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We must, therefore, make absolute the rule *nisi*, reverse the decree of the Mámlatdár, and dismiss the plaintiff's suit, with costs on plaintiff throughout.

Rule made absolute. Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

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IBRA'HIMJI ISSA'JI AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* BEJANJI JAMSEDJI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Valuation of suit—Suit for account—Suit Valuation Act (VII of 1887), Sec. 8—Court Fees' Act (VII of 1870), Sec. 7 (iv), Cl. (f), and Sec. 11—Appeal—Bombay Civil Courts Act (XIV of 1869), Sec. 26—Practice.

In a suit for an account of partnership dealings, the plaintiffs valued the claim approximately at Rs. 600. The Subordinate Judge passed a decree awarding to the plaintiffs a sum of Rs. 30,830-9-2. The plaintiffs thereupon paid an additional court fee of Rs. 900 under section 11 of the Court Fees' Act (VII of 1870). The defendants appealed to the High Court from the decree of the Subordinate Judge. The plaintiffs objected that the appeal lay to the District Judge, and not to the High Court.

Held, that the value of the subject-matter of the suit exceeded Rs. 5,000; the appeal, therefore, lay to the High Court under section 26 of Act XIV of 1869.

APPEAL from the decision of Ráo Bahádur Chunilál Máneklál, First Class Subordinate Judge of Poona, in Suit No. 237 and 1888.

The plaintiffs sued for an account of partnership transactions from 1886 till the date of its dissolution on 13th December, 1887, and to recover what might be found due to them as their share of the profits.

* Appeal No. 6 of 1893.

The defendant preferred an application under the extraordinary jurisdiction, and obtained a rule *nisi* requiring the plaintiff to show cause why the order of the Mámlatdár should not be set aside on the ground (*inter alia*) that the Mámlatdár had no jurisdiction to entertain the suit, as the plaintiff was not in actual possession of the lands within six months before the institution of the suit.

Vásudeo G. Bhandárkar appeared for the opponent (plaintiff) to show cause.

Nagindás T. Marphatia appeared for the applicant (defendant) in support of the rule.

The Court (Parsons and Telang, JJ.) passed an order discharging the rule with costs. 13th September 1892.

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The plaintiffs valued their claim at Rs. 600, alleging that it was impossible for them to state the exact amount of their share of the profits before the accounts were taken, and undertaking to pay additional court fees if more were found due to them.

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

The Subordinate Judge passed a decree awarding to the plaintiffs a sum of Rs. 30,830-9-2.

The plaintiffs thereupon paid an additional court fee of Rs. 900 under section 11 of the Court Fees' Act (VII of 1870).

The defendants then appealed to the High Court from the decree of the Subordinate Judge.

The respondents (plaintiffs) took a preliminary objection to the appeal, contending that the appeal lay to the District Court and not to the High Court.

Ganpat Sadáshiv Ráv for the respondents (plaintiffs) :—The appeal in this case lies to the District Court, and not to the High Court—Act XIV of 1869, sec. 26. This is a suit for an account. The claim was valued at Rs. 600 for purposes of court fees. That valuation must, therefore, be taken to be the valuation of the suit for purposes of jurisdiction also. Section 8 of Act VII of 1887 applies to this case; under that section the valuation for purposes of jurisdiction is the same as the valuation for purposes of court fees: see *Khushálchand* v. *Nagindás*[1]; *Bhagvantrái* v. *Mehta Bájuráo*[2]; *Gulábsingji* v. *Lakshmansingji*[3]; *Bái Varunda* v. *Bái Manegavri*[4].

P. P. Khare for appellants :—The suit was no doubt valued in the Court below at Rs. 600. But that was merely a nominal valuation of the subject-matter of the suit. The real valuation was Rs. 30,830-9-2, which was the sum ultimately found due to the plaintiffs, and upon which they have paid additional court fees under section 11 of Act VII of 1870. That being so, the value of the subject-matter of the suit is more than Rs. 5,000, and the appeal lies to this Court.

(1) I. L. R., 12 Bom., 675 at p. 677.
(2) I. L. R., 18 Bom., 40.
(3) *Ibid*, 100.
(4) *Ibid*. 207.

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JARDINE, J.:—The plaintiffs sued for an account in the Court of the Subordinate Judge of the First Class. Under the Court Fees' Act, VII of 1870, section 7 (iv), clause (*f*), they valued the relief sought at Rs. 600. This valuation is subject to the provision of section 11—*Govandás* v. *Dáyábhai*[1]—which section distinguishes the "fee actually paid" on the plaint and "the fee which would have been payable had the suits comprised the whole of the profits or amount" decreed. The decree obtained by the plaintiffs was for Rs. 30,830-9-2, and they have paid the additional fees under section 11 in the Court of the Subordinate Judge. On the defendants appealing to this Court, objection is taken that section 26 of Act XIV of 1869 does not apply, and that the appeal lies to the District Court.

This objection is urged in the following argument. The case comes under the Suits Valuation Act (VII of 1887), section 8, being one to which these words apply; "where in suits * * 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 purposes of jurisdiction shall be the same." The valuation, however insufficient, stated by the plaintiffs at their option on the plaint governs the valuation of the defendants' appeal, section 11 of the Court Fees' Act being ignored. By parity of reasoning the optional valuation of the plaint, no matter what greater amount may be awarded them by the decree, determines the forum of the appeal by the defendants, because that optional and preliminary valuation must be treated as the only value of the subject-matter in interpreting the words of section 26 of Act XIV of 1869, which gives an appeal to the High Court "in all suits * * of which the amount or value of the subject-matter exceeds Rs. 5,000." The cases of *Khushálchand* v. *Nagindás*[2], *Bhagvantrai* v. *Mehta Bajurao*[3], *Gulábsingji* v. *Lakshmansingji*[4], where the Subordinate Judge had dismissed the suit, and *Bái Varunda* v. *Bái Manegavri*[5], where he rejected the plaint, were cited in support of the above propositions.

(1) I. L. R., 9 Bom., 22.
(2) I. L. R., 12 Bom., 675 at p. 677.
(3) I. L. R., 18 Bom., 40.
(4) *Ibid.* 100.
(5) *Ibid.* 207.

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We are of opinion that those authorities do not touch the present case, where the plaintiffs have been successful. The argument that the first optional and uncertain valuation is to determine the court fee in appeal, and thereby the jurisdiction of appeal, is not supported by any authority. Section 7 (iv), clause *(f)*, of the Court Fees' Act refers to the relief sought in the memorandum of appeal as well as to that sought in the plaint, while section 8 of the Suits Valuation Act deals only with suits. The word "determinable" in section 8 of the Suits Valuation Act applies as much to the final and exact and judicial determination made under section 11 of the Court Fees' Act as it does to the inexact and *ex-parte* valuation in the plaint. "What *primâ facie* determines the jurisdiction is the claim, or subject-matter of the claim, as estimated by the plaintiff"—*Lakshman* v. *Bábáji*[1]. But on principle as there explained this determination *primâ facie* may, if unreasonable, be rejected. If, *e. g.*, the present plaintiffs had been awarded Rs. 6,000, and then appealed on the ground that Rs. 30,000 were due to them, it would be unreasonable of them to value the relief sought in the memorandum of appeal as only Rs. 600, the valuation in the plaint.

The jurisdiction of appeal is determined by Act XIV of 1869, and depends on the amount or value of the subject-matter, which last term is treated in the above decision as meaning the amount demanded: which, as we have seen, is, even in a *suit*, not necessarily commensurate with the amount of court fees paid on the plaint. What the plaintiffs in this account-suit demanded was the amount that might be found due to them; and so long as they claim the Rs. 30,830-9-2 decreed to them, they cannot be allowed to say that the subject-matter is only Rs. 600 in value. The relief now sought by the defendants in their memorandum of appeal is more in value than Rs. 5,000. The Court of appeal is not bound by the decision of the Court below as to the stamp on the plaint—*Motigavri* v. *Pránjivandás*[2], and under any view of the circumstances, the judicial valuation for court-fee purposes under section 11 of the Court Fees' Act is the best valuation of the subject-matter of the suit. The Court, therefore, holds that this appeal lies here.

(1) I. L. R., 8 Bom., 31 at p. 33. (2) I. L R., 6 Bom., 302.

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RA'NADE, J. :—I concur. The preliminary objection raised by the respondents' pleader as to the jurisdiction of this Court to entertain the appeal appears to me not to be supported by the record of the case. The plaint in this case stated that as the exact sum due to the plaintiffs on account of their share of the profits could not be ascertained until the accounts were properly taken, plaintiffs valued the relief claimed by them at a nominal figure of Rs. 600, and they offered to pay additional court fees on whatever sum might be found due. The Court of the First Class Subordinate Judge alone had jurisdiction in the matter of this suit, whether the claim was valued at Rs. 600, or whether it was valued at a higher figure than Rs. 5,000. There was, therefore, no occasion to value the claim at any particular figure for purposes of jurisdiction. A nominal valuation was made of the subject-matter, and plaintiffs expressly undertook to supply the deficient stamp duty. Plaintiffs evidently claimed a far larger sum than Rs. 5,000, for it appears that for the first two years for which accounts were made, they had received Rs. 17,000 as their share of the profits. As a matter of fact, the Subordinate Judge found that plaintiffs were entitled to recover more than Rs. 30,000 for their share of the profits for the two years covered by the suit. The judgment was pronounced on 22nd December, 1892, about the time that the Court was to close for the Christmas holidays. When the Court opened again, plaintiffs paid up on 3rd January, 1893, the deficient court fees, and the decree taxed plaintiffs' costs including the additional court fee of Rs. 900 paid on 3rd January, 1893. A further supplemental order about costs was made on 23rd January, 1893.

It is plain from these details that the suit was treated all along by the parties and the Court as a suit the subject-matter of which exceeded Rs. 5,000 in value, and an appeal from a decree awarding Rs. 30,830 in such a suit obviously lay to the High Court under section 26 of Act XIV of 1869. The authorities relied upon by the respondents' pleader in support of his contention have, therefore, no application in the particular circumstances of the present case. It is only in certain classes of suits, and even in those cases where court fees are charged *ad valorem*,

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that the valuation for the computation of court fees is the same as the valuation for purposes of jurisdiction. This rule does not apply to account suits such as the present, where the subject-matter of the claim admittedly exceeded Rs. 5,000 in value.

The appeal in such cases lies to this Court, and not to the District Court.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1895. *January* 28.

KRISHNA'CHA'RYA (ORIGINAL DEFENDANT No. 2), APPELLANT, *v.* LINGA'WA (ORIGINAL PLAINTIFF), RESPONDENT.*

Possession—Ejectment—Title by possession—Mámlatdár—Finding by Mámlatdár as to possession—Subsequent contrary finding by civil Court—Mámlatdár's order not conclusive—Suit by party against whom Mámlatdár's order made—Limitation.

The plaintiff brought this suit to recover possession of certain land which had belonged to her nephew, and of which after his death in 1878 she had assumed the management. In 1881 she brought a possessory suit against the first defendant in the Mámlatdár's Court, which suit was dismissed in January, 1885, the Mámlatdár holding that she had not been in possession. In a civil suit, however, which (pending the proceedings in the Mámlatdár's Court) she had filed against the first defendant in the Court of the Subordinate Judge of Haveri, the Judge found that she had been in possession since 1880, and awarded her damages against the first defendant (who was held to be her farm servant) for crops which had been taken away by him. In 1887 the second defendant as mortgagee from defendant No. 1 obtained a decree against plaintiff in the Mámlatdár's Court awarding him possession of the land, and in execution of that decree the plaintiff was dispossessed in December, 1887.

In 1890 the plaintiff filed this suit to recover possession and for mesne profits since 1887. The defendant pleaded that the plaintiff had no title to the land and that the suit was barred by limitation, inasmuch as the plaintiff had not brought a suit to establish her right within three years after the Mámlatdár's order in 1885 dismissing her possessory suit.

Held, that the Mámlatdár's order of January, 1885, had no conclusive effect and was rendered ineffectual by the subsequent decree of the civil Court; and as the plaintiff continued in possession, notwithstanding that order, down to 1887, the present suit was not barred by limitation, and neither her remedy nor her right to the land was extinguished.

* Second Appeal, No. 327 of 1893.