

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.

1874.  
BA'TMA'HKOR  
v.  
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CHAKU.

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.

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*Nanhoon Singh v. Tofanee Singh* (12 Beng. L. R. 113), *Jeebraj Singh v. Inderjeet Mahtoon* (*Ibid.* 115, Note 1), and *Bai Māhbor v. Bulakhi Chaku* (*supra* p. 538) followed.

PINNEY, J. :—A review may be admitted on any ground, whether urged at the original hearing of the appeal or not, whenever the Court considers that it is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, following *Chintamani Pal v. Pyari Mohun Mookerjee* (6 Beng. L. R., 126).

THIS was a special appeal from the order of W. M. Coghlan, District Judge at Thana, reversing the order of Curssetji Rastamji, 2nd Class Subordinate Judge at Kalyán.

The facts of the case are briefly these. The house in dispute had been sold at a Court's sale in execution of a money decree against one Dharamsi Dungarsi, and purchased by the defendant, Kalu Bhiwaji, for Rs. 175. The plaintiff Vishram Mawaji, who was in possession, having resisted the defendant in obtaining possession of the house, the latter, under Section 268 of the Civil Procedure Code, applied for the removal of the obstruction. Kalu succeeded in his application, and Vishram was referred by the Court to a regular suit to establish his right to the property in question. Vishram accordingly brought the present suit under Section 269 of the Code, and prayed that the summary order might be set aside, and that he might be declared entitled to retain the house in his possession. The plaint was written on a stamp of the value of Rs. 10. The plaintiff's pleader, however, admitted, in answer to a question by the Court, that the market-value of the house was above Rs. 5,000. On that admission the Subordinate Judge held that the estimated value of the subject matter of the suit, as illustrated in Clause 4, Section 26, of the Code, exceeded Rs. 5,000; and that, therefore, under Section 24, Clause 2, of the Bombay Civil Courts' Act XIV. of 1869, he had no jurisdiction to entertain the suit. He, however, held that the stamp duty, Rs. 10, paid by the plaintiff on his plaint was sufficient under the Court Fees' Act VII. of 1870, Schedule II., Article 17, Clauses 1 and 3. But he was of opinion that the valuation of a suit for the purposes of the Court Fees' Act was different from its valuation for the purpose of determining the question of the jurisdiction of a Court, under Sections 5 and 26 of Act VIII. of 1859, and Section 24 of Act XIV. of 1869. He accordingly rejected the plaint, as the plaintiff declined to receive it back for its presentation to the proper Court.

In appeal, that order was reversed by the District Judge. He was of opinion, that as the plaint was properly stamped with a stamp of ten rupees, the claim was within the Subordinate Judge's jurisdiction, and that the latter Court had no concern with the value of the house in question.

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VISHRA'M  
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The defendant Kálu preferred a special appeal against the decision of the District Judge, and the appeal was heard in the first instance by GIBBS and PINHEY, JJ., on the 28th November 1873.

*Vishnu Ghanasham*, for the appellant, contended that the Subordinate Judge, refusing to try the suit on the ground of want of jurisdiction, was perfectly correct, and cited in support of his contention *Jeebraj Singh v. Inderjeet Mahtoon*,<sup>(1)</sup> and *Nanhoon Singh v. Tofanee Singh*.<sup>(2)</sup>

*Rao Saheb V. N. Mandlik*, for the respondent, was not called upon.

PER CURIAM:—The Court confirms the order of the Lower Appellate Court, with costs on special appellant.

*Vishnu Ghanasham* on the 25th February 1874 applied for a review of the above decision to PINHEY, J., (the other Judge, Mr. GIBBS, having in the meantime ceased to be on the Bench of the High Court, in consequence of his appointment as a Member of the Governor's Council). The review was sought on the following, among other grounds:—(I). A suit ought to be valued for the purpose of determining the jurisdiction of a Court, not according to the special rules prescribed in the Court Fees Act, but according to the market value of the property claimed. (II). The decision is contrary to Act XIV. of 1869, Section 24, Clause 2, and Act VIII. of 1859, Section 26, Clause 4. A rule *nisi* having been granted on the 14th August 1874, the same was argued before PINHEY, J., on the 25th September 1876.

*Pándurang Balibhadra* appeared to show cause against the rule. The grounds on which the review is sought, are either those urged at the hearing of the special appeal or new grounds. But a review is not to be granted on such grounds, as ruled by the Calcutta High Court: *Jonab Ali v. Chandee Churn Dey*,<sup>(3)</sup> and *Rajendro Protap Sahee v. Bhowabul Singh*.<sup>(4)</sup> A review is not allowed on

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

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

(3) 11 Calc. W. R. Civ. R. 202.

(4) 14 Calc. W. R. Civ. R. 105.

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the ground that the authorities to which the attention of the Court ought to have been called were not cited at the first trial: *Ellem v. Basheer*.<sup>(1)</sup> As a matter of fact, the grounds of the present application for review were sufficiently argued before and considered by two Judges, who unanimously came to the conclusion that the Subordinate Judge had jurisdiction to try the claim. The learned pleader also referred to *Dwarkanath Doss v. Manick Chunder Doss*,<sup>(2)</sup> *Nobee Kishen v. Shih Pershad*,<sup>(3)</sup> *Shama Churn Chuckerbutty v. Bindabun Chunder Roy*,<sup>(4)</sup> *Prosunnonath Dutt v. Judoonath Paul*,<sup>(5)</sup> *Roy Meghraj v. Beejoy Gobind*,<sup>(6)</sup> *Krishnarav Venkatesh v. Vasudev Anant*,<sup>(7)</sup> *Motichand Jaichand v. Dadabhai Pestonji*.<sup>(8)</sup>

*Vishnu Ghanasham* appeared in support of the rule:—The authorities of the Calcutta High Court, cited in support of the position that a review should not be granted on points already discussed and decided at the original hearing of a case, nor on new points, must be regarded as overruled by a Full Bench decision of that Court in the case of *Chintamani Pal v. Pyari Mohan Moorkerjee*.<sup>(9)</sup> What the Court has to consider and decide is, as laid down in that case, whether a review is necessary to correct any evident error, or is otherwise requisite for the ends of justice. The other authorities quoted do not apply to the present case.

In making the rule absolute, PINHEY, J., said:—I am of opinion that the rule *nisi* for a re-hearing of this special appeal must be made absolute. I entirely concur in the ruling of the Calcutta High Court in *Chintamani Pal v. Pyari Mohan Moorkerjee*.<sup>(10)</sup> And as the estimated value of the house, which is the subject-matter of this suit, is more than Rs. 5,000, I am of opinion that the 2nd Class Subordinate Judge at Kalyán had no jurisdiction to try the suit. The application for review is, therefore, admitted, and the special appeal must be set down for re-hearing. Costs of this application to follow the result of the trial.

The special appeal, accordingly, was re-heard by WESTROPP, C.J., and NA'NA'BHA'I HARIDA'S, J., on the 14th February 1877.

(1) I. L. R. 1 Calc. 184 ; S. C. 24 Calc. W. R. Civ. Rul. 353.

(2) 9 Calc. W. R. Civ. Rul. 102. (3) *Ibid.* 161. (4) *Ibid.* 181. (5) *Ibid.* 589.

(6) 23 Calc. W. R. Civ. Rul. 438. (7) 11 Bom. H. C. Rep. 15. (8) *Ibid.* 186.

(9) 6 Beng. L. R. 126.

(10) 6 Beng. L. R. 126.

*Vishnu Ghanasham* relied upon the authorities already cited.

*Pándurang Balibhadra*, for the respondent, relied upon the two cases *Krishnarav v. Vasudev* <sup>(1)</sup> and *Motichand v. Dadabhai*. <sup>(2)</sup> He also contended that the market value of the house must be taken to be the price paid by the defendant, Rs. 175.

WESTROPP, C.J.:—This Court, on the authority of the Calcutta cases *Nanhook Singh v. Tofance Singh* <sup>(3)</sup> and *Jeebraj Singh v. Inderjeet Mahtoon*, <sup>(4)</sup> and of *Bái Máhkor v. Bulakhi Chaku*, <sup>(5)</sup> reverses the order of the District Judge and restores that of the Subordinate Judge with costs; but, in accordance with the course followed in the last-mentioned case, directs that the plaint be returned to the plaintiff in order that he may, if so advised, present the same in the proper Court.

1877.

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BHIWA'JI  
v.  
VISHRA'M  
MAWAJI.

## [TESTAMENTARY AND INTESTATE JURISDICTION.]

MANICKBAI, APPLICANT; HORMASJI BOMANJI, CAVEATOR.\*

March 5.

*Will—Acknowledgment of signature by testator—Indian Succession Act (X. of 1865), Section 50, Clause 3—Wills Act (1 Vic. Cap. 26), Section 9.*

It is a sufficient acknowledgment by a testator of his signature to his will if he makes the attesting witnesses understand that the paper which they attest is his will, though they do not see him sign it, or observe any signature to the paper which they attest, provided that the Court is satisfied that the testator's signature was on the will when the witnesses attested it.

THE applicant, as widow and executrix of Bomanji Burjorji Shroff, propounded as his last will a document bearing his signature and those of two attesting witnesses, who identified the document as one which they, at the request of the testator, had attested in the office of Messrs. Ralli Brothers, where they and the testator were all employed. They both said that, before they attested it, the testator told them that it was his will, but that he did not sign it in their presence or read it to them. One said he could not remember whether he saw the testator's signature, or any

\* In the matter of the last will and testament of Bomanji Burjorji Shroff.

(1) 11 Bom. H. C. Rep. 15.

(2) 11 Bom. H. C. Rep. 186.

(3) 12 Beng. L. R. 113.

(4) 12 Beng. L. R. 115.

(5) *Supra* p. 538.