

## APPELLATE CIVIL.

Before Mr. Russell, Acting Chief Justice, and Mr. Justice Aston.

DAYARAM JAGJIVAN (ORIGINAL PLAINTIFF), APPELLANT, v. GORDHANDAS DAYARAM AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

1906.

October 5.

*Suits Valuation Act (VII of 1887), sections 8 and 11—Court Fees Act (VII of 1870), section 7, paras IV, V, VI, IX and X, clause (d)—Suit for a declaration with consequential relief—Valuation for the purpose of jurisdiction and for the fiscal purpose of Court fees.*

Though the valuation of suits for the purpose of jurisdiction is distinct from their valuation for the fiscal purpose of Court fees, still section 8 of the Suits Valuation Act (VII of 1887) provides that when in suits other than those referred to in the Court Fees Act (VII of 1870), section 7, paras v, vi, ix and x, clause (d), *ad valorem* Court fees are payable, the value as determinable for the computation of Court fees and the value for the purposes of jurisdiction shall be the same.

*Per RUSSELL, Ag. C. J.*—The words “as determinable” in section 8 of the Suits Valuation Act (VII of 1887) mean, as determinable by the Court which has to try the case.

*Per ASTON, J.*—Section 4 of the Suits Valuation Act (VII of 1887) seems to indicate that the principle adopted by the legislature for valuing a suit, mentioned in Schedule II, Article 17, of the Court Fees Act (VII of 1870), which relates to land or an interest in land, is that the value of such a suit for purposes of jurisdiction shall be governed by the value of the land or interest in land.

It being nowhere enacted in the Act that where such value is not determined by rules made under section 3, the value shall be such as the plaintiff chooses to adopt, the value must be (where disputed) determined by judicial decision in the suit, such determination being subject to the provisions of section 11 of the Suits Valuation Act (VII of 1887).

APPEAL from an order passed by Gulabdas Laldas, Acting First Class Subordinate Judge of Thána, returning the plaint for presentation to proper Court, in regular suit No. 38 of 1905.

Defendant 1, Gordhandas Dayaram, brought a suit, No. 17520 of 1900, in the Bombay Court of Small Causes against Moti-Jaggivan and Company and obtained a decree. For the purpose of execution, the decree was transferred to the Court of the Second Class Subordinate Judge of Dahanu and certain lands having been

\* Appeal No. 1 of 1906 from order.

1906.

DAYARAM  
GORDHANDAS.

attached, the plaintiff applied for the removal of the attachment, but his application was rejected and the properties were sold in execution and were purchased by one Chintaman Bhagvan. The plaintiff, thereupon, brought the present suit in the Court of the First Class Subordinate Judge of Thána against three defendants, namely, Gordhandas Dayaram, Damodar Vithoba and Chintaman Bhagvan, for a declaration that the lands, which were situate within the local jurisdiction of the Second Class Subordinate Judge of Dahanu, were not liable to be attached and sold in execution. The plaintiff claimed further the reliefs, namely, (a) the lands were the property of a *Sadúvart* on the foot of the *Vyavasthápátra*, dated the 13th July 1896, (b) the plaintiff had become its owner from the date of his purchase for the purposes of the *Sadúvart*, and (c) defendant 3 should be declared as not entitled to its possession. The plaint was stamped with a Court-fee stamp of Rs. 10 and in para 9 stated that the claim was to be restored to possession, and that, as the actual value of the lands was more than Rs. 5,000, the suit was instituted in the Court of the First Class Subordinate Judge.

The defendants answered that the plaint was not adequately stamped, being engrossed on a Court-fee stamp of Rs. 10, that the value of the lands being less than Rs. 5 000, the proper Court to entertain the suit was that of the Second Class Subordinate Judge of Dahanu, that the value alleged in para 9 of the plaint was too high and was wrongly enhanced to annoy and harass the defendants by dragging them from Dahanu to the Court of the First Class Subordinate Judge of Thána and that the lands had been actually put into the possession of defendant 3.

The First Class Subordinate Judge found that the claim was not properly valued and that his Court had no jurisdiction to entertain the suit as the value of the subject-matter was less than Rs. 5,000. He, therefore, passed an order directing that the plaint be returned to the plaintiff for presentation to the proper Court.

Against the said order the plaintiff appealed.

*D. W. Pilgaunkar* appeared for the appellant (plaintiff):—The Judge was wrong in holding that he had no jurisdiction to entertain the suit. As First Class Subordinate Judge he had concurrent

jurisdiction with the Second Class Subordinate Judge in the whole District under the Bombay Civil Courts' Act. Section 15 of the Civil Procedure Code does not take away his jurisdiction. That section is a rule of procedure and not of jurisdiction: *Nidhi Lal v. Mazhar Husain*<sup>(1)</sup>.

As regards declaratory suits, questions of jurisdiction are governed by the statements in the plaint and not by the plea in defence: *Jag Lal v. Har Narain Singh*<sup>(2)</sup>. In declaratory suits with consequential reliefs, Courts have no jurisdiction to decline to accept the valuation given in the plaint: *Chinnammal v. Madarsa Routher*<sup>(3)</sup>. We have not exaggerated the value of the lands and it should be accepted as correct: *Mahabir Singh v. Behari Lal*<sup>(4)</sup>, *Lakshman Bhatkar v. Babaji Bhatkar*<sup>(5)</sup>.

*P. B. Shingne* appeared for the respondents (defendants):—The valuation of a suit for the purposes of the Court-fees is not always the same as the valuation for the purposes of jurisdiction. Suits Valuation Act is clear on the point.

It is open to the defendant to contest and to the Court to consider whether the valuation made by the plaintiff is correct: *Boidya Nath Adya v. Makhan Lal Adya*<sup>(6)</sup>.

The decisions relied on do not lay down that the valuation by the plaintiff for the purposes of jurisdiction can never be questioned. Moreover, the decisions passed before the Suits Valuation Act came into force are to be cautiously followed. Section 11 of the Suits Valuation Act distinctly contemplates that the valuation made by the plaintiff can be questioned and Courts of Law will be invited to determine whether the valuation is correct or not: *Nidhi Lal v. Mazhar Husain*<sup>(1)</sup>.

RUSSELL, AG. C. J.:—Before discussing the somewhat difficult question of law herein it is necessary to give an outline of the material facts.

This is an appeal from the order of the First Class Subordinate Judge of Thána, whereby he directed the plaint to be returned

(1) (1884) 7 All. 230.

(2) (1888) 10 All. 524.

(3) (1903) 27 Mad. 480.

(4) (1891) 13 All. 320.

(5) (1883) 8 Bom. 31.

(6) (1890) 17 Cal. 680.

1906.

DAYARAM  
v.  
GOBINDDAS.

1906.

DAYARAM  
v.  
GORDHANDAS.

to the plaintiff for presentation to the proper Court inasmuch as the lands in question were not of the value of Rs. 5,000 and therefore his Court at Thána had no jurisdiction to try the suit.

The plaintiff Dayaram Jagjivan sued the three defendants (1) Gordhandas Dayaram, (2) Damodar Vithoba and (3) Chintaman Bhagwan for the relief hereinafter set forth. Defendant 1 had got a decree No. 17520 of 1900 in the Bombay Small Causes Court against the Bombay firm of Moti Jagjiwan and Company for a certain sum. In execution of that decree which was transferred to the Second Class Subordinate Judge's Court at Dahánu the said defendant caused the lands in question to be attached. They are situate at Kanadu near Kalgaon in the táluca of Umbergaon within the jurisdiction of the said Second Class Subordinate Judge's Court.

The plaint was stamped with a court-fee of Rs. 10 and the value of the claim stated therein is Rs. 130. Para 9 of the plaint says that the plaintiff's claim is to be restored to possession and that as the value of the land is more than Rs. 5,000 the suit is brought in the said Court at Thána.

The reliefs sought by the plaintiff are thus summarized in the judgment of the lower appellate Court:—

- (a) That it be declared that the plaint property as per list to plaint is *Sadavart* property on the foot of the *Vyavasthapatra* dated 13th July 1896.
- (b) That the plaintiff has become its owner from the date of its purchase for the *Sadavart* purpose (sic).
- (c) That defendant 3 should be declared not entitled to possession.

No copy or translation of the plaint, however, has been furnished to us, and (as I have had to do on many previous occasions) I protest against this Court being asked to decide on questions when proper materials are not placed before us.

Issues 1 and 2 were the only ones decided.

- (1) Whether the plaint is not properly valued?
- (2) Whether this Court has jurisdiction to try this suit?

It was assumed in the argument before us that consequential relief was not claimed. Mr. Shingne for the defendants expressly stated that he would assume that. In our opinion however that

assumption is wrong. See the following cases. *Ram Prasad v. Sukh Dai*<sup>(1)</sup> and *Ahmed Mirza Saheb v. Thomas*<sup>(2)</sup> where *Jalaluddin Mahomed v. Shohorullah*<sup>(3)</sup> was followed. In the former of these cases the plaintiff asked that the property "might be protected from sale," in the latter a declaration was sought that the property belonged to the plaintiff. In this case para 9 of the plaint and prayer (a) of the plaint are undistinguishable from those cases. The cases above quoted show that an *ad valorem* duty as prescribed by Schedule I of the Court-Fees Act of 1870 was payable on the plaint. See also *Parvalibai v. Vishvanath*<sup>(4)</sup>.

It has no doubt been held that the valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of court-fees and therefore Court Fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction: *Dayachand Nemchand v. Hemchand Dharamchand*<sup>(5)</sup>. Still section 8 of the Suits Valuation Act, VII of 1887, provides that where in suits other than those referred to in the Court-Fees Act, 1870, section 7, paras v, vi and ix, and para x, clause (d) (*i.e.*, suits for possession of lands and houses, for pre-emption, to redeem and foreclose a mortgage, and for specific performance of an award) 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 the purposes of jurisdiction shall be the same. A suit for a declaration with consequential relief falls under para iv (c) of section 7 of the Court-Fees Act and so it is a suit "other than" those referred to in paras v, vi, ix and x (d) of that section. Again, the words in section 8 of the Suits Valuation Act "as determinable" are important: "determinable" by whom? Surely by the Court who has to try the case. For, whether or not a suit has been properly valued is a preliminary question which ought to be disposed of before the case goes to trial: *Joytara Dassee v. Mahomed Mobaruck*<sup>(6)</sup>; see also *Bai Meherbai v. Maganchand*.<sup>(7)</sup>

(1) (1880) 2 All. 720.

(4) (1904) 29 Bom. 207.

(2) (1886) 13 Cal. 162.

(5) (1880) 4 Bom. 515.

(3) (1874) 15 B. L. R. App. 1.

(6) (1882) 8 Cal. 975.

(7) (1904) 29 Bom. 229.

1906.

DAYARAM  
v.  
GORDHANDAS.

Further, section 11 of the Suits Valuation Act expressly authorises an appellate Court to entertain objections to the over or under valuation of suits for the purpose of jurisdiction under the conditions therein laid down : a provision which would have been useless if the Court of first instance had not had the power to decide the question.

As regards the cases cited in argument before us, *Boidya Nath Adya v. Makhan Lal Adya*<sup>(1)</sup>, the following passage is applicable to this case. "The Court-Fees Act (section 7, clause 4) provides that for the purpose of determining the amount of court-fee payable, the value of certain classes of suits should be taken to be the amount at which the plaintiff values the relief sought. But we do not think the Legislature ever intended to leave it to the plaintiff to choose the Court in which he should bring his suit for possession or partition of property by assigning an arbitrary value to the subject-matter of the suit. The provisions of the Suits Valuation Act (Act VII of 1887, sections 7, 8 and 11) clearly indicate that that is not the intention of the Legislature. The present case does not come within any of the classes of cases in which, according to that Act, the court-fee valuation and valuation for purposes of jurisdiction are declared to be identical. In the absence of any rules made under the last-mentioned Act, we think the correct rule to follow is that indicated in the observation of Garth, C. J., in *Kirby Churn Mitter v. Anath Nath Deb*<sup>(2)</sup>, that for purposes of jurisdiction in partition suits we should be guided by the value of the property in suit."

The plaintiff has not assailed the conclusion of fact come to by the learned First Class Subordinate Judge at Thána and apparently his sole reason for raising the point as here is suggested inconvenience in having the case tried in the Dáhanu Court in getting the attendance of witnesses and the production of books, &c., there.

We therefore confirm the order of the lower Court and dismiss this appeal with costs.

(1) (1890) 17 Cal. 680 at p. 683.

(2) (1882) 8 Cal. 757.

ASTON, J.—The decision in *Dhondo v. Govind*<sup>(1)</sup> shows that this suit must be treated as one falling under Schedule II, article 17, clause 1 of the Court-Fees Act, VII of 1870.

Section 3 of the Suits Valuation Act VII of 1887 provides that “(1) The Local Government may, with the previous sanction of the Governor General in Council, make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-Fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause (d).

“(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.”

At the hearing both sides were agreed that the Local Government have not made the rules contemplated in section 3.

For the appellant-plaintiff it was contended by Mr. Pilgaumkar that it was therefore open to plaintiff to adopt any value he pleases for the purpose of jurisdiction and *Chinnammal v. Madarsa Rowther*<sup>(2)</sup> was relied on in support of this contention. Mr. Shingne for respondent relied upon *Boidya Nath v. Makhan Lal*<sup>(3)</sup> as showing that the Calcutta High Court have expressed a contrary opinion.

In *Lakshman v. Babaji*<sup>(4)</sup> decided in 1883, *i. e.*, before the Suits Valuation Act, VII of 1887, it was broadly laid down that “what *primd facie* determines the jurisdiction is the claim, or subject-matter of the claim, as estimated by the plaintiff.” But in that case West, J., also said: “An exaggerated claim thus brought for the purpose of getting a trial in a different Court from the one intended by the legislature is substantially a fraud upon the law, and must be rejected, whether it arises from mere recklessness or from an artful design to get the adjudication of one Judge instead of that of another.”

There is no express provision in the Suits Valuation Act making the valuation for the purposes of jurisdiction *primd facie*

(1) (1884) 9 Bom. 20.

(2) (1903) 27 Mad. 480.

(3) (1890) 17 Cal. 680.

(4) (1883) 8 Bom. 31.

1906.

DAYARAM

v.

GORDHANDAS.

determinable by the plaintiff in any suit which can be valued lower for the computation of court-fees.

On the other hand section 4 of the Suits Valuation Act seems to me to indicate that the principle adopted by the legislature for valuing a suit mentioned in Schedule II, article 17, which relates to land or an interest in land is that the value of such a suit for purposes of jurisdiction shall be governed by the value of the land or interest in land.

It being nowhere enacted in the Act that where such value is not determined by rules made under section 3, the value shall be such as the plaintiff chooses to adopt, I am of opinion that the value must be (where disputed) determined by judicial decision in the suit, such determination being subject to the provisions of section 11 of the Suits Valuation Act, VII of 1887.

I would therefore confirm the order of the lower Court and dismiss this appeal with costs.

*Decree confirmed.*

G. B. R.

---

## APPELLATE CIVIL.

*Before Mr. Justice Aston and Mr. Justice Heaton.*

1906.

October 10.

SHIVRAM KONDO KULKARNI (ORIGINAL DEFENDANT), APPELLANT, v. KRISHNABAI KOM KASHINATH WAMAN AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

*Indian Majority Act (IX of 1875), section 3—Guardian—Minor—Order making appointment of guardian—Certificate of guardianship not issued—Act XX of 1864†—Period of minority.*

Where a person obtains an order for a certificate of guardianship of a minor under the provisions of Act XX of 1864, the minor is deemed to have attained his majority when he shall have completed his age of 21 years by virtue of section 3 of the Indian Majority Act (IX of 1875). It is not necessary for the purposes of the section that any formal certificate of guardianship in pursuance of such order should be obtained.

---

\* Appeal No. 5 of 1906 from order.

† This Act was repealed as to the whole thereof by Act VIII of 1890. [Ed.]