

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1909.
November 11.

JASODA WARD CHHOTU (ORIGINAL DEFENDANT), APPELLANT, v.
CHHOTU MANNU DALVALU (ORIGINAL PLAINTIFF), RESPONDENT.*

Restitution of conjugal rights—Valuation of claim—Jurisdiction of Second Class Subordinate Judge to entertain the suit—Bombay Civil Courts Act (XIV of 1869), section 24—Suits Valuation Act (VII of 1887), section 11.

A suit for restitution of conjugal rights, wherein the claim was valued by the plaintiff at Rs. 65, was instituted in the Court of the Second Class Subordinate Judge. The First Court decreed the claim: and on appeal the decree was confirmed. On second appeal it was contended that the First Court had no jurisdiction to try the suit.

Held, that the valuation of the claim by the plaintiff must be accepted for the purpose of jurisdiction, unless it was shown to have been made either from any improper motive or deliberately for the purpose of giving the Court a jurisdiction which in fact it had not.

Jan Mahomed Mandal v. Mashar Bibi(1), followed.

SECOND appeal from the decision of H. S. Phadnis, District Judge of Khandesh, confirming the decree passed by D. S. Sapre, Subordinate Judge of Jalgaon.

Suit for restitution of conjugal right.

The plaintiff filed his suit in the Court of the Second Class Subordinate Judge at Jalgaon, valuing his claim at Rs. 65. That Court decreed the claim.

On appeal, this decree was confirmed by the District Court.

The defendant preferred a second appeal to the High Court contending *inter alia* that the Second Class Subordinate Judge had no jurisdiction to try the suit which was for restitution for conjugal rights.

R. R. Desai for the appellant (defendant).—A Subordinate Judge of the Second Class has no jurisdiction to try a suit for restitution of conjugal rights. The claim is here valued for

* Second Appeal No. 877 of 1908.

(1) (1907) 34 Cal. 352.

purposes of court-fees at Rs. 65 ; but that does not determine jurisdiction.

Under section 24, clause (2), of the Bombay Civil Courts Act (XIV of 1869) the First Class Subordinate Judge has jurisdiction to try all suits of a civil nature within the territorial jurisdiction. Under the third clause of the section, the Second Class Subordinate Judge can try any suit wherein the subject-matter does not exceed in amount or value Rs. 5,000. Therefore, he can try only those suits which are capable of money valuation.

In the present case the subject-matter is incapable of any money valuation ; and the claim as valued by the plaintiff for court-fee purposes is no guide to determine jurisdiction. See *Aklemannessa Bibi v. Mahomed Hatem*⁽¹⁾.

The respondents did not appear.

CHANDAVARKAR, J. :—It is contended before us on the authority of *Aklemannessa Bibi v. Mahomed Hatem*⁽¹⁾ that the suit for restitution of conjugal rights, out of which this second appeal arises, did not lie in the Court of the Second Class Subordinate Judge, by whom it was tried, because, according to the Bombay Civil Courts Act, that Court has jurisdiction to try no suit other than that the subject-matter of which is of the value of less than Rs. 5,000, whereas a suit for restitution of conjugal rights (it is urged) is not one the subject-matter of which can be valued. What is meant by this argument is, as we understand it, that a suit for restitution of conjugal rights is not one the subject-matter of which can be precisely and definitely valued. In such cases the law leaves it to the plaintiff to put his own valuation on the plaint and accepts it for the purposes of jurisdiction unless it is vitiated by some improper motive such as a deliberate design to give the Court a jurisdiction which it has not. As was said in the case of *Lakshman Bhatkar v. Babaji Bhatkar*⁽²⁾, what *primâ facie* determines the jurisdiction is the claim or subject-matter of the claim as estimated by the plaintiff, and “ this determination having given the jurisdiction, the jurisdiction itself continues. . . unless a different principle comes into operation to prevent such a result or to make the proceedings

(1) (1904) 31 Cal. 849.

(2) (1883) 8 Bom. 31.

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from the first abortive." This law has been followed in a series of cases in this Court: *The firm of Jechand Khushalchand v. The firm of Moti Laxji*⁽¹⁾, and *Gulabchand Motiram Gujar v. Fulchand Panachand*⁽²⁾. It has also been adopted by the other High Courts.

In the present case the plaintiff valued the subject-matter of the suit at Rs. 65 and nothing was urged against the valuation in either of the lower Courts. The point as to want of jurisdiction in the Second Class Subordinate Judge's Court is raised for the first time in second appeal. The case of *Aklemannessa Bibi v. Mahomed Hatem*⁽³⁾ cannot be accepted as a decision on the point because, as has been pointed out by the same Court in *Jan Mahomed Mandal v. Mashar Bibi*⁽⁴⁾, the observations in the former case are mere *obiter dicta*. In the latter case the Calcutta High Court has held that, where the claim in a suit for restitution of conjugal rights is valued by the plaintiff, that valuation must be accepted for the purpose of jurisdiction unless it is shown to have been made either from any improper motive or deliberately for the purpose of giving the Court a jurisdiction which it has not.

The decree must be confirmed.

Decree confirmed.

R. R.

(1) (1888) P. J. J.

(3) (1904) 31 Cal. 849.

(2) (1889) P. J. 192.

(4) (1907) 34 Cal. 352.