

**APPELLATE CIVIL.***Before Harington and Carnduff JJ.*

HARIHAR PRASAD SINGH

v.

SHYAM LAL SINGH.\*

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Feb. 25.

*Court-fee—Declaratory decree, suit for—Consequential relief—Plaint, rejection of—Civil Procedure Code (Act V of 1908), O. VII, r. 11—Valuation of suit—Court-fees Act (VII of 1870), s. 7, paras. iv, cl. (c), v, cl. (a)—Valuation for purpose of jurisdiction—Suits Valuation Act (VII of 1887), s. 8.*

In a suit for declaration that a decree amounting to Rs. 2,794 and odd should be declared forged, illusory and unfit for execution, and also for a declaration that the family property valued at Rs. 7,000 was not liable to be sold in execution of that decree, the plaintiff paid court-fee ten times the Government revenue payable on the land worth Rs. 7,000. The Court below rejected the plaint :—

*Held*, that the real value of the reliefs claimed was Rs. 2,794 and odd, the value of the decree, and that the plaintiff not having paid court-fee on that amount, the plaint was rightly rejected.

A plaintiff cannot value his case for the purpose of court-fee and for the purpose of jurisdiction at different amounts.

**APPEAL** by Harihar Prasad Singh, the plaintiff.

This appeal arose out of an action brought by the plaintiff, who was a minor, for a declaration that a certain decree was forged, fraudulent and was not fit for execution, and also for a declaration that the joint family property was not liable for the payment of the said decree. The plaintiff alleged that the father of defendants Nos. 2 and 3 got a bond executed by defendant No. 8, the father of the plaintiff, and caused a false necessity to be recited in the said

\* Appeal from Original Decree, No. 222 of 1909, against the decree of Tarak Nath Dutt, Subordinate Judge of Patna, dated May 8, 1909.

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bond; that on the basis of the said bond defendants Nos. 2 and 3 instituted a suit, and in collusion with defendant No. 8 obtained a compromise decree; that in the said suit no notice was served upon the plaintiff and no proper proceeding was taken for the appointment of his guardian; that the plaintiff's mother, who is his guardian, having come to know that the family properties of the plaintiff were to be sold in execution of the said decree, brought the present suit. In it the plaintiff further prayed that if the whole of the property could not be released, the plaintiff's share might be released. The amount of the decree under execution was Rs. 2,794-14-3, and the value of the family property was stated to be Rs. 7,000. The plaintiff paid court-fee ten times the Government revenue payable on the land worth Rs. 7,000.

The defendants pleaded, *inter alia*, that the court-fee paid by the plaintiff was insufficient, and as such it ought to be rejected. The Court below held that inasmuch as the property was valued at Rs. 7,000, *ad valorem* court-fee on that amount should have been paid, and directed the plaintiff to pay the balance within ten days. The plaintiff having failed to do so, the plaint was rejected. Against this decision the plaintiff appealed to the High Court.

*Babu Sarat Chandra Roy Chowdhury*, for the appellant. The court-fee paid by the plaintiff was the proper court-fee. He said that the value of the property which would be affected was Rs. 7,000, and it was a revenue-paying estate, therefore he paid court-fee ten times the Government revenue: see section 7, para. v, cl. (b) of the Court-fees Act. A Court cannot increase the valuation of a suit. It is the plaintiff who can do so. Where a plaintiff has valued his suit

arbitrarily, and upon no principle at all, there the Court can interfere: see *Umatul Batul v. Nauji Koer* (1). In the present case the plaintiff did not value the suit arbitrarily.

*Babu Karunamoy Bose*, for the respondent. Under section 8 of the Suits Valuation Act the plaintiff must pay court-fee according to the valuation he put in the plaint for the purpose of jurisdiction. In this suit, for the purpose of jurisdiction he valued at Rs. 7,000, so he was bound to pay *ad valorem* court-fee on that amount: see *Rajkrishna Dey v. Bepin Behary Dey* (2).

*Babu Sarat Chandra Roy Chowdhury*, in reply.

HARINGTON J. This is an appeal against the judgment of the Subordinate Judge of Patna rejecting the plaint on the ground that insufficient court-fee was paid. And the question which comes up now is whether the Judge was right in taking that course. The suit was one which asked that a decree amounting to Rs. 2,794-14-3 should be declared forged, fraudulent, illusory, collusive, inoperative and unfit for execution. It also asks that the family property valued at Rs. 7,000 should be declared to be not liable to be sold in execution of this decree. There was also an alternative prayer, if the whole of the property could not be released, the plaintiff's share might be released. The plaintiff tendered ten times the Government revenue payable on the land worth Rs. 7,000, basing his claim to do that on the provisions of section 7, sub-section v of the Court-fees Act. But that sub-section provides for cases where a suit is brought for possession of land. The present suit is not one brought for possession of land. This is a case where a declaration as also consequential reliefs have been asked for. It

(1) (1907) 6 C. L. J. 427, 436.

(2) (1912) 16 C. L. J. 194.

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comes under the previous sub-section by which an *ad valorem* fee is payable.

It has been contended that the Court could not question the value put on the reliefs claimed. I think that this cannot be argued where it is shown on the face of the plaint that the value put on the relief is too small. It is the duty of the Court to see that proper value is put on the reliefs claimed.

In this case, in my opinion, the real value of the reliefs claimed is Rs. 2,794 odd, which is the amount of the decree the plaintiff asked to have declared fraudulent. This was the decree made against him: from this he desired to escape liability. I do not think that Rs. 7,000, the value of the whole property, could be the value of the reliefs claimed; for even if the entire property were sold, the balance of the sale-proceeds after satisfying the decretal amount would be payable to the owners of the property. I think, therefore, that the proper value of the reliefs claimed is the value of the decree.

What has happened in this case is that for the purpose of jurisdiction the plaintiff valued his case at Rs. 7,000. Under the Suits Valuation Act, section 8 court-fee would be payable on that value. He cannot value his case for the purpose of court-fee and for the purpose of jurisdiction at different amounts. The correct value of the suit is the value of the amount of the decree. If that value is put on for the purpose of court-fee, it must also be put on for the purpose of jurisdiction.

The result is that this appeal is dismissed with costs.

CARNDUFF J. I agree.

S. C. G.

*Appeal dismissed.*