It was clearly the intention of the testator that in the event which has happened he should take the estate; and there is no reason why effect should not be given to that intention.

The grounds urged before us therefore all fail, and the decree appealed from must be affirmed, except as regards costs. But seeing that the question about the construction of the will is not altogether free from difficulty, and seeing also that the charge of unchastity brought against defendant No. 1 has not been established, we think the defendants, though unsuccessful, should not be made liable for the costs of the plaintiff. The result then is that the decree of the Court below will be affirmed, except so far as it makes the defendants liable for the costs of the plaintiff; and the parties will bear their own costs in this Court and in the Court below.

F. K. D. *Appeal dismissed.*

Before Mr. Justice Banerjee and Mr. Justice Rampini.

HAMIDUNNISSA BIBI AND ANOTHER (PLAINTIFFS) *v.* GOPAL CHANDRA MALAKAR (DEFENDANT).* 1897 *April* 27.

Valuation of Suit—Designed exaggeration of valuation—Suits Valuation Act (VII of 1887), section 11—Munsif, Jurisdiction of—Code of Civil Procedure (Act XIV of 1882), section 578—Jurisdiction—Provincial Small Cause Courts Act (IX of 1887), section 15, sub-section 3.

A suit was brought in the Munsif's Court for money as well as for damages valued at Rs. 1,004. The Munsif gave the plaintiff a decree for Rs. 900, but dismissed the claim for the balance, which was for damages. On appeal the Subordinate Judge was of opinion that the claim had been designedly exaggerated, and he therefore held that the suit was one cognizable by the Small Cause Court, and directed the plaint to be returned to the plaintiff for the purpose of presenting it to the proper Court.

Held, that as the suit was tried on its merits by the first Court, and the over-valuation of the suit was not found by the Appellate Court to have prejudicially affected the disposal of the suit on its merits, the objection as to jurisdiction should not have been given effect to, and therefore the Court below was wrong in directing the plaint to be returned.

* Appeal from Appellate Decree No. 1425 of 1895, against the decree of Babu Purna Chunder Shome, Subordinate Judge of 24-Pergunnahs, dated the 29th of May 1895, reversing the decree of Babu Moti Lall Haldar, Munsif of Alipur, dated the 19th of November 1894.

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Mohee Lall v. *Kheta Ram Marwary* (1) followed; *Nanda Kumar Banerjee* v. *Ishan Chandra Banerjee* (2) and *Bonomally Nawn* v. *Campbell* (3) distinguished.

THE facts of this case and the arguments appear sufficiently from the judgment of the High Court.

Dr. *Rash Behary Ghose* and Moulvie *Abdul Jawad* for the appellants.

Babu *Nil Madhub Bose* and Dr. *Ashutosh Mookerjee* for the respondent.

The judgment of the High Court (BANERJEE and RAMPINI, JJ.) was delivered by

BANERJEE, J.—This appeal arises out of a suit brought by the plaintiffs, appellants, to recover a sum of Rs. 1,004, on the allegation that the plaintiff No. 1 gave to the defendant a currency note for Rs. 1,000 for change, believing, under a mistake, that it was a note for Rs. 100 only; that the defendant shortly afterwards returned to plaintiff No. 1 a note for Rs. 100 making her believe that it was the identical currency note which she had made over to the defendant, and saying that he was unable to change it; that subsequently, upon the mistake being discovered on the return of the husband of plaintiff No. 1, the defendant was asked to give back the currency note for Rs. 1,000, but he denied having received it; that not having had in their hands this note for Rs. 1,000, the plaintiffs, to meet the expense for the construction of their house, had to borrow Rs. 800 on interest, and thus had been made liable to pay interest to the extent of Rs. 104; and that the plaintiffs were, therefore, entitled to recover from the defendant Rs. 900, being the difference between the Rs. 1,000 note made over to him, and the Rs. 100 note received from him, together with Rs. 104 as damages.

The defence was that the defendant was not liable for the plaintiff's claim; and that, on the face of the plaint, the claim could only have been for Rs. 900, and it had evidently been exaggerated with the object of ousting the jurisdiction of the proper Court in which the suit should have been brought.

The parties went to trial upon the following issues: "*First*,

(1) 1 B. L. R., Ap. 91. (2) 10 B. L. R., 196.

whether the Court has jurisdiction to try the suit? *Second*, whether the defendant misappropriated the proceeds of a Rs. 1,000 note belonging to the plaintiff? *Third*, whether the plaintiffs are entitled to any and what damages?"

The first Court, after having found upon the third issue that the claim for damages was not made out, in its decision upon the first issue, said this: "The plaintiffs' claim, as stated in the plaint, is composed of two portions: one for Rs. 900, being the proceeds of their Rs. 1,000 note alleged to have been misappropriated by the defendant, and another for Rs. 104, being the amount of damages claimed. It has been observed above that the latter claim for Rs. 104 is not made out. The plaintiffs' case is now confined only to the first portion of their claim, namely, for Rs. 900. The question which is now pressed before the Court by the learned pleader for the defendant is that the plaintiffs' claim, which is now reduced below Rs. 1,000, should be tried by the Small Cause Court at Sealdah and not by this Court, the plaintiffs being not at liberty, by making an unwarrantable addition to their claim, to bring the present suit within the cognizance of this Court, ousting the jurisdiction of the Small Cause Court." And a little further on it observed: "In the present case, plaintiffs very legitimately claimed damages, but they failed to make them out. This failure on their part will not oust the jurisdiction of this Court." And then having found the second issue for the plaintiffs, the first Court gave them a decree for Rs. 900.

On appeal the lower Appellate Court has reversed that decree, and ordered the plaint to be returned to the plaintiffs for the purpose of being presented to the proper Court, on the ground that the suit properly lay in the Court of Small Causes, and not in the Court of the Munsif, the claim having been designedly exaggerated, with the view of bringing the suit in the Munsif's Court. In support of its decision, the lower Appellate Court refers to the cases of *Nanda Kumar Banerjee* v. *Ishan Chandra Banerjee* (1), *Bonomally Nuun* v. *Campbell* (2) and *Lakshman Bhatkar* v. *Babaji Bhatkar* (3).

(1) 1 B. L. R., Ap. 91. (2) 10 B. L. R., 193.
(3) I. L. R., 8 Bom., 31.

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In second appeal it is contended for the plaintiffs that the decision of the lower Appellate Court is wrong in law, and that the cases relied upon in that decision are distinguishable from the present; and in support of this contention, section 11 of the Suits Valuation Act (VII of 1887), and the cases of *Mohee Lall* v. *Kheta Ram Marwary* (1) and *Damodhar Timaji Gosavi* v. *Trimbak Sakharam* (2) are relied upon.

We are of opinion that the appellants' contention is correct. This is how the matter stands. Under sub-section 3 of section 15 of Act IX of 1887, the local Small Cause Court has jurisdiction to try suits for money, where the amount does not exceed Rs. 1,000; and by section 19, sub-section 2, of Act XII of 1887, the local Munsif has jurisdiction to try suits where the value does not exceed Rs. 2,000. In the present case, therefore, if the claim had been only for the sum of Rs. 900 decreed by the first Court, the Small Cause Court, and not the Court of the Munsif, would have had jurisdiction to try the suit; and the question is whether, although the suit was valued at Rs. 1,004, that is, at an amount which exceeded the jurisdiction of the Small Cause Court, and made the suit triable by the Munsif, the fact of this valuation being the result of a designed exaggeration of the claim for the purpose of evading the jurisdiction of the Small Cause Court and bringing the suit in the Munsif's Court, as the lower Appellate Court has found, makes the suit really one cognizable by the Court of Small Causes, and the plaint liable to be returned to the plaintiff for presentation to that Court, notwithstanding that the suit was tried by the Munsif on the merits, and notwithstanding that the Appellate Court does not find that the over-valuation has prejudicially affected the disposal of the suit on its merits.

We are of opinion that, having regard to the provisions of section 11 of the Suits Valuation Act, this question ought to be answered in the negative. That section enacts that, "Notwithstanding anything in section 578 of the Code of Civil Procedure, an objection that by reason of over-valuation or under-valuation of a suit"—we quote only so much of the section as is applicable to the present case—"a Court of first instance, which had not

(1) 25 W. R., 76. (2) I. L. R., 10 Bom., 370.

jurisdiction with reference to the suit exercised jurisdiction with respect thereto, shall not be entertained by an Appellate Court unless (*a*) the objection was taken in the Court of first instance on or before the first hearing, or (*b*) the Appellate Court is satisfied, for reasons to be recorded by it in writing that the suit was over-valued, and that the over-valuation thereof has prejudicially affected the disposal of the suit on its merits." And the section goes on to enact that, "if the objection was taken in the manner mentioned in clause (*a*) of sub-section 1, but the Appellate Court is not satisfied as to both the matters mentioned in clause (*b*) of that sub-section, and has before it the materials necessary for the determination of the other grounds of appeal itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance."

Now in the present case, although the objection was taken in the first Court before the first hearing, and although the Appellate Court was satisfied that the suit was over-valued, it does not say that it is satisfied that the over-valuation has prejudicially affected the disposal of this suit on its merits. The Appellate Court, therefore, has not here proceeded in conformity with sub-section 2 of section 11, as it ought to have done.

It was argued by the learned Vakil for the respondent that section 11 of the Suits Valuation Act has no application to this case, because the Act is intended, as its preamble shows, only to prescribe the mode of valuing certain suits, and that section 11 is limited in its operation to those cases where the change of jurisdiction is from a higher to a lower Court of the same class, that is, from a Subordinate Judge's Court to a Munsif's Court, or *vice versâ*, and not where it is from a Court of exclusive jurisdiction, like a Court of Small Causes, to that of a Munsif.

We do not think that this argument is sound. Though the object of the Act is to prescribe the mode of valuing certain suits, section 11 comes under Part III of the Act which is headed as a part relating to supplemental provisions; and there is nothing in the language of the section to limit its operation in the way contended for. We are, therefore, of opinion that section 11 of the Suits Valuation Act applies to this case, and

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that the Court of appeal below was wrong in reversing the decree of the first Court and directing the return of the plaint, without complying with the provisions of that section.

The two cases cited from the Bengal Law Reports are both distinguishable from the present; first, because they were decided before the Suits Valuation Act was passed; and, secondly, because the principle upon which they are based has no application to this case. That principle is this, that the plaintiff cannot give jurisdiction to or take away jurisdiction from a Court by adding to his claim something to which he was not entitled upon any view of the case, and that such unwarrantable addition to his claim must be struck out, and the jurisdiction of the Court determined with reference to the rest of his claim.

Can this be said of the claim for damages to the extent of Rs. 104 in this case? A claim for damages like this is not absolutely untenable as a matter of law; and it is only because the evidence, in the opinion of the Courts below, was insufficient to substantiate this part of the claim that it has to be dismissed. In our opinion this case is much more analogous to that of *Mohee Lall* v. *Kheta Ram Marwary* (1), which we see no reason to dissent from, and which, we think, we ought to follow.

As for the case of *Lakshman Bhatkar* v. *Babaji Bhatkar* (2), there the first Court had returned the plaint on the ground that it had no jurisdiction to try the suit by reason of its value, and the High Court confirmed the first Court's decision. It is true that Mr. Justice West in his judgment observed: "An exaggerated claim thus brought for the purpose of getting a trial in a different Court from the one intended by the Legislature is substantially a fraud upon the law, and must be rejected, whether it arises from mere recklessness or from an artful design to get the adjudication of one Judge instead of that of another." This was a mere *obiter dictum* of the learned Judge; and having regard to the provisions of the Suits Valuation Act, which was passed some years after the date of this decision, and to the fact that in a later case, namely, that of *Damodhar Timaji Gosavi* v. *Trimbak Sakharam* (3),

(1) 25 W. R., 76. (2) I. L. R., 8 Bom., 31.
(3) I. L. R., 10 Bom., 370.

which was governed by Act XI of 1865, the Bombay High Court declined to follow this *dictum*, we do not think that it would be right to apply that principle to this case. It is, no doubt, a sound rule that Courts should not allow parties to evade the law relating to matters of jurisdiction, and that, where it is found that a party has intentionally exaggerated his claim in order to bring his suit in a Court which otherwise would not have jurisdiction to try it, before the merits of the claim have been gone into the plaint should be returned to be presented to the proper Court. But this rule must be taken with qualifications; and one important qualification is that embodied in section 11 of the Suits Valuation Act, which is this, namely, that where the suit has been tried on its merits by the first Court, and the over-valuation or under-valuation of the suit is not found by the Appellate Court to have prejudicially affected the disposal of the suit on its merits, there the objection as to jurisdiction should not be given effect to. A plaintiff who alters the valuation of his suit for the purpose of evading jurisdiction may be punished by having no costs allowed to him; but it would not, in our opinion, conduce to promote the ends of justice, if an Appellate Court were to set aside a decision which is found to be correct on the merits, simply because the value of the suit had been designedly increased, or diminished, to evade jurisdiction.

For these reasons we are of opinion that the decision of the lower Appellate Court must be set aside, and the case remanded to that Court in order that it may dispose of the appeal, having regard to the provisions of section 11 of the Suits Valuation Act. The costs of this appeal will abide the result.

S. C. G. *Appeal allowed. Case remanded.*