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further of opinion that the deed was either a gift of reversionary interest or a release of that interest. Being thus doubtful on the question, he referred it to the Commissioner, Central Division, through the Collector of Sholapur under section 56 of the Stamp Act. In forwarding the reference to the Commissioner under section 40 of the Stamp Act, the Collector agreed with the view of the Sub-Registrar that section 4 of the Stamp Act was not applicable but he was doubtful whether the document was a deed of gift or a deed of release of reversionary interest.

The Commissioner, thereupon, made a reference under section 57 of the Stamp Act in the following terms :—

The chief question is whether the deed of consent in question is a gift or a release. In my opinion the document cannot be a gift, as Balkrishna has no existing interest in the property in question. (*Vide* definition of gift on page 254 of Desai's Stamp Act.) The document appears to be a release on the analogy of the case at I. L. R. 24 Allahabad 372, and the Madras Board's Proceedings No. 340 of 25th February 1881, printed on page 304 of Desai's Stamp Act.

G. S. Rao, Acting Government Pleader, appeared for the Government of Bombay.

PER CURIAM.—The Court agrees with the Commissioner and holds that the relinquishment of his claim by the reversioner is a release and must be stamped accordingly.

Order accordingly.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Beaman.

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July 5.

DAGDU VALAD SAKHARAM KUNBI (ORIGINAL PLAINTIFF),
APPELLANT, v. TOTARAM VALAD NARAYAN KUNBI AND OTHERS
(ORIGINAL DEFENDANTS), RESPONDENTS.*

*Court Fees Act (VII of 1870), section 7, clause (iv) (b), section 7, clause (v),
—Suits Valuation Act (VII of 1887), section 8—Suit for partition and
separate possession of joint family property—Valuation for Court fee
purposes—Market value of subject matter determines jurisdiction—
Jurisdiction.*

* Appeal No. 3 of 1909, from order,

The plaintiff sued for partition of certain houses, house-sites, moveables and lands, valuing his share in the lands at five times the assessment (*i. e.*, at Rs. 489-6-0) for Court-fee purposes and in the moveables at Rs. 1,455-8-0. The market value of the plaintiff's share in the lands was Rs. 5,600. The plaint was presented in the Court of First Class Subordinate Judge, as the value of the plaintiff's share was over Rs. 5,000. The Subordinate Judge held that the value for Court fees, that is, Rs. 1,944-14-0 should be treated as the value for jurisdiction under section 7, clause (iv) (b) of the Court Fees Act, 1870 and section 8 of the Suits Valuation Act 1887 and returned the plaint for presentation in the Court of Second Class Subordinate Judge.

Held, reversing the orders that the suit fell within the jurisdiction of the First Class Subordinate Judge.

Held, further, that the suit fell not within section 7 (iv) (b) but under section 7 (v) of the Court Fees Act 1870 and section 8 of the Suits Valuation Act 1887 did not apply. That, therefore, it was the market value of the lands, houses, &c., that determined the jurisdiction of the Subordinate Judge.

Motibhai v. Haridas (1) commented on.

APPEAL from order passed by N. R. Majmundar, First Class Subordinate Judge at Dhulia.

Suit for partition.

The plaintiff sued to recover by partition a moiety of certain moveables, houses, house-sites and lands. The value of the plaintiff's share in moveables, houses and house-sites was put at Rs. 1,455-8-0 for Court fee purposes; and in lands at Rs. 489-6-0 at five times the assessment. The market value of plaintiff's share in the fields was about Rs. 5,600.

The plaint was presented originally in the Court of the Second Class Subordinate Judge at Jalgaon. The defendant contended that the market value of the field was undervalued in the plaint. The question was therefore referred to a Commissioner, who found the market value of the plaintiff's share in the fields to be Rs. 7,055-8-0.

The Second Class Subordinate Judge of Jalgaon thereupon returned the plaint to be presented in the proper Court, as the market value of the subject matter in suit was more than Rs. 5,000.

(1) (1896) 22 Bom. 315.

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The plaint was next presented to the Court of the Subordinate Judge at Dhulia : but the learned Judge held that as the value for Court fee purposes of plaintiff's share did not exceed Rs. 5,000, the plaint should be re-presented in the Jalgaon Court. His reasons were as follows :—

It has been held in I. L. R., 22 Bom. 315 that the valuation placed by the plaintiff for the purposes of computing Court fees also, determines jurisdiction (see also 2 Bom. 219, 17 Bom. 56) and section 8 of the Suits Valuation Act also lays down that "where in suits other than those referred to in Court Fees Act 1870, section 7, paragraphs v, vi and ix and paragraph x, clause (d), Court fees are payable *ad valorem* under the Court Fees Act, 1870, the value determinable for the computation of Court fees and value for purposes of jurisdiction shall be the same."

The present suit is a suit for partition and separate possession, and so it is governed by section 7, paragraph 4, clause (b) of the Court Fees Act 1870.

The valuation for computing Court fees and that for purposes of jurisdiction are the same, namely, Rs. 1,944-14-0. This Court has, therefore, no jurisdiction; and the proper Court to hear the suit is the Court of the Second Class Subordinate Judge at Jalgaon.

Assuming that it is the Court's province to determine valuation for the purposes of Court fees and jurisdiction, still I think that the principle adopted by the plaintiff of valuing the fields at five times the assessment is correct. Under paragraph v, clause (d), proviso I of section 7 of the Court Fees Act this principle of valuation is laid down, when the claim is for the possession of the revenue paying land; and there seems no reason why a plaintiff who asks for possession after partition should be compelled to pay a higher Court fee. It has been held that for purposes of jurisdiction, the value of a suit for a declaratory decree must be taken to be what it would be if it were for the possession of the property in respect of which the declaration is prayed for. See I. L. R. 12 Mad. 223. And the same rule, I think, should apply to a suit for partition if it is considered that the plaintiff is not at liberty to value the claim according to his pleasure.

The plaintiff appealed against this order.

G. K. Dandekar for the appellant:—In a suit to recover possession of property by partition, the value of the subject matter is the market value and not the value fixed for court fee purposes, and it is the market value which determines jurisdiction. See *Kalu bin Bhiwaji v. Vishram Mawaji*⁽¹⁾ and

(1) (1877) 1 Bom. 543.

Dagachand v. Hemchand Dharamchand.⁽¹⁾ Here, the market value has been found to exceed Rs. 5,000 in value.

Further, a suit like the present should be treated as a suit for possession falling under section 7, paragraph (v) and not under section 7, paragraph (iv) (b), of the Court Fees Act 1870. It is always easy to determine the market value of the plaintiff's share in partition suits. Paragraph (iv) of section 7 contemplates suits where it is not practicable to determine the value of the relief claimed. If I am so far right, then the suit falls under the exceptions to section 8 of the Suits Valuation Act 1887.

Conceding for argument's sake that the suit is one falling under section 7, paragraph iv, clause (b) of the Court Fees Act, section 8 of the Suits Valuation Act has no application inasmuch as the present suit relates to lands paying revenue to Government. Section 8 is to be read subject to sections 3 and 4 of the Act, which prescribe a special mode of valuation in cases of suits relating to lands paying revenue to Government. The effect of sections 3, 4 and 8 taken together is that in any suit relating to land whether it be for possession or from injunction or for a mere declaration, the value of the subject matter is not the value which is put for Court fee purposes but a different value which is the market value.

I submit that section 8 of the Suits Valuation Act has no application to a suit relating to land although the suit may be to obtain a declaration in respect of land or a suit for partition of land.

A. G. Desai (amicus curie) for the respondents:—I submit this suit falls under section 7, clause (iv) of the Court Fees Act 1870, as it is the part of his share which is sought for by the plaintiff and partition is ancillary to such a relief. Otherwise, the clause (iv) (a) would be superfluous. The claim in question expressly contemplates a claim for partition; once partition is decreed, separate possession of the share follows as a matter of course. Suits for partition have been held to fall under section 7, clause (iv) (b). See *Motibhai v. Haridas*.⁽²⁾

(1) (1880) 4 Bom. 515.

(2) (1896) 22 Bom. 315.

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Once it is conceded that the suit falls under clause (iv) (b) of section 7 of the Court Fees Act, it is clear that under section 8 of the Suits Valuation Act, the value for the Court fee purposes and jurisdiction is the same, and section 4 of the latter Act does not modify the general principle laid down in section 8.

BATCHELOR J. :—We are obliged to Mr. A. G. Desai for his assistance in this appeal. It arises out of a suit which is described by the learned Subordinate Judge as a suit for the partition and separate possession of joint family property, consisting of lands, houses and moveables.

The question before us is as to the Court which is properly vested with jurisdiction to try this suit. That depends upon the value of the subject matter of the suit. The market value of the share claimed by the plaintiff has been ascertained to be Rs. 5,600 and that sum is not now objected to on behalf of the defendants.

The First Class Subordinate Judge has returned the plaint for presentation to the Second Class Subordinate Judge, being of opinion, that the suit falls within the jurisdiction of this latter official. Mr. Dandekar on behalf of the appellant urges that that is wrong, and that the suit properly belongs to the jurisdiction of the First Class Subordinate Judge himself.

The question really turns upon the section of the Court Fees Act which governs this particular class of suits. The Lower Court assigned it to sub-clause (b) of paragraph (iv) of section 7 which refers to "a suit to enforce the right to share in any property on the ground that it is joint family property." Upon the best consideration that I can give to the point, it appears to me that the suit is not properly referable to this clause. Paragraph (iv) comprises six different classes of suits, and omitting the momentarily ambiguous class under clause (b), it is to be observed that all the suits in the paragraph are claims for a relief which is not properly assessable in money. *Prima facie* therefore, no suit to obtain possession of land, which has an easily ascertained market value, can logically be brought under paragraph (iv); in fact, so to treat a suit referring to land would, it seems to me, throw the whole paragraph into confusion. Next,

clause (b), it should be observed, refers to a suit to enforce the right to "share" in any property, not the right to "a share" in property. The words themselves, therefore, suggest that the suit is for the enforcement of what one may call an abstract claim or right, and that would bring the clause (b) into proper logical neighbourhood with the other clauses of the paragraph. I am of opinion, therefore, that this suit more properly falls under paragraph (v) of section 7 as being a suit for the possession of land. This view receives some support from the provisions of the Suits Valuation Act, because if the suit is referred to paragraph 4 (b), it will apparently be governed by section 8 of that Act, and will, there again, be bracketed with other suits of a totally different character, suits from which it appears to have been the object of the Legislature to discriminate a suit for the possession of land. Mr. Desai has called our attention to the decision of this Bench in *Motibhai v. Haridas*⁽¹⁾; but I think that that case can be distinguished from the suit before us, for there, as I read the report, it was admitted that the value of the subject matter of the plaintiff's suit was Rs. 250 and the only point really in dispute was whether that value or the total value of the entire property to be divided should form the test for the purposes of jurisdiction. If that is so, then the observations of Mr. Justice Parsons, which seem to be in conflict with the opinion which I have above expressed, were not necessary for the decision. For the reasons stated I am of opinion that the decree of the Court below must be set aside and the suit remanded for trial to the First Class Subordinate Judge.

Costs, costs in the cause.

BEAMAN J. :—I am of the same opinion. A suit to obtain by means of partition a slice of land, the approximate value of which can easily be stated in terms of money, appears to me to be plainly a suit for the possession of land. Such a suit cannot, in my opinion, be brought within the meaning of section 7 (iv) (b) of the Court Fees Act (VII of 1870), which appears as clearly to be intended merely for suits to enforce what my learned brother has properly called an abstract right "to share in any joint

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property." That being the case and the suit being a suit for possession of land, most of the difficulties which would otherwise have beset our decision disappear. And I have no reason to doubt, notwithstanding some apparent conflict in what was described as *obiter dicta* in at least one previous case, that once this point has been raised and all that has been implied in it definitely stated, the decision which we have come to is the right decision and correctly interpretes the statute.

Decree set aside.

R. R.

 APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1909.
July 12.

NARAYAN RAVJI BANADE (ORIGINAL PLAINTIFF), APPLICANT, v. GANGARAM RATANCHAND MARWADI AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.*

Small cause suit—Suit brought in the Court of First Class Subordinate Judge having small cause powers—The Subordinate Judge on privilege leave—Charge of the Court in Joint Second Class Subordinate Judge who had no small cause powers—Registering the suit as a regular suit—Trial of the suit by the First Class Subordinate Judge as a regular suit—Suit remains a small cause—Appeal—Jurisdiction.

A suit of the nature of a small cause was instituted in the Court of the First Class Subordinate Judge who had small cause powers. At the date of its institution, he was on privilege leave and his Court was in the charge of the Joint Second Class Subordinate Judge who had no small cause powers. The suit was therefore registered as a regular suit. On his return from leave the First Class Subordinate Judge tried it as a regular suit. The question having arisen whether the suit was a small cause

Held, that the First Class Subordinate Judge continued to be a Judge with small cause Court powers during his absence on leave, and the entering of the suit in the file of regular suits could not take it away from the category of small causes nor could the fact that the Subordinate Judge tried the suit under his ordinary jurisdiction deprive it of its character as a small cause.

APPLICATION under extraordinary jurisdiction under section 115 of the Civil Procedure Code (Act V of 1908).

The plaintiff filed a suit to recover Rs. 287 on a promissory note from the defendants. The suit was instituted in the Court

* Civil Application No. 67 of 1909.