

[APPELLATE CIVIL JURISDICTION.]

1874.
December 10.

BÁI MA'HKOR (PLAINTIFF AND APPELLANT) *v.* BULAKHI CHAKU
(DEFENDANT AND RESPONDENT).*

Declaratory Decree—Court Fees Act VII. of 1870, Section 4, Schedule II., Art. 17, Clauses 3 and 6—Valuation of suit—Bombay Civil Courts Act XIV. of 1869, Section 24—Jurisdiction—Procedure—Return of plaint—Civil Procedure Code, Act VIII. of 1859, Section 30.

A Subordinate Judge of the 2nd class has no jurisdiction to entertain a suit for the declaration of the plaintiff's title where the property in respect of which the declaration is sought exceeds Rs. 5,000 in value.

The law may lay down, for purposes of revenue, certain rules for the valuation of suits; but such valuation cannot be accepted as a criterion of the actual amount or value of the claim, upon which the jurisdiction of a Court depends.

Whether a suit be merely to obtain a decree, declaratory of the plaintiff's title to, or whether it be to establish his title, coupled with a prayer for possession of, the rights of a deceased person, the inheritance is the object in dispute.

The actual value of the estate, to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff, is the value of the subject-matter.

Where the Appellate Court decides that the Lower Court had no jurisdiction to entertain the suit, it should return the plaint to the plaintiff, in order that it may be presented to the proper Court.

THIS was a special appeal from the decision of J. W. Walker, Assistant Judge at Ahmedabad, reversing the decree of the 2nd Class Subordinate Judge of the same place.

Bái Mahkor sued to obtain a declaration that she was the heiress of Bái Adat, widow of one Kirpárám Venirám, and that, as such, she was entitled to inherit the widow's property. The plaint was engrossed on a stamp of ten rupees, and assessed the value of the suit at Rs. 99. The action was filed in the Court of the 2nd Class Subordinate Judge of Ahmedabad. The value of the property, left by Bái Adat, and to which Máhkor sought by her suit to obtain a declaration of her right as heir, was estimated at more than Rs. 5,000. The Subordinate Judge held both the plaintiff and defendant to be heirs of the deceased, and both equally entitled to succeed to her property, and decreed accordingly. In appeal the Assistant Judge reversed that decree, and

* Special Appeal No. 212 of 1874.

threw out the plaintiff's claim on the ground that the first Court had no jurisdiction. He remarked :—

“ A preliminary point is raised by the defendant's pleader, namely, that the Lower Court had no jurisdiction to try the suit, inasmuch as the property involved is over Rs. 5,000.

“ The suit was heard by a Subordinate Judge of the 2nd Class, and, therefore, under Act XIV. of 1869, Section 24, if the property involved is over Rs. 5,000, he had no jurisdiction. It is admitted by the plaintiff's pleader that Bái Adat's property exceeds Rs. 5,000 ; but it is urged that the Court has not to look to any property in this case, as a declaratory decree alone is sought. The plaintiff has recorded the decision of the District Judge on an application for a certificate of heirship to Bái Adat, and the deceased's property is there estimated at Rs. 8,000. Exhibit 11 is proved, and from that it also clearly appears that Bái Adat left the property exceeding Rs. 5,000.

“ The effect of a declaration of right in the plaintiff's favour would, it is clear, be to give her possession of the property, so far as the defendant is concerned ; for, on a suit by the plaintiff to obtain possession, it would not be competent to the defendant to contest the plaintiff's right. As held, therefore, by this Court in several recent cases, it follows that the Lower Court had no jurisdiction; it is not competent to a Court to make a declaratory decree in a suit where it could not grant consequential relief, if asked to do so. Here the Lower Court could not have entertained a suit to recover the property, and, therefore, it is incapable of making any binding declaration of right affecting that property.

“ The contention that no property is involved is merely verbal, depending on the form the suit has been made to take. The only possible ‘ consequential relief ’ in the case would be the award of Bái Adat's property. And I may remark that, if it were true that no property was involved, then the plaintiff would not be entitled to a declaration of right ; for, as laid down in a similar case, *Ramsurn Mitter v. Rakhaldoss*,⁽¹⁾ ‘ a Civil Court has no authority to make a declaration as to the validity or other-

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wise of a marriage where no question of property depends thereon.' I reverse the decree of the Lower Court. All costs on the plaintiff."

The appeal was argued before KEMBALL and NA'NA'BHAI HARIDA'S, JJ.

Nagindás Tulsidás, for the appellant, contended that the 2nd Class Subordinate Judge of Ahmedabad had jurisdiction to entertain the suit; or if that Court had no jurisdiction, as held by the Assistant Judge, the plaint ought to have been returned to the plaintiff for presentation in the proper Court, and not rejected, as had been done by the Assistant Judge.

Dhīrājāl Mathurādās (Government Pleader) *contra*:—The value of the subject-matter in dispute in a suit should be estimated for purposes of jurisdiction, not according to the rules of the Court Fees Act, but by the actual market value of the property in suit: *Jeebraj Singh v. Inderjeet Mahtoon*; (1) *Nanhoon Singh v. Tofanee Singh*; (2) *Baboo Lekraj Roy v. Kanliya Singh*; (3) *Thiagarāja Mudali v. Ramainuja Charry*. (4)

KEMBALL, J.:—The suit in this case was instituted in the Court of the 2nd Class Subordinate Judge of Ahmedabad to obtain a decree declaratory of the right of the plaintiff to inherit the property of one Bái Adat, widow of Kirpárám Venirám; the claim was valued at Rs. 99, and the plaint was written upon a stamped paper of the value of Rs. 10. The defendant denied the plaintiff's title and claimed to be himself the heir, and the Subordinate Judge found upon the merits that the plaintiff and defendant were co-heirs. Against this decision both parties appealed to the District Court, when the Assistant Judge, who heard the appeal, finding that the property left by the deceased exceeded in value Rs. 5,000, held that the Court of the Subordinate Judge, 2nd Class, had no jurisdiction to entertain the suit, and on this preliminary objection reversed the decree of the Subordinate Judge, and threw out the plaintiff's claim with all costs. The plaintiff now comes to this Court on special appeal asking to have the ruling of the Assistant Judge set aside and a judgment passed upon the cause.

(1) 18 Cal. W. R. Civ. Rul. 109; S. C. 12 Beng. L. R. 115, Note (1)

(2) 20 Cal. W. R. Civ. Rul. 33; S. C. 12 Beng. L. R. 113.

(3) L. R. 1 Ind. App. 317.

6 Mad. H. C. Rcp. 151, *per* Holloway, J., p. 161.

The question is, was the Assistant Judge wrong in holding that the Court of a Subordinate Judge of the 2nd Class was not competent to try the suit?

By Section 24 of the Bombay Civil Courts Act (XIV. of 1869), the jurisdiction of a Subordinate Judge of the 2nd Class is declared to extend "to all original suits and proceedings of a civil nature wherein the subject-matter does not exceed in amount or value five thousand rupees." For the appellant it is argued that the subject-matter of the present suit is *not* the property of the deceased, all that is sought being a bare declaration of title without consequential relief; and reference is made, in confirmation of this view, to the Court Fees Act, which prescribes a fixed fee for plaints in declaratory suits, where no relief is sought, on the ground that it is not possible to estimate at a money value *the subject-matter in dispute* (see Section 4 of that Act and also Schedule II., Art. 17, cls. 3 and 6). On the other side, it is contended that the Court Fees Act, which was framed for purely fiscal purposes, is not available as a guide in determining a question of jurisdiction; and as a decree upon title would be conclusive between the same parties in any subsequent suit for possession, *the property involved* must be taken to be the subject-matter in a declaratory suit.

We think the respondent's objection to the use of the Court Fees Act in ascertaining value for the purpose of jurisdiction is sound. The law may well lay down, for purposes of revenue, certain fixed rules for the valuation of suits; but obviously such valuation cannot be accepted as a criterion of a matter of fact, such as the actual amount or value of a claim, upon which the jurisdiction of a Court depends. See on this head the remarks of Sir J. Colvile in *Baboo Debraj Roy and others v. Kanhya Singh and others*,⁽¹⁾ and also the judgment of Couch, C.J., in *Jeebraj Singh v. Inderjeet Mahton*,⁽²⁾ and the ruling of the Full Bench of the Madras High Court in *Thiagaraja Mudali v. Ramaniya Charry*.⁽³⁾

In order to test the jurisdiction of a 2nd Class Subordinate Judge, which, as we have seen from the section of the Civil

(1) L. R. 1 Ind. Ap. 317.

(2) 18 Calc. W. R. 109 Civ. Rul.

(3) 6 Mad. H. C. Rep. 151.

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Courts' Act above quoted, is subject to a pecuniary limitation, we have to determine definitively what is the "subject-matter" of the present suit; for, if the Assistant Judge was right in holding that "the property involved" is its subject-matter, we are bound to accept his valuation of the property as conclusive of the fact of jurisdiction.

We do not think there is much force in the appellants' argument that a distinction exists between a suit to have a declaration of right and a suit for possession dependent on that right, and that the object of such a declaratory suit being merely to establish the fact of a right resident in the plaintiff, that right, and not the property (the possession of which can only be obtained by a subsequent suit), is the subject-matter of the suit. It appears to us perfectly clear that whether the suit be merely for a decree declaratory of title to, or whether it be to establish title coupled with a prayer for possession of, the rights of the deceased person, *the inheritance* is the object in dispute. For the purpose of assessing the stamp duties leviable on plaints, a distinction, no doubt, is drawn by the Legislature, and the reason for this is intelligible. If a person desires merely a declaration of his title, an arbitrary fee is fixed, but if possession of property itself is sought, a fee is charged according to the amount or value of such property; but the question of jurisdiction does not rest on the whim or will of the suitor: the amount or value of the property involved must be taken as the test of jurisdiction (where there is a pecuniary limit prescribed by law) quite apart from the remedy sought; to hold otherwise would be to admit this anomaly, that a Court might be competent to determine bare title to property, and yet would not have jurisdiction to consider the right to possession, although the decree as to title would be conclusive on the superior Court, when trying the possessory suit. It is true the law (*vide* Civil Procedure Code, Section 15) allows the Courts, without granting consequential relief, to make binding declarations of title; but it has been held both here and in England (this Section 15 is almost a transcript of Stat. 15 and 16 Vict. Chap. 86, Section 50) that it is discretionary with Courts whether they will give a declaratory decree or not; and it has also been held that a declaratory decree will not be made unless the plaintiff would be entitled to conse-

quential relief if he asked for it, as, for instance, where an abstract decision on the point is asked, plaintiff being either in full possession or out of possession beyond the statutable period for the institution of suits.

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Lastly, the appellant argues that it is not proper to take the value of the deceased's estate as the value of the subject matter, seeing that it may possibly be charged with debts and legacies which would considerably reduce the amount coming into his hands. With that the District Court had nothing to do. The plaintiff asked to be declared entitled to the inheritance; and in considering whether the claim was properly valued, the Court obviously could not estimate the value the estate might eventually represent to the plaintiff.

We think, however, that the lower Appellate Court should have done what the Court of first instance was bound to do under the circumstances, and have offered to return the plaint to the plaintiff in order to its being presented in the proper Court. In confirming, therefore, the decree of the Lower Court with costs on the appellant, we order that she be allowed to have the plaint returned to her.

[APPELLATE CIVIL JURISDICTION.]

KALU BIN BHIWA'JI (DEFENDANT AND APPELLANT) v. VISHRA'M MAWAJI (PLAINTIFF AND RESPONDENT).*

1877.
February 14.

Court Fees' Act VII. of 1870, Schedule II., Article 17, Clauses 1 and 3—Valuation of suit—Jurisdiction—Act VIII. of 1859, Sections 5 and 26—Bombay Civil Courts Act XIV. of 1869, Section 24, Clause 2—Review—Act VIII. of 1859, Section 376.

For the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market value of the subject-matter of the suit, and not according to the special rules applicable to valuation fixed in Act VII. of 1870.

(1) *Note.*—On this point see also the judgment of Westropp, J., in *Beattie v. Jettha Durgarsi* (5 Bom. H. C. Rep. 152, O. C. J.), where the question is fully discussed and the authorities collected at pp. 158 *et seqq.*

* Special Appeal No. 374 of 1873.