

APPELLATE CIVIL.

Before Mr. Justice Mookerjee and Mr. Justice Beachcroft.

RAJ KRISHNA DEY

v.

BIPIN BEHARI DEY.*

1912

June 19.

Court-fee—Declaratory suit—Consequential relief—Injunction, prayer for—Endowment—Valuation of suit—Jurisdiction—Specific Relief Act (I of 1877), s. 42—Court-fees Act (VII of 1870), s. 7 (iv) (c)—Suits Valuation Act (VII of 1877), s. 8.

The plaintiff brought a suit for declaration that he was the sole *shebait* of the family deity, and was entitled as such to exclusive possession of the disputed properties on behalf of the deity, and also for a declaration that the registration of the name of the principal defendant as joint owner of the endowed properties with the plaintiff in the books of the Collector was improperly made. He valued the suit, for purposes of jurisdiction, at Rs. 11,005, and paid Rs. 10 as court-fees under Schedule II, Art. 17 (iii) of the Court-fees Act. Subsequently, on an objection taken under s. 42 of the Specific Relief Act by the principal defendant at the hearing of the suit, a prayer was added in the plaint for an injunction prohibiting the principal defendant from interfering with the plaintiff performing his duties as *shebait* and managing the *debutter* properties, and a further *ad valorem* fee was paid by the plaintiff under Schedule I, read with s. 7 (iv)(d) of the Court-fees Act, for the injunction. The Court of first instance having heard the suit and dismissed it on the merits, the plaintiff appealed to the High Court, and upon the memorandum of appeal he paid court-fees in the same manner as in the Court of first instance :

Held, that the prayer for injunction was arbitrarily undervalued, that its value was the value of the relief claimed, and that the plaintiff was bound to pay *ad valorem* court-fees upon the plaint and memorandum of appeal on the basis that the value of the relief claimed was Rs. 11,005.

Umatul Batul v. Nanji Koer (1), *Dayaram Jagjivan v. Gordhandas Dayaram*(2) and *Boidya Nath Adya v. Makhan Lal Adya* (3) referred to.

* Appeal from Original Decree, No. 118 of 1910.

(1) (1907), 11 C. W. N. 705 ;
6 C. L. J. 427.

(2) (1906) I. L. R. 31 Bom. 73.

(3) (1890) I. L. R. 17 Calc. 680.

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APPEAL by Raj Krishna Dey, the plaintiff.

This was a suit brought on the 10th July 1908 by the plaintiff against Bipin Behari Dey and other members of a joint Hindu family for a declaration of his, the plaintiff's, title as sole *shebait* of the family deity, for a further declaration that he, the plaintiff, was entitled to the exclusive possession of the disputed properties on behalf of the deity, and also for a declaration, that the registration of the name of Bipin Behari Dey as joint owner of the endowed properties with the plaintiff in the books of the Collector was improperly made. He valued the suit for the purposes of jurisdiction at Rs. 11,005, and paid Rs. 10 as court-fees on a valuation of the same under Schedule II, Art. 17 (iii) of the Court-fees Act. On the 14th May 1909, when the case came on for trial, the defendant, Bipin Behari Dey, took the preliminary objection, that the suit was not maintainable in view of the provisions of section 42 of the Specific Relief Act. The plaint was accordingly amended by the addition of a prayer, that Bipin Behari Dey be prohibited from interfering with the plaintiff performing his duties as *shebait* and managing the *debutter* properties, and a further *ad valorem* fee of Rs. 75 was paid by the plaintiff under Schedule I, read with section 7 (iv) (d) of the Court-fees Act, for the injunction. Upon the suit being dismissed on the merits by the Subordinate Judge, the plaintiff appealed to the High Court, paying the court-fees on the memorandum of appeal in the same manner as in the Court of first instance.

Babu Tarak Chandra Chakravarti, for the respondent. I have a preliminary objection to take in this appeal as to its incompetency. Originally the suit was brought on payment of Rs. 10 as court-fees. The court-fees on the memorandum of appeal were

paid in the same manner as on the plaint. The appeal is, therefore, valued at Rs. 1,000. Under the provisions of section 8 of the Suits Valuation Act, the value as determinable for the computation of court-fees and the value for the purposes of jurisdiction is the same. This appeal, therefore, lies to the District Judge, and not here. This suit, as framed, came under section 7 (*iv*)(*c*) of the Court-fees Act. It was virtually a suit for recovery of possession, and no amount of circumlocution will make it otherwise. The prayer for injunction was nothing more than a prayer for possession. The stamp duties paid by the plaintiff on the plaint and on the memorandum of appeal are, consequently, insufficient to bring this appeal within the jurisdiction of the High Court.

Babu Hara Kumar Mitra, for the appellant. It has been held by the Court of first instance that the plaint in this suit was properly stamped. When a declaration is sought for, and the declaration is for, possession of property worth more than Rs. 5,000, as in the present suit, an appeal will lie to this Court. In this case it was not the proprietary right, but the *shebaitship*, that was claimed. My submission is, that the plaintiff has paid the proper court-fees for a mere declaratory suit and is not liable to pay more, and that he is entitled to bring his appeal in the High Court on the basis of the valuation of his suit. I am prepared, however, to pay the full amount of court-fees on the memorandum of appeal, and I ask for time to pay the same.

The respondent was not called upon to reply.

MOOKERJEE AND BEACHCROFT, JJ. A preliminary objection has been taken to the competence of this appeal. The appeal arises out of a suit in which the plaintiff seeks for declaration that he is a sole *shebait*

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of Lakhi Barahu Jiu and the principal defendant is not a *shebait* of the idol, and also for an injunction to restrain the defendant from interfering with his possession of the endowed properties. In the plaint as originally framed, there was no prayer for an injunction. Objection was, therefore, taken by the defendant to the effect that the suit was not maintainable in view of the proviso to section 42 of the Specific Relief Act. The plaintiff then amended the plaint and inserted the prayer for injunction to which reference has just been made. He valued the suit for the purposes of jurisdiction at Rs. 11,005, but for the purpose of payment of court-fees valued the prayer for injunction at Rs. 1,000. He then paid Rs. 10 as court-fees for the declaration under Schedule II, Art. 17 (*iii*), and Rs. 75 for the injunction under Schedule I read with section 7 (*iv*), (*d*) of the Court-fees Act, 1870. The suit was heard on the merits and dismissed. The plaintiff has appealed to this Court, and upon the memorandum of appeal, he has paid court-fees in the same manner as in the Court of first instance. It has been contended on behalf of the respondents that, under section 8 of the Suits Valuation Act, the valuation for the purposes of court-fees is identical with the valuation for the purpose of jurisdiction, and that, consequently, if the value assigned by the plaintiff for purpose of jurisdiction be accepted, the plaint and the memorandum of appeal are both insufficiently stamped, while, if the value assigned by the plaintiff for purposes of court-fees be accepted, the appeal lies to the District Judge and not to this Court.

Section 8 of the Suits Valuation Act provides as follows:—“Where in suits other than those referred to in the Court-fees Act, 1870, section 7, paragraphs V, VI and IX, and paragraph X, clause (*d*), court-fees are payable *ad valorem* under the Court-fees Act 1870, the

value as determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same." The suit as framed falls within section 7, clause IV, sub-clause (c) of the Court-fees Act, 1870. Consequently, the value as determined for purposes of jurisdiction, namely, Rs. 11,005, must also determine the value for the purpose of payment of court-fees.

The same conclusion follows from another point of view. Section 7 (c) of the Court-fees Act provides that the amount of fee payable in suits to obtain a declaratory decree, where, as here, consequential relief is prayed, shall be determined according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. It was pointed out by this Court in the case of *Umatul Batul v. Nanji Koer*(1), that in cases falling under section 7 (iv) of the Court-fees Act, although the plaintiff is to state the amount at which he values the relief sought, the Legislature never intended that the plaintiff should be at liberty to assign any arbitrary value and thus be free to choose capriciously the *forum* of trial or appeal. The same view was taken in *Dayaram Jagjivan v. Gordhandas Dyaram* (2) and is implied in *Boidya Nath Adya v. Makhan Lal Adya* (3). In the case before us, there is no room for controversy that the prayer for injunction has been arbitrarily undervalued. The plaintiff contends that he is the sole *shebait* of the idol Lakhi Barahū Jiu, and is entitled, as such, to exclusive possession of the disputed properties, on behalf of the idol. He further contends that the principal defendant has been improperly placed in joint possession of the endowed properties under an erroneous order of the Revenue

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authorities made on the 6th May 1908. If he succeeds in these contentions, he will obtain exclusive possession of the endowed properties, of which according to his allegation he was in joint possession at the date of the commencement of the suit. The value of the prayer for injunction, therefore, is the value of the relief claimed by the plaintiff, and upon the facts stated that value, as estimated by the plaintiff himself, is Rs. 11,005. The plaintiff is, therefore, bound to pay *ad valorem* court-fees upon the plaint and memorandum of appeal, on the basis that the value of the relief claimed is Rs. 11,005. The court-fees payable upon Rs. 11,005 is Rs. 520; but the plaintiff has paid only Rs. 75; he is thus liable to pay the difference Rs. 445, both upon the plaint and the memorandum of appeal; he is accordingly directed to pay court-fees to the extent of Rs. 890 within three weeks from this date. If the amount is paid, the appeal will be heard. If it is not paid, the Court will consider what further order should be passed. The appeal will stand adjourned for three weeks.

The respondents are entitled to the costs of this hearing.

Appeal adjourned.

[The court-fee was paid, and the appeal heard on the merits: *see* next case. Ed.]

O. M.