

1893

MARCH 6.

APPEL-

LATE

CIVIL.

18 B. 207.

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APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

BAI VARUNDA LAKSHMI (*Original Plaintiff*), *Appellant v. BAI MANEGAVRI* (*Original Defendant*), *Respondent*.* [6th March, 1893.]

Stamp—Suits Valuation Act (VII of 1887), s. 8—Court Fees Act (VII of 1870)—Valuation of suits—Appellate Courts—Jurisdiction—Valuation for purposes of jurisdiction—Appeal.

The provisions of s. 8 of Act VII of 1887 apply to appellate Courts as well as to Courts of first instance, and the value of the subject-matter of suits for the purposes of jurisdiction must be determined by the provisions of that section.

In a suit of the description mentioned in s. 8 of Act VII of 1887 the plaintiff valued his claim at Rs. 664 for the computation of Court-fees, and at Rs. 14,000 for purposes of jurisdiction.

Held, that the appeal from the decree of the Court of first instance lay to the District Court, and not to the High Court.

[F., 6 C.L.J. 427 = 11 C.W.N. 705; 50 P.R. 1896; *Appl.*, 63 P.R. 1902; 6 P. R. 1904; *Appr.*, 32 C. 734 (739) = 9 C.W.N. 690; R., 20 B. 265 (267); 6 O.C. 255 (258).]

APPEAL from an order rejecting a plaint passed by Khan Bahadur M. N. Nanavati, First Class Subordinate Judge of Surat.

In this case the plaintiff prayed for the following reliefs:—

(A) An injunction restraining the defendant from applying Government promissory notes of the value of Rs. 14,000, in contravention of the terms of an agreement dated 10th January, 1890, made between the plaintiff and the defendant.

(B) An injunction restraining the defendant from leaving undone certain acts which the defendant had to perform in accordance with the terms of the said agreement, as mentioned in paragraph 10 of the plaint.

[208] (C) An order directing the defendant to make over to certain trustees four per cent. Government promissory notes of the value of Rs. 7,500.

(D) An order directing the defendant to pay Rs. 604 on account of costs which the plaintiff had incurred in certain legal proceedings.

For the computation of Court fees the plaintiff valued reliefs A, B and C at Rs. 20 each, and relief D at Rs. 604. The whole claim was assessed at the aggregate sum of Rs. 664, and a stamp of Rs. 50-4 was affixed to the plaint.

For purposes of jurisdiction the claim was valued at Rs. 14,000. The suit was filed in the Court of the First Class Subordinate Judge at Surat.

The Subordinate Judge, being of opinion that the reliefs sought were undervalued, ordered that the claim should be properly valued and stamped. The plaintiff having failed to do so, the Subordinate Judge rejected the plaint.

From this order the plaintiff appealed to the High Court.

Gokuldas K. Parekh, for appellant.

Govardhan M. Tripati, for respondent.

Govardhan M. Tripati.—There is a preliminary objection to this appeal. The appeal lies, not to this Court, but to the District Court. Under s. 8 of Act VII of 1887, in a case like the present the valuation for purposes of jurisdiction is the same as the valuation for purposes of Court

* Appeal No. 28 of 1892.

fees. The plaintiff has valued his claim under the Court Fees Act (VII of 1870) at less than Rs. 5,000. The same valuation should, therefore, be taken for purposes of jurisdiction. The appeal, therefore, lies to the District Court.

Gokuldas K. Parekh.—The provisions of s. 8 of Act VII of 1887 apply to suits only. It would be straining the language of the section to extend its provisions to appeals. The section is, therefore, applicable to Courts of first instance, and not to appellate Courts. In this case the plaintiff expressly states that the property in dispute is worth about Rs. 14,000. This should [209] be taken to be the valuation for purposes of jurisdiction. The appeal, therefore, lies to this Court.

The following judgment was delivered by the Court (CANDY and FULTON, JJ.) :—

JUDGMENT.

PER CURIAM :—A preliminary objection has been taken that the appeal in this case lies to the District Court and not to the High Court. Mr. Gokuldas seeks to avoid the provisions of s. 8 of Act VII of 1887 by contending that it applies to Courts of first instance and not to appellate Courts. But we are unable to allow the contention. This is a suit decided by the Subordinate Judge, First Class, of which the value of the subject-matter was for the computation of Court fees less than Rs. 5,000 and s. 8 of Act VII of 1887 provides that in such a suit the value as determinable for the computation of Court fees and the value for the purposes of jurisdiction shall be the same. But it is only in suits in which the value of the subject-matter (which must be determined according to the provisions of (s. 8 of Act VII of 1887), exceeds Rs. 5,000 that the appeal lies to the High Court (s. 26 of Act XIV of 1869). In all other cases the appeal from an original decree of a Subordinate Judge lies to the District Court. We must, therefore, return the memorandum of appeal to be presented in the District Court. All costs in this Court on appellant.

18 B. 209.

APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

BALVANT GANESH AND OTHERS (*Original Defendants*), Appellants v. NANA CHINTAMON AND OTHERS (*Original Plaintiffs*), Respondents.*
[6th March, 1893.]

Stamp—Court-fees—Valuation of suit—Suit for partition.

The stamp on a suit for partition and possession of the plaintiff's share of joint family property must be an *ad valorem* one on the value of the share.

[F., 28 A. 340 (342) = 3 A L.J. 181 = 26 A.W.N. 38; 16 Ind. Cas. 771 = 6 S.L.R. 72; 8 Ind. Cas. 512 = 21 M.L.J. 21 = 9 M.L.T. 3; 4 L.B.R. 279 (281); Appl., 22 B. 315 (316); R., 6 C.L.J. 651 = 12 C.W.N. 37 (41); 15 C.P.L.R. 120 (122); Cons., 28 P.R. 1903 = 65 P.L.R. 1903.]

THIS was an appeal from the decree of Rao Bahadur Chunilal Maneklal, First Class Subordinate Judge of Poona, in suit No. 104 of 1891.

* Appeal No. 80 of 1892.

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18 B. 207.