

1892
DEC. 5.
APPEL-
LATE
CIVIL.
18 B. 40.

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APPELLATE CIVIL.

Before Mr. Justice Telang and Mr. Justice Fulton.

BHAGVANTRAI MUNSHI (Original Plaintiff), Appellant v. MEHTA
BAJURAO (Original Defendant), Respondent.* [5th December, 1892.]

Valuation—Valuation of suit—Suit Valuation Act (VII of 1887), s. 8—Valuation for purposes of Court fees and for purposes of jurisdiction—Jurisdiction—Appeal.

In a suit for an account the valuation for purposes of Court fees determines the question of jurisdiction, the valuation for both purposes being the same under s. 8 of Act VII of 1887.

[41] The plaintiff sued for an account, and valued the relief sought at Rs. 130. The suit was filed in the Court of a Subordinate Judge of the First Class. The Subordinate Judge rejected the claim. Thereupon, the plaintiff appealed to the High Court, valuing his claim in appeal at Rs. 10,505.

Held, that the appeal lay to the District Court, and not to the High Court.

[R., 18 B. 100 (102); 20 B. 265 (267).]

APPEAL from the decree of Rao Bahadur Chunilal Maneklal, First Class Subordinate Judge of Ahmedabad, in suit No. 567 of 1888.

The plaintiff sued for an account from May, 1881, to 22nd July, 1886, and to recover whatever might be found due to him by the defendant, alleging that the defendant was his *mukhtyar* or agent, and as such entrusted with the management of his property consisting of houses, fields and an *inam* village called Vastral, situate in the Ahmedabad District. The plaintiff further alleged that on the 21st July 1888, he had revoked the defendant's *mukhtyarnama*, or power of attorney, and had given him notice to render an account of his management, but this he refused to do. Hence the present suit. The claim was valued at Rs. 130 for purposes of Court fees, and a stamp of Rs. 10 was affixed to the plaint.

The suit was filed in the Court of the First Class Subordinate Judge of Ahmedabad.

The Subordinate Judge, after taking accounts between the parties, rejected the plaintiff's claim *in toto*.

Against this decision the plaintiff appealed to the High Court. He valued his claim in appeal at Rs. 10,505.

The appeal was heard by Telang and Fulton, JJ.

Goverdhan M. Tripati, for respondent.—There is a preliminary objection to the appeal. The appeal in this case lies to the District Court, and not to the High Court. The plaintiff valued his original claim at Rs. 130 in the Court below. This valuation should be taken for purposes of Court fees, as well as for jurisdiction. Under s. 8 of Act VII of 1887, the valuation for both purposes is the same. That being the case the appeal lies to the District Court under Act XIV of 1869—*Kushalchand v. Nagindas* (1).

[42] *Ganpat Sadashiv Rao*, for appellant.—The valuation of the suit, as given in the plaint, is for purposes of Court fees only. The suit involves a claim to property worth more than Rs. 5,000. That being the case, according to the established practice of this Court, the appeal lies to this Court and not to the District Court. Refers to *Manohar Ganesh*

* Appeal No. 104 of 1890.

(1) 12 B. 675.

v. *Bawa Ramcharandas* (1). The law is well settled that valuation for purposes of Court fees is quite distinct from valuation for purposes of jurisdiction. Section 8 of Act VII of 1887 has no application to the present case. Nor would s. 9 of the Act apply in the absence of any rules made by the High Court.

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JUDGMENT.

TELANG, J.—The plaintiff sued for an account, and in the plaint valued the relief sought at Rs. 130, stating at the same time that he would pay Court fee on any larger amount that might be decreed. The First Class Subordinate Judge rejected the claim, with costs. The plaintiff has now appealed to this Court, but a preliminary objection has been taken that, as the relief sought was valued at Rs. 130, the appeal lies not to this Court, but to the District Court. The appellant's pleader relies on the statement in the plaint that at the time of filing it there were no means of ascertaining the amount due, but that it was a very large sum, and that temporarily the relief sought was valued at Rs. 130. It was contended that this valuation was made merely for the purpose of ascertaining the Court fee payable, but we are unable to accept this view. In *Khushalchand v. Nagindas* (2), it was held that, in a suit for account, the valuation entered in the plaint for purposes of Court fee determined the question of jurisdiction, and the law thus laid down has been embodied by the Legislature in s. 8 of Act VII of 1887 which was in force at the time this suit was instituted. We must, therefore, direct that the memorandum of appeal be returned to the appellant for presentation in the proper Court. The appellant must pay the costs incurred in this Court.

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Appeal rejected.

18 B. 43.

[43] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

DADABHAI DAJIBHAI (*Original Defendant No. 2*), Applicant v. DIOGO SALDANHA (*Original Plaintiff*), Opponent.* [13th December, 1892.]

Jurisdiction—Contract—Performance of contract—Making of contract—Goods to be shipped at Bombay to the plaintiff at Karwar—Contract entered into and intended to be performed at Bombay.

The plaintiff residing at Karwar sent a sum of money to Kemp & Co. (defendant No. 1), a firm at Bombay, asking them to send him certain goods. Kemp & Co. informed the plaintiff that they had not the goods required by him. The plaintiff thereupon telegraphed to them to pay the amount to defendant No. 2, a resident of Bombay, provided he shipped the goods. On the failure of defendant No. 2 to ship the goods, the plaintiff brought a suit against the defendants in the Court at Karwar to recover the amount. He claimed against Kemp & Co. (defendant No. 1) because they had paid the money to the second defendant before the goods were shipped, and against the second defendant because he had not shipped the goods, although he had received the money. The Court at Karwar was of opinion that Karwar was the place where the contract was to be performed, and that, therefore, it had jurisdiction to entertain the suit, and it passed a decree against defendant No. 2. The claim as against defendant No. 1 was dismissed.

* Application under Extraordinary Jurisdiction, No. 169 of 1892.
(1) 2 B. 219. (2) 12 B. 675.