the case. And, in support of this view, the rulings of this Court in *Kirty Churn Mitter v. Aunath Nath Deb* (7) and *Boidya Nath Adya v. Makhani Lal Adya* (8) have been relied on.

We have referred to those cases, and in our opinion they do not support the proposition contended for. The suits dealt with in those cases were suits for partition of property; and in those cases it was laid down that such suits do not fall within the provisions of section 7, paragraph IV, clause (b) of the Court Fees Act, and that therefore the provisions of section 8 of the Suits Valuation Act do not apply to them. It was held that for the purposes of the Court-fees Act, the Court-fee to be paid was determined by schedule II, article 17, clause (b) of the Court-fees Act and that for the purposes of jurisdiction, the Court should ascertain the value of the property to be dealt with by the Court in partition, that is to say, the market-value of the property.

Those two cases are however clearly distinguishable from the present, which in our opinion clearly falls within the provisions of paragraph IV, clauses (c) and (d) of section 7 of the Court-fees Act. We see no reason to differ from the view taken by the High Courts of Bombay, Madras, and Allahabad that in a case like the present it is not the duty, nor is it within the power of the Court to ascertain the value of the property for the purposes of jurisdiction; but that it should accept the value of the relief stated in the plaint. In our opinion, the Court in such cases should accept the value of the relief sought by the plaintiff both [740] for the purposes of the Court-fees as well as for the purpose of determining the jurisdiction of the Court to try the suit.

We think, therefore that the view taken by the learned Subordinate Judge is incorrect. We set aside his judgment and decree and direct that the appeal be remanded to him for retrial on the merit.

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| (1) (1392) I. L. R. 17 Bom. 56. | (5) (1893) I. L. R. 15 All. 378. |
| (2) (1893) I. L. R. 18 Bom. 207. | (6) (1896) I. L. R. 20 Mad. 299. |
| (3) (1880) I. L. R. 2 All. 869. | (7) (1882) I. L. R. 8 Cal. 757. |
| (4) (1862) I. L. R. 4 All. 320. | (8) (1880) I. L. R. 17 Cal. 680. |

The appellant in this case will recover the value of the Court-fee paid by him on the memorandum of appeal to this Court, and is entitled as against the respondents to his other costs in this Court. The costs in the lower Court will abide the result.

Appeal allowed ; case remanded.

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[741] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Caspersz.

RAM SUNDER DAS v. KAMAL JHA *alias* KAMAL DAS.*
[11th and 12th April, 1905.]

Receiver—Receiver, appointment of—Pending suit for recovery of property.

Where in a suit pending before a First Subordinate Judge for recovery of property, an application has been made for the appointment of a Receiver and granted.

Held, on appeal, that it is inadvisable to go into the merits of a case, which is pending before a Court, where the appointment of a Receiver is under consideration. Such a course is undesirable and tends to prejudice the case.

SECOND APPEAL by the defendant Ram Sunder Singh :

The plaintiff Kumar Das brought a suit against the defendant Ram Sunder Singh for the recovery of possession of the properties moveable and immoveable and appurtenant to the Mohuntship of Asthal Barahi Nanahi.

Pending this suit Kamal Das applied for the appointment of a Receiver under section 503 of the Civil Procedure Code, and the first Subordinate Judge of Mozafferpur, Babu Nalini Nath Mitter, made an order on the 3rd January 1905 appointing a Receiver. From this order the defendants appealed to the District Judge of Mozafferpur, Mr. E. P. Chapman, who on the 9th January 1905 confirmed the order of the First Subordinate Judge, and ordered him to pass such further orders as to security, accounts, and remuneration, as he might consider proper.

On the 11th January 1905 Babu Nalini Nath Mitter, First Subordinate Judge passed an order appointing Mr. E. H. Stevens as Receiver and ordered him to take immediate possession of the property in suit. The Receiver was to have 10 per cent. com-[742] mission on the rents and profits of the property collected or realized by him, and should furnish security to the extent of Rs. 4,000. He should pass his accounts at the end of each month and submit a copy of the same in Court; also deposit the balance due thereon in the Court, every month. He was further ordered to exercise the powers in respect of the management of the property as provided under section 503 of the Code.

From this order the defendant Ram Sunder Singh appealed.

Mr. Garth (with him Babu Chandra Sekhar Banerji and Babu Joy Gopal Ghose) for the appellant, Ram Sunder Singh. The question here is whether the plaintiff has made out a *prima facie* case of title as against the defendant. The defendant has a right to be in possession of the property as against a stranger. The Court will not take that possession away from the defendant, unless a strong *prima facie* case is made against him,

* Appeal from Order No. 27 of 1905, against the order of Mr. E. P. Chapman, District Judge of Tirhoot, dated the 9th of January 1905, affirming the order of Babu Nalini Nath Mitter, Subordinate Judge of Mozafferpur, dated the 3rd January 1905.