

## APPELLATE CIVIL.

Before Chief Justice Scott and Mr. Justice Batchelor.

VACHHANI KESHABHAI AND OTHERS (ORIGINAL PLAINTIFFS), APPLICANTS, v. VACHHANI NANBHA BAVAJI AND OTHERS (ORIGINAL DEFENDANTS), OPPONENTS.\* 1908.  
November 26.

*Suits Valuation Act (VII of 1887), section 8—Suit for declaration and consequential relief—Valuation—Court-fees—Jurisdiction—Value of the relief stated in the plaint.*

In a suit for declaration and consequential relief (injunction) with respect to land the Court must accept the value of the relief stated in the plaint for the purpose both of the Court-fees and jurisdiction.

*Hari Sanker Dutt v. Kali Kumar Patra*(1), followed.

*Dayaram v. Gordhandas*(2), distinguished.

APPLICATION under the extraordinary jurisdiction, section 622 of the Civil Procedure Code (Act XIV of 1882), against the decision of N. R. Majmudar, Joint First Class Subordinate Judge of Ahmedabad with appellate powers, confirming the order passed by N. V. Desai, Second Class Subordinate Judge of Dhanduka and Ghogho, returning a plaint for presentation to the proper Court.

The plaintiffs brought a suit against the defendant in the Court of a Second Class Subordinate Judge and prayed for the following reliefs :—

- (a) A declaration that they were owners of a three-fourths share of certain lands called the *Bhalthadani Pati* and the income thereof that might be in deposit with the Talukdári Settlement Officer and also of a three-fourths share of  $8\frac{3}{4}$  *dokdás* of the village site and of every other sort of income from the village of Marchand ;
- (b) Recovery of Rs. 637-8-0 on account of their share in the income of the said *Pati* for the Samvat years 1956 to 1960 ; and
- (c) A perpetual injunction restraining the defendants from preventing them from jointly managing the property in dispute.

\* Application No. 64 of 1908 under extraordinary jurisdiction.

(1) (1935) 32 Cal. 74.

(2) (190) 31 B.m. 73.

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The first relief was valued at Rs. 130, while the second and the third were valued at Rs. 637-8-0 and Rs. 25 respectively.

The defendants answered that as the value of the property in suit was over Rs. 5,000 the Second Class Subordinate Judge's Court had no jurisdiction to entertain the suit. The Subordinate Judge allowed the defendant's contention and returned the plaint for presentation to the proper Court.

On appeal by the plaintiffs the Appellate Court confirmed the order for the following reasons :—

But the important question is whether the jurisdiction of the lower Court is ousted on this account. The answer to this question depends upon the interpretation that might be put upon section 8 of the Suits Valuation Act, 1887. The suit is governed by section 7, paragraph 4, clauses (c) and (d), of the Court-Fees Act as it is a suit for declaration coupled with consequential relief (see I. L. R. 10 Bom. 60, I. L. R. 17 Bom. 56), and the plaintiff is at liberty to value the reliefs he seeks at any amount he chooses and to pay the Court-fee on such amount (I. L. R. 19 Bom. 198 and I. L. R. 17 Bom. 56). Section 3 of the Suits Valuation Act, 1887, empowers the Local Government to make rules 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, cl. (d); and section 4 provides that when a suit mentioned in the Court-Fees Act, 1870, section 7, paragraph 4, or Schedule II, Article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which, for purposes of jurisdiction, the relief sought in the suit is valued, shall not exceed the value of the land or interest as determined by those rules. Section 8 lays down that when in suits, other than those referred to in the Court-Fees Act, 1870, section 7, paragraphs v, vi and ix, and paragraph x, cl. (d), 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. It seems to me that when rules are framed under section 3 of the Suits Valuation Act, 1887, the plaintiff, who asks for a declaration and consequential relief, though he is at liberty to value the relief at any amount he likes and pay Court-fee on that amount, cannot put a higher value upon his suit than that determined by those rules. Where no such rules are made the value as determinable for the computation of Court-fees and the value for purposes of jurisdiction is to be the same. No rules have been promulgated by our Local Government under section 3 of the Suits Valuation Act, 1887, and the discretion of the plaintiff is left unfettered. In I. L. R. 17 Bom. 56, which was a case of declaration and consequential relief, it was held as I have already said that the valuation of the relief sought for computing Court-fees rested with the plaintiff and not with the Court; and in other suits falling under section 7, paragraph 4, of the Court-Fees Act, 1870, the plaintiff

was allowed to put his own value upon the reliefs claimed, and it was held that the amount paid by him also determined jurisdiction (I. L. R. 12 Bom. 675, I. L. R. 19 Bom. 198). It would seem therefore that according to those decisions the amount paid by the plaintiff in a suit, in which a declaration and consequential relief is prayed for, should determine the jurisdiction; and the High Court of Calcutta has so held (I. L. R. 32 Cal. 734). But our own High Court in 8 Bom. L. R. 885 has recently held that though a suit in which declaration and consequential relief are sought is governed by section 8 of the Suits Valuation Act, 1887, the term "determinable" used in that section means "determinable by the Court which has to try the case," and I am bound to follow this decision.

Plaintiffs preferred an application under the extraordinary jurisdiction, section 622 of the Civil Procedure Code (Act XIV of 1882).

*V. G. Ajinkya* for the applicants (plaintiffs):—We come up in revision on the ground that the first Court, which alone had the jurisdiction to try the suit, was wrong in passing the order for the return of the plaint for presentation to the proper Court. That Court refused to exercise the jurisdiction which was vested in it to entertain the suit. Our suit is one for declaration and injunction which has been held to be a proper consequential relief. Our claim is therefore governed by section 7, sub-section (4), clause (c), of the Court-Fees Act, which lays down that the *ad valorem* Court-fee leviable in suits coming within the clause would be determined by the valuation put down by the plaintiff. Along with the said section may be considered section 8 of the Suits Valuation Act which shews that in suits falling under section 7, sub-section (4), clause (c), the valuation for Court-fees and jurisdiction would be the same. It has been ruled over and over again by this Court that the amount put by the plaintiff in a suit in which declaration and consequential reliefs are prayed for should determine the jurisdiction: *Khushalchand Mulchand v. Nagindas Motichand*<sup>(1)</sup>, *Great Indian Peninsula Railway Company v. Raisett Chandmull*<sup>(2)</sup>. In the present case no rules as contemplated by section 4 of the Suits Valuation Act have been framed by Government, and so long as no rules are framed the suit would be governed by section 8 of the Act, and that section lays down that the value determinable for Court-fees and jurisdic-

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(1) (1888) 12 Bom. 675.

(2) (1894) 19 Bom. 165.

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tion would be the same, and as the plaintiff is the person who is to value the claim for the purposes of Court-fees, the value put down by him would determine the jurisdiction. The whole law on the point is discussed by the Calcutta High Court in *Hari Sanker Dutt v. Kali Kumar Patra*<sup>(1)</sup>. We therefore submit that the lower Courts wrongly held that the suit was not within the pecuniary jurisdiction of the Second Class Subordinate Judge.

*M. N. Mehta* for the opponents (defendants):—We submit that though the suit is one for declaration and injunction, the plaintiff is not the sole arbiter of the valuation to be put down for determining the jurisdiction of the Court. The word “determinable” occurring in section 8 of the Suits Valuation Act would mean as determinable by the Court. The Court is not deprived of its jurisdiction to go into the question whether the value put down by the plaintiff is sufficient or not: *Boidya Nath Adya v. Makhan Lal Adya*<sup>(2)</sup>, *Musst. Bibi Umatul v. Musst. Nanji Koer*<sup>(3)</sup>. There is a ruling of our Court in *Dayaram v. Gordhandas*<sup>(4)</sup> which lays down that the valuation to be determined under section 8 of the Suits Valuation Act should be determined by the Court, and so long as that ruling stands the lower Courts are bound to follow it. Besides, section 12 of the Suits Valuation Act gives ample power to the Court to go into the question of valuation, and in this case the Court has exercised that power and has, after taking evidence, come to the conclusion that the value of the subject-matter was over Rs. 5,000, and therefore under section 24 of Act XIV of 1863 the Court of the Second Class Subordinate Judge had no jurisdiction to entertain the suit.

*Ajinkya* in reply:—The case of *Boidya Nath Adya v. Makhan Lal Adya*<sup>(5)</sup> was for partition. The ruling in *Musst. Bibi Umatul v. Musst. Nanji Koer*<sup>(6)</sup> was not under the Suits Valuation Act. The case of *Dayaram v. Gordhandas*<sup>(7)</sup> is clearly distinguishable as in that case possession was one of the consequential reliefs asked for.

(1) (1905) 32 Cal. 734.

(2) (1890) 17 Cal. 680.

(3) (1907) 11 Cal. W. N. 705.

(4) (1906) 31 Bom. 73.

(5) (1890) 17 Cal. 680.

(6) (1907) 11 Cal. W. N. 705.

(7) (1906) 31 Bom. 73.

SCOTT, C. J. :—The question that we have to decide is whether in a suit for a declaration and consequential relief the Court must accept the value of the relief stated in the plaint for the purpose both of the Court-fees and jurisdiction.

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We think that the words of section 8 of the Suits Valuation Act VII of 1887 lead to that conclusion; and we find that this was the view taken by the Calcutta High Court in *Hari Sanker Dutt v. Kali Kumar Patra*<sup>(1)</sup>.

We have been pressed by a decision of the Court in *Dayaram v. Gordhandas*<sup>(2)</sup>, but that is a case which is clearly distinguishable, because the learned Judges there treated it as a suit in which there was a claim for possession.

We, therefore, make the rule absolute and set aside the order of the lower Court with costs.

*Rule made absolute.*

G. B. R.

\* (1) (1905) 32 Cal. 734.

(2) (1906) 31 Bom. 73.

## APPELLATE CIVIL.

*Before Chief Justice Scott and Mr. Justice Chandavarkar.*

GANESH MORESHWAR JOSHI AND ANOTHER (ORIGINAL DEFENDANTS 3 AND 4), APPELLANTS, v. PURSHOTTAM BALKRISHNA RODE AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANTS 5 AND 6).\*

1908.

December 1.

*Civil Procedure Code (Act XIV of 1882), sections 278, 282, 283 and 287—Money-decree—Execution—Attachment and sale of property mortgaged with possession to a third person—Auction-purchase by judgment-creditor with leave of Court subject to mortgage—Suit by judgment-creditor prior to confirmation of sale and satisfaction of decree for a declaration that the mortgage was fraudulent and without consideration—Purchase—Equity of redemption—Estoppels binding upon judgment-debtor.*

Plaintiffs obtained a money-decree against their debtor and in execution attached the debtor's immoveable property which was already mortgaged with possession to a third person. At the auction-sale the plaintiffs themselves purchased the property with the leave of the Court subject to the mortgage.

\* Second Appeal No. 186 of 1907.