

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

RHIMBAI JAMALBHOY (ORIGINAL PLAINTIFF 1), APPLICANT, v. MARIAM BINTE ABDUL BASOOL AND OTHERS (ORIGINAL DEFENDANTS), OPONENTS Nos. 1, 4 TO 9 AND 11.*

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November 15.

Aden Act (II of 1864), sections 8 and 15(1)—Court-fees Act (VII of 1870), section 7, sub-section 4, clauses (c) and (d)—Suits Valuation Act (VII of 1887), section 8—Civil Procedure Code (Act XIV of 1882), section 551—Civil Procedure Code (Act V of 1908), section 115—Valuation for the purposes of Court-fees and jurisdiction—Suit for declaration and injunction—Rejection of plaint as not properly stamped—Appeal—Application to state a case to High Court—Summary dismissal of appeal—Application for revision—Jurisdiction.

The plaintiff brought a suit in the Court of the Assistant Resident at Aden for a declaration of heirship and an injunction with reference to certain property of the value of upwards Rs. 50,000. The claim being for declaration and injunction was, under the provisions of the Court-fees Act (VII of 1870),

* Application No. 8 of 1909 under extraordinary jurisdiction.

(1) Sections 8 and 15 of the Aden Act (II of 1864) are as follows:—

8. No appeal shall lie from any decision or order of the Resident given or made by him, whether in the exercise of his original jurisdiction, or in the exercise of his jurisdiction as a Court of Appeal or of revision; but if in the trial of any suit in which the claim estimated as aforesaid shall not exceed one thousand rupees in value, any question of law or of usage having the force of law or of the construction of a document affecting the merits of the decision shall arise, on which the Resident shall entertain doubts, the Resident may, either of his own motion, or on the application of any of the parties to the suit, draw up a statement of the case and submit it, with his own opinion, for the decision of the High Court of Judicature at Bombay.

And if in the trial of any suit or the hearing of an appeal in any suit in which the claim, estimated as aforesaid, shall exceed one thousand rupees in value, any question of fact or of law or of usage having the force of law or of the construction of a document affecting the merits of the decision shall arise, the Resident shall, on the application of any of the parties to the suit, or he may of his own motion, draw up a statement of the case and submit it with his own opinion for the decision of the said High Court.

15. In the administration of civil justice, the Court of the Resident shall be guided by the spirit and principles of the laws and regulations in force in the Presidency of Bombay, and administered in the Courts of that Presidency not established by Royal Charter, and in the High Court in the exercise of its jurisdiction as a Court of Appeal from those Courts.

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section 7, sub-section 4, clauses (c) and (d) valued by the plaintiff at Rs. 130 upon which the prescribed Court-fee stamp was Rs. 10 only. The Assistant Resident rejected the plaint on the ground that it was not properly stamped.

Against the order of the Assistant Resident the plaintiff appealed to the Resident at Aden, and on the 23rd September 1908 presented an application under section 8 of the Aden Act (II of 1864) to state a case to the High Court upon certain questions specified in the application. The Resident, however, on the next day, that is, on the 24th September summarily dismissed the appeal under section 551 of the Civil Procedure Code (Act XIV of 1882). The judgment dismissing the appeal was read out to the plaintiff on the 7th October following, when she attended the Court.

The plaintiff, thereupon, preferred an application for revision to the High Court praying that the order dismissing the appeal might be quashed and that the Resident be required to state a case.

A question having arisen as to whether the High Court had jurisdiction to interfere in revision with any order passed by the Resident in the exercise of his Civil jurisdiction under the Aden Act (II of 1864),

Held, that with regard to questions which might arise regarding cases to be stated by the Resident for the decision of the High Court under the provisions of section 8 of the Aden Act (II of 1864) the Resident's Court is subordinate to the High Court.

Under section 15 of the Aden Act (II of 1864) as the Court of the Resident is to be guided by the spirit and principle of the laws and regulations in force in the Presidency of Bombay and administered in the Courts of that Presidency not established by Royal Charter and in the High Court in the exercise of its jurisdiction as a Court of Appeal from those Courts, the provisions of the Suits Valuation Act (VII of 1887) are 'the law for the time being for the valuation of claims' in the Courts of the Resident of Aden.

Held, further, that the plaintiff's claim being valued at Rs. 130 according to the law for the valuation of claims for the time being in force and according to the rulings of the Bombay High Court, it did not fulfil the requirements of section 8 of the Aden Act (II of 1864) so as to give the plaintiff a right to demand the statement of the case upon any question of fact or law arising in the suit.

APPLICATION under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) against the decision of E. de Brath, Major-General, Political Resident at Aden, summarily dismissing an appeal against the order passed by Major J. R. Carter, Assistant Resident, rejecting a plaint on the ground of the insufficiency of the Court-fees stamp.

One Dadabhoy Ganibhoy, a resident of Aden, died at that place in the year 1904 leaving him surviving a widow Rhimbai, children and grand-children. The deceased was possessed of considerable moveable and immoveable property consisting of houses, cash, shop-goods, pearls, etc. The Court of the Resident at Aden took charge of the said property and realized about Rs. 53,000 by its sale. After the sale the heirs of the brothers of the deceased claimed a three-fourths share in the proceeds of the sale and the Resident's Court proposed to distribute that share among the claimants and to give the remaining one-fourth share to the widow and the children of the deceased. The widow, Rhimbai, and the children of the deceased brought a Suit No. 176 of 1907 against the claimants of the three-fourths share in the Court of the Assistant Resident at Aden for a declaration that the plaintiffs were the sole legal heirs of the deceased Dadabhoy Ganibhoy and as such entitled to receive the whole of the property of the deceased according to their respective shares, free from the claims of the defendants. The plaintiffs also prayed for an injunction restraining the defendants from receiving from the Court any portion of the said estate. The claim was valued at Rs. 130 and the plaint was engrossed on a Court-fee stamp of Rs. 10. The Assistant Resident found that the plaint was insufficiently stamped and gave a month's time to the plaintiffs to make up the requisite stamp. The plaintiffs having failed to do so, they presented an application praying for extension of time and for amendment of the plaint. The Assistant Resident refused the application and passed an order rejecting the plaint under section 54 of the Civil Procedure Code (Act XIV of 1882).

The plaintiffs preferred an appeal, No. 3 of 1908, against the said order to the Court of the Resident and subsequently on the 23rd September 1908 applied to that Court to refer the case for the opinion of the High Court at Bombay under section 8 of the Aden Act (II of 1864) on the following question:—

Is the plaint sufficiently stamped, and, was the order of the Court rejecting the plaint under section 54, clause (b) of the Civil Procedure Code without making an order, what the requisite stamp should be, legal?

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On the 24th September 1908 the Resident summarily dismissed the appeal under section 551 of the Civil Procedure Code, 1882.

On the 28th September 1908 the plaintiffs applied to the Resident to be informed as to what became of the appeal and they were, in reply, required to attend the Court-house on the 7th October following in connection with the appeal. On the appearance of the plaintiffs in Court on that day, the judgment of the Court dismissing the appeal was read and recorded.

Against the said order dismissing the appeal, Rhimbai preferred an application under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) urging *inter alia* that the Resident erred in law in not referring the case for the opinion of the High Court under section 8 of the Aden Act (II of 1864), that he acted beyond jurisdiction in passing his order without making a reference to the High Court, that he failed to exercise a jurisdiction which he ought to have exercised and that he acted with material irregularity in the exercise of his jurisdiction. A *rule nisi* having been issued calling on the opponents (defendants) to show cause why the decision of the Resident should not be set aside,

K. N. Koyaji appeared for the applicant (plaintiff 1) in support of the rule.

L. A. Shah appeared for the opponents (defendants) to show cause:—We have to urge a preliminary objection. The applicant is not entitled to ask this Court to interfere with the decision of the Resident in revision because section 115 of the Civil Procedure Code, 1908, is not applicable. The Resident's Court at Aden is not subordinate to the High Court. The power of superintendence is given to the High Court only in certain particulars specified in some sections of the Aden Act. We rely upon the ruling of the Full Bench in *Khoja Shivji v. Hasham Gulam*⁽¹⁾. Even though appeals lay from the Zanzibar Court to the High Court, it was held that the High Court had no powers of revision over the Zanzibar Court. By the Aden Act neither an appeal nor a revisional application lies to the High Court.

(1) (1895) 20 Bom. 480.

[SCOTT, C. J., referred to *Abdul Karim v. The Municipal Officer, Aden*⁽¹⁾, affirmed by the Privy Council in *Municipal Officer, Aden v. Ismail Hajee*⁽²⁾.

In *Abdul Karim v. The Municipal Officer, Aden*⁽¹⁾, only the power of the High Court to remove a suit from the Resident's Court and to try and determine it itself under clause 13 of the Letters Patent was declared. It did not declare any revisional powers to be in the High Court and the Privy Council merely affirmed the decision of the High Court. The fact that the transfer was not ordered under section 25 of the Civil Procedure Code, 1882, shows that the Resident's Court could not be subordinate to the High Court. See section 2 of the Civil Procedure Code, 1882, and section 3 of the new Code, 1908.

K. N. Koyaji for the applicant (plaintiff 1) in support of the rule:—The Full Bench ruling in *Khoja Shivji v. Hasham Gulam*⁽³⁾ is in our favour. The judgment of Sir Charles Sargent, C. J., in that case shows that it was merely because the High Court of Bombay was made by the Zanzibar Order in Council to be only an appellate Court to hear appeals in Civil cases from Zanzibar, that there was no power of revision in the High Court. In Criminal cases the High Court of Bombay is, under section 9 of the Order in Council, to be deemed the High Court and not merely an appellate Court, and this difference was clearly pointed out by Sir Charles Sargent, C. J. Under the Aden Act, the powers of superintendence and revision are expressly given to the High Court over the Resident's Court at Aden. Besides Zanzibar is not a part of the Bombay Presidency, but Aden is, and this circumstance makes the Court at Aden subordinate to the Bombay High Court. See section 16 of the Letters Patent.

Abdul Karim v. The Municipal Officer, Aden⁽¹⁾, affirmed by the Privy Council in *Municipal Officer, Aden v. Ismail Hajee*⁽²⁾ establishes the power of the High Court to superintend or revise the acts and decisions of the Court at Aden. Superintendence and revision are interchangeable terms. Superintendence may be more comprehensive than revision but it cannot exclude

(1) (1903) 27 Bom, 575.

(2) (1905) 30 Bom. 246.

(3) (1895) 20 Bom. 480.

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revision. The ruling in *Abdul Karim v. The Municipal Officer, Aden*⁽¹⁾, points out that superintendence is not only a ministerial but a judicial power. Superintendence implies appellate jurisdiction and *vice versa*; *Pirbhai Khimji v. B. B. & C. I. R. Co.*⁽²⁾. Section 15 of the Charter Act and section 16 of the Letters Patent act and re-act on each other. The decision in *Gabind-sundari Debi v. Jagadamba Debi*⁽³⁾ covers exactly a case like the present. Section 2 of the Civil Procedure Code, 1882, and section 3 of the new Code, 1908, are not meant to give exhaustive definition of "Subordinate Courts." The application of section 13 of the Letters Patent in any case does not mean that section 25 of the Code of 1882 or section 24 of the Code of 1908 is necessarily inapplicable. Therefore in the present case either section 115 of the new Code or section 15 of the Charter Act may be applied. But apart from all general arguments, it is enough for our purpose to confine attention to section 8 of the Aden Act. That section makes it imperative for the Resident to refer a case to the High Court where the claim exceeds Rs 1,000 in value. This circumstance gives the High Court the power to direct the Resident at Aden to refer a case to the High Court. The Resident may otherwise act capriciously. At any rate for the purposes of section 8 of the Aden Act, section 115 of the new Code, 1908, or section 15 of the Charter Act must apply.

Coming to the merits, the claim here was more than Rs. 1,000 in value and so the Resident was bound to submit a case for the decision of this Court under section 8 of the Aden Act when we made an application to him to that effect.

Shah for the opponents (defendants) to show cause:—The application for reference to the High Court was made on the 23rd September 1908 and it is not shown that the appeal was heard on that day. The judgment was written on the 24th September and it was pronounced on the 7th October following. The applicant (plaintiff) cannot therefore claim the benefit of section 8 of the Aden Act which requires the application for reference to be made, "in the trial of any suit or the hearing of an appeal." Secondly, the claim does not exceed Rs. 1,000 in value. The

(1) (1903) 27 Bom. 575. (2) (1871) 8 Bom. H. C. R. (O. C. J.) 52.

(3) (1870) 6 Ben. L. R. 168 at p. 170.

Aden Act requires the claim to be "estimated according to any law for the valuation of claims for the time being in force," and the Court-fees Act and the Suits Valuation Act lay down the law for the valuation of claims at the present day. The present claim being for declaration and injunction, the value of the claim for the purposes of Court-fees is that mentioned in the plaint, which is Rs. 130; and the same is the value of the claim under section 8 of the Suits Valuation Act for the purpose of jurisdiction. Under section 15 of the Aden Act the Court of the Resident at Aden is to be guided by the spirit and principle of the laws and regulations in force in the Presidency of Bombay and administered in the Courts of that Presidency not established by Royal Charter and in the High Court in the exercise of its jurisdiction as a Court of Appeal from those Courts. Hence the valuation prescribed by the aforesaid Acts must be taken to be the valuation for the purposes of section 8 of the Aden Act. As the claim did not exceed Rs. 1,000 according to such valuation, the Resident was not bound to submit the case to this Court.

Koyaji in reply :--The words "in the trial of any suit or the hearing of an appeal" in section 8 of the Aden Act mean during the trial of any suit or during the hearing of an appeal and not at the hearing of a suit or appeal.

The claim is to be estimated according to the law for the valuation of claims and not of suits. The words in sections 5—8 of the Aden Act clearly imply a distinction between suits and claims therein; otherwise the wording would have been, in any suit estimated according to the law for the valuation of suits for the time being in force. The sections of the Aden Act are to be construed in the same way as section 596 of the Civil Procedure Code, 1882, corresponding with section 110 of the new Code, 1908. The right of appeal depends on the real value and not the value fixed for the purposes of Court-fees: *Mohun Lall Sookul v. Bebee Doss*⁽¹⁾, *Baboo Lekraj Roy v. Kanhya Singh*⁽²⁾, *Pichayee v. Sivagami*⁽³⁾, *Hari Mohan v. Surendra Narain Singh*⁽⁴⁾, *Musst Aliman v. Mustt Hasiba*⁽⁵⁾. The Suits Valuation Act

(1) (1860) 7 Moo. I. A. 428.

(3) (1891) 15 Mad. 237.

(2) (1874) L. R. 1 I. A. 317.

(4) (1903) 31 Cal. 301.

(5) (1897) 1 Cal. W. N. LXXXXIII.

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determines the values of suits and not claims and it is for the purposes of jurisdiction of the Courts in which suits have to be filed and not for purposes of appeals. According to the law for the valuation of claims, they are to be valued according to the market price. The provisions of section 40 of the Punjab Courts Act, 1884, are similar to those of section 8 of the Suits Valuation Act and it has been laid down by a Full Bench in Civil Judgment No. 24 of the Punjab Records for 1908 that the value of the claim under that section for purposes of appeal was not the same as under Suits Valuation Act.

Section 15 of the Aden Act need not be invoked as the Court-fees Act and the Suits Valuation Act are actually in force in Aden inasmuch as those Acts extend to the whole of British India. But we submit that those Acts have nothing to do with the question of valuation of claims under section 8 of the Aden Act.

Our grievance is that our plaint was rejected on the ground that it was insufficiently stamped because we valued the claim at Rs. 130 and not at Rs. 53,000 for the purposes of Court-fees. We contend that this is contrary to the rulings of this Court. *Manohar Ganesh v. Bawa Ramcharandas*⁽¹⁾, *Sardarsingji v. Ganpatsingji*⁽²⁾, *Parvatibai v. Vishvanath*⁽³⁾, *Vachhani v. Vachhani*⁽⁴⁾. For the purposes of the Court-fees we gave the correct valuation at Rs. 130 according to the said rulings, but for purposes of jurisdiction the value was Rs. 53,000. But when come up here in revision we are met with the contention that the value of the claim is Rs. 130. Thus we get no relief.

SCOTT, C. J. :—This is an application by the plaintiff in a suit filed in the Court of the Resident at Aden that an order dismissing an appeal in the suit under section 551 of the Civil Procedure Code may be quashed and that the Resident may be required to state a case upon certain questions specified in an application, dated the 23rd of September 1908, made the day before he delivered judgment in the appeal, it being contended that the

(1) (1877) 2 Bom. 219.

(3) (1904) 29 Bom. 207.

(2) (1892) 17 Bom. 56.

(4) (1908) 33 Bom. 307.

obligation to state such a case was imposed upon him by the provisions of section 8 of the Aden Act II of 1864.

A preliminary objection was taken on behalf of the opponents that this Court has no jurisdiction to interfere in revision with any order passed by the Resident in the exercise of his civil jurisdiction under the Aden Act, on the ground that the Resident being only subject to the High Court of Bombay in certain specified particulars under the Act with regard to civil jurisdiction his Court could not be said to be a Court Subordinate to the High Court within the meaning of section 115 of the Civil Procedure Code.

Now with regard to questions which should be stated by the Resident for the decision of the High Court under the provisions of section 8 of the Aden Act there can, we think, be no question that the Resident's Court is Subordinate to the High Court, for the Resident is, after the decision of the High Court given upon the questions submitted by him under that section, bound to pass a decree and to dispose of the case conformably to the decision of the High Court. We think, therefore, that with regard to such questions, this Court has the power of revision under section 115 of the Code in order that the Resident may not refuse to exercise the jurisdiction given to him by that section and may not act with material irregularity in the exercise of such jurisdiction without the power of the superintending Court to interfere. We, therefore, decide the preliminary objection against the opponents.

The next question is whether the Resident has refused to exercise the jurisdiction vested in him under section 8 or has acted with material irregularity in the exercise of such jurisdiction.

It appears that on the 14th of August 1908, a petition of appeal was presented to him from the decision of his Assistant Resident, Major Carter, in Suit No. 176 of 1907, rejecting the plaint on the ground that it was not properly stamped. The petition of appeal, according to the practice in Aden, where Pleaders are not usually heard, stated the arguments of the appellants and referred to the authorities on which they relied and nothing

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more was heard of the appeal until an application, made to the Resident on the 28th of September 1908, requesting that the applicant might be informed as to what had become of the appeal, received on the 30th of September, a response requiring the appellants to attend the Court-house on the 7th of October in connection with the appeal. Prior to the application of the 28th of September, namely, on the 23rd of September, the appellants had applied under section 8 of the Aden Act for reference of the following questions in the above appeal for decision of the High Court of Bombay, namely, "Is the plaint sufficiently stamped, and, was the order of the Court rejecting the plaint under section 54, clause (b) of the Civil Procedure Code, 1882, without making an order, what the requisite stamp should be, legal?"

On the 7th of October the plaintiff attended at the Court of the Resident and a judgment was then read out dismissing the appeal under section 551. The judgment is dated 24th of September.

Neither the judgment nor the records of the case indicate that the Resident took any notice whatever of the application made on the 23rd of September that a case should be stated under section 8.

The question is, whether in ignoring that application so far as the records of the case indicate, the Resident acted with material irregularity in the exercise of his jurisdiction or refused to exercise the jurisdiction vested in him by law.

Now one of the conditions entitling a litigant at Aden to demand the statement of a case for the decision of the High Court by the Resident is stated in section 8 to be the trial of a suit or the hearing of an appeal in which the claim estimated according to any law for the valuation of claims for the time being in force shall exceed Rs. 1,000 in value. In the present case the claim of the plaintiff was for a declaration and injunction with reference to certain property of a deceased resident in Aden alleged to be of the value of upwards Rs. 50,000 regarding which there was a dispute as to whether the plaintiff was entitled to the whole or a quarter share.

The claim being for declaration and injunction was under the provisions of the Court-fees Act, section 7, sub-section (4), clauses (c) and (d), valued by the plaintiff at Rs. 130, upon which the prescribed Court-fee stamp was Rs. 10 only.

For the purpose of jurisdiction in the Bombay Presidency, the Suits Valuation Act VII of 1887, section 8, provides that "where in suits other than those referred to in the 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 as determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same."

Therefore, as under section 15 of the Aden Act, the Court of the Resident is to be guided by the spirit and principle of the laws and regulations in force in the Presidency of Bombay and administered in the Courts of that Presidency not established by Royal Charter and in the High Court in the exercise of its jurisdiction as a Court of Appeal from those Courts, we have in the provisions of the Suits Valuation Act, to which we have referred, 'the law for the time being in force for the valuation of claims.'

Assuming that the plaintiff's claim has been correctly valued under the Court-fees Act, as appears to be the case on a consideration of the decisions of this Court reported in *Manohar Ganesh v. Bawa Ramcharandas*⁽¹⁾, *Sardarsingji v. Ganpatsingji*⁽²⁾, *Parvatibai v. Vishvanath*⁽³⁾, *Vachhani v. Vachhani*⁽⁴⁾, her claim estimated according to the law for the valuation of claims for the time being in force would be Rs. 130. It is, therefore, a claim which does not fulfil the requirements of section 8 of the Aden Act so as to give the plaintiff a right to demand the statement of the case upon any question of fact or law arising in her suit.

For these reasons we cannot hold that the case calls for any interference under section 115 of the Code, and we dismiss the application with costs.

Application dismissed.

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(1) (1877) 2 Bom. 219.

(3) (1904) 29 Bom. 207.

(2) (1892) 17 Bom. 56.

(4) (1908) 33 Bom. 307.

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