APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Richardson.

1910
May 25.

PRAHLAD CHANDRA DAS
v.
DWARKA NATH GHOSE.*

Adoption—Valuation of suit—Suit to set aside Adoption—Munsif, jurisdiction of —Forum—Practice.

According to a long-standing practice, a suit to set aside an adoption is, for the purposes of jurisdiction, incapable of valuation; and it is competent to the plaintiff in such a suit to value the relief claimed, and that valuation determines the forum to decide the suit.

Aklemannessa Bibi v. *Mahomed Hatem* (1) commented on.

Jan Mahomed Mandal v. *Mashar Bibi* (2) referred to.

SECOND APPEAL by the defendants, Prahlad Chandra Das and others.

This appeal arose out of an action brought by the plaintiff to set aside an adoption. The suit was brought in the Court of the Munsif, first Court, Barisal. The plaintiff stated that the defendant No. 2 purported to adopt defendant No. 1 under an alleged verbal permission given to her by her late husband, Norendra, at his deathbed, but in fact there was no permission at all, and as such the said adoption was invalid. It was further stated that defendant No. 2, Sarojini, did not perform the necessary ceremonies.

The defendants pleaded, *inter alia*, that the husband of defendant No. 2 gave permission to adopt, and that the necessary ceremonies were duly performed.

It appeared that the suit was valued at Rs. 1,235, and that the Munsif in whose court it was instituted exercised jurisdiction in all suits not exceeding Rs. 2,000 in value.

* Appeal from Appellate Decree, No. 2631 of 1908, against the decree of Sripati Chatterjee, Subordinate Judge of Barisal, dated Aug. 20, 1908, affirming the decree of Jogendra Nath Bose, Munsif of Barisal, dated Jan. 9, 1908.

(1) (1904) I. L. R. 31 Calc. 849. (2) (1907) I. L. R. 34 Calc. 352.

After the close of the evidence for both sides, the defendants' pleader took an objection that, inasmuch as the relief claimed was not capable of money-valuation, the Court had no jurisdiction to try the suit; and the learned Munsif directed the plaint to be returned. The plaintiff thereupon appealed against that order. The Appellate Court set it aside and remanded the case. After remand, the learned Munsif allowed both the parties to adduce fresh evidence, and upon taking such evidence decreed the plaintiff's suit, holding that the adoption was invalid. On appeal by the defendants to the Subordinate Judge, the decision of the Court of first instance was affirmed.

Against this decision the defendants appealed to the High Court, mainly on the ground that the Munsif had no jurisdiction to try the suit.

Babu Kritanta Kumar Bose, for the appellants.

Babu Mahendra Nath Roy and *Babu Girija Prasanna Roy Chowdhry*, for the respondent.

BRETT AND RICHARDSON JJ. The main point which has been taken in support of this appeal is that the lower Appellate Court erred in law in holding that a suit to set aside an adoption was entertainable by the Munsif's Court. It appears that the suit was valued by the plaintiff at Rs. 1,235, and that the Munsif in whose Court it was instituted exercised jurisdiction in all suits not exceeding Rs. 2,000 in value. In support of the appellant's contention, the decision of this Court in the case of *Aklemannessa Bibee* v. *Mahomed Hatem* (1) has been relied on. This Court has, however, in the later case of *Jan Mahomed Mandal* v. *Mashar Bibi* (2), pointed out that the decision in the case of *Aklemannessa Bibi* v. *Mahomed Hatem* (1) as to the jurisdiction of the Munsif to entertain a suit for restitution of conjugal rights, is an *obiter dictum*. We have studied carefully the judgments of this Court in these two cases, and we are of opinion that the view taken in the latter

(1) (1904) I. L. R. 31 Calc. 849. (2) (1907) I. L. R. 34

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case that the decision in the former case was not one which was necessary for the purposes of disposing of that case, and, therefore, it was an *obiter dictum*, is correct. We see no reason to depart from what appears to have been the practice in this province for a number of years and which has been accepted as the practice in other provinces, and to hold that, for the purposes of jurisdiction, a suit to set aside an adoption is incapable of valuation. The practice has always been that it is competent to the plaintiff to value the relief claimed in his suit, and that valuation has been taken to determine the forum of the Court to decide the suit. In our opinion, therefore, this point taken in support of the appeal fails.

We have gone through the judgment of the lower Appellate Court, and we think that, on the merits as determined by the findings of that Court, the defendants have really no case We see no reason, therefore, to interfere with the judgment and decree of the lower Appellate Court. We accordingly dismiss the appeal with costs.

Appeal dismissed.

S. C. G.