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interested in mortgaged property should be made parties to a suit on the mortgage. Therefore defendant No. 3 was a necessary party and the suit must be held to have been in time.

The decree is confirmed with costs.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Sir Narayan Chandavarkar, Kt., Acting Chief Justice, and Mr. Justice Batchelor.

1912. *June* 26.

SHIDAPPA VENKATRAO (ORIGINAL PLAINTIFF), APPELLANT, *v.* RACHAPPA SUBRAO (ORIGINAL DEFENDANT), RESPONDENT.*

Court Fees Act (VII of 1870), section 17—Suit to obtain a declaration as adopted son and to establish title to property—Injunction with respect to a house—Declaration with respect to other property—Valuation of the plaint—Valuation for pleader's fees—Special jurisdiction of the First Class Subordinate Judge—Appeal to the District Court—Second Appeal—Return of the memorandum of appeal for presentation to the High Court—Jurisdiction.

In a suit for a declaration that the plaintiff was the adopted son of V., and as such was entitled to his property, the plaint was valued at Rs. 130 for a declaration of the rights and at Rs. 69,016-9-0 for pleader's fees. The plaintiff prayed for an injunction restraining the defendant from interfering with plaintiff's rights in respect of a house which was already in his possession and the injunction was valued at Rs. 5. With respect to the other property which was attached by the Collector after V.'s death, the plaintiff sought for a bare declaration of his rights as V.'s adopted son. The suit was tried by the First Class Subordinate Judge of Belgaum in his special jurisdiction and he allowed the claim.

The defendant appealed to the District Judge and he, notwithstanding the plaintiff's preliminary objection that the appeal lay to the High Court and not to his Court, held that the First Class Subordinate Judge had no jurisdiction to try the suit under his special jurisdiction because the suit was for a declaration and consequential relief which was valued at Rs. 5 for the purposes of Court-fees, and the valuation for the purposes of jurisdiction being the same as for the purposes of Court-fees, that valuation was less than Rs. 5,000. The District Judge, therefore, entertained the appeal and having found that the plaintiff's adoption was not proved, disallowed the claim.

* Second Appeal No. 152 of 1911.

On second appeal by the plaintiff,

Held, reversing the decree, that the First Class Subordinate Judge was entitled to try the suit under his special jurisdiction and his decree was appealable to the High Court.

The plaint distinctly laid claim to two subjects, namely, two kinds of properties. First, there was property in the possession of the Collector and its value exceeded Rs. 5,000 and that property having been in the possession of the Collector, it was not necessary for and allowable to the plaintiff to ask for an injunction. He was only entitled to a declaration of his title. The other subject-matter of the suit was the house as to which the plaintiff was entitled to ask for a declaration and consequential relief and to put his own valuation on the plaint.

SECOND appeal against the decision of E. Clements, District Judge of Belgaum, reversing the decree of V. V. Phadke, First Class Subordinate Judge.

The plaintiff sued for a declaration that he was the lawfully adopted son of the deceased Venkatrao, Desai of Ingli in the Belgaum District, and as such entitled to the property of the deceased and for an injunction to the defendant not to obstruct the plaintiff in the enjoyment of such of the property (a house) of the deceased as was in plaintiff's possession. The plaint alleged that Venkatrao died on the 24th January 1909, that he adopted plaintiff, who was a member of the same family, on the 24th November 1908, that the defendant was trying to give one of his own sons in adoption to Venkatrao and when it was settled that the plaintiff was to be adopted, the defendant maliciously applied to the Collector and the Court of Wards took possession of all the property of the deceased with the exception of the dwelling house and that as the defendant disputed the plaintiff's adoption, it became necessary to bring the present suit. The plaint was valued at Rs. 135, that is, at Rs. 130 for the declaration and at Rs. 5 for the injunction, but it was stated in the plaint that the value of the whole property comprised in the suit was Rs. 69,016-9-0.

The defendant answered that the plaintiff's adoption was false and the deed of adoption was fabricated, that the plaintiff and the deceased Venkatrao were not members of an undivided family, that the deceased Venkatrao was very ill on account of paralysis and owing to that illness his intellect had become

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weak at the time of the alleged adoption and he was not in a position to understand the meaning or effect of adoption and that the adoption was illegal.

The Subordinate Judge found that the adoption set up by the plaintiff was proved and valid, that the deceased Venkatrao had sufficient mental capacity to understand the nature of what he was doing and that the plaintiff was not the nearest heir of the deceased. He, therefore, awarded the claim by granting the declaration and injunction sought for by the plaintiff.

The defendant appealed and the plaintiff took a preliminary objection as to the jurisdiction of the District Court to hear the appeal. In over-ruling the plaintiff's preliminary objection the District Judge observed :—

A preliminary objection is taken to this Court's jurisdiction to hear the appeal. The respondent urges that although the plaint is properly valued at Rs. 135 for the purpose of the Court-fees, the suit was entertained by the lower Court, the First Class Subordinate Judge of Belgaum, on the understanding that the Court's jurisdiction depended on the market value of the deceased's estate. The property in this district being situated in the Athni and Chikodi Tálukas, the lower Court could only entertain the suit in its special jurisdiction. It is therefore argued that the suit having gone to trial on the understanding that the value of the subject-matter was above Rs. 5,000, the appeal must lie to the High Court. It appears to me that this question admits of but one answer. I am not concerned with what the learned Subordinate Judge or the parties may have thought. The suit did not come within the lower Court's special jurisdiction and the lower Court had no jurisdiction whatever to try it. Whatever the result of that may be, the appeal undubitably lies to this Court, under section 26 of the Bombay Civil Court's Act which provides that the appeal lies to the High Court in suits decided by a First Class Subordinate Judge in either his ordinary or special jurisdiction in which the value of the subject-matter exceeds Rs. 5,000. In *Vachhání Keshabhai* v. *Vachhani Nanbha*, 11 Bom. L. R. 30 following a Calcutta case, the Bombay High Court have held that the valuation of the relief in the plaint is to be accepted both for the purposes of Court-fees and jurisdiction.

Having come to this decision, it appeared to me necessary to consider the point whether I was bound to set aside the proceedings of the lower Court and return the plaint for presentation to the Athni or Chikodi Court. As this step would have led to a deplorable waste of time and money and had nothing to commend it, neither party even hinting that he had been prejudiced by the lower Court's erroneous assumption of jurisdiction, I suggested to the pleaders and counsel that they should consult one another as to the best means of obviating this evil and in

particular asked them to consider whether it would not be possible to allow the plaint to be revalued at Rs. 5,001 and to return the memorandum of appeal for presentation to the High Court. In the discussion that followed it was made clear that the parties could not by agreement confer a jurisdiction upon the lower Court which it never had. As the plaint was properly valued for Court-fees, section 12 of the Court Fees Act had no application. The Court therefore could not order that the plaint be revalued. The upshot of the argument was that, unless the aid of the need section 21, Civil Procedure Code, could be invoked, this Court had no alternative but to return the plaint. Section 21, Civil Procedure Code, is not mentioned in the statement of objects and reasons. It appears, however, to have been enacted on the analogy of section 11 of the Suits Valuation Act (Act VII of 1887). Whereas the latter section has the effect, subject to certain restrictions, of ratifying a trial which was held in a Court without jurisdiction, owing to an error in the valuation of the plaint, the former section appears to cure a defect of territorial jurisdiction, under similar restrictions. There can be no doubt that section 21 would cover a case where the place of residence of the defendant or the situation of the property in suit had been in good faith wrongly described in the plaint. I know of no general principle which would serve to distinguish such a case from the present, where the mistake appears to have been one of law. The wording of the section is very wide, and in giving a wide interpretation to it, I rely on the principle that an Appellate Court should endeavour to rectify irregularities and do substantial justice. If I am right in my interpretation of the section, I need not consider the decisions of the Privy Council which lay down that a trial without jurisdiction is void *ab initio*, because the Legislature made in inroad upon that doctrine in section 11 of the Suits Valuation Act, and have a perfect right to modify it still further by statute. Section 21 begins "no objection to the place of suing shall be allowed." There are two canons of interpretation which would make that section clearly applicable to the present case, first, that when the language of a statute is plain and unambiguous, and admits of one meaning only, that meaning and that meaning alone, must be given to it, and, secondly, that "remedial enactments must be construed literally." This enactment was evidently passed for the expedition of justice and for ousting delays in its administration. It is therefore a "remedial" measure and must be extended as far as the words will admit to every case within its purview. I therefore hold that neither party is at liberty in the present case, as there has admittedly been no failure of justice consequent upon the lower Court's erroneous assumption of jurisdiction, to ask this Court in appeal to return the plaint for presentation to the proper Court. *A fortiori* it would be improper for the Court to take such a step *suo motu*.

The plaintiff appealed.

Robertson with *G. S. Rao* (Government Pleader), *G. K. Parekh* and *N. A. Shiveswarkar* for the appellant (plaintiff) :— The District Judge erred in holding that he had jurisdiction to entertain the appeal and he relied upon the decision in

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Vachhani v. *Vachhani*[1]. But that case has no application. The property in suit is valued at Rs. 69,000 and odd. Excepting a small house valued at Rs. 250 the whole of the property is in the possession of the Collector as Court of Wards and with respect to it we ask for a mere declaration and valued the relief as for a declaratory decree at Rs. 130 only and paid the Court-fee of Rs. 10 covering that amount. The Court-fee of Rs. 10 was the proper Court-fee: Court Fees Act, Schedule II, Article 17 (iii). With respect to the house we pray for an injunction restraining the defendant from interfering with our possession. The relief for injunction we valued at Rs. 5 and we paid the *advalorem* Court-fee: Court-Fees Act, Chapter III, section 7, iv (*d*). The total amount of the two reliefs is Rs. 135 for the purposes of Court-fees and the plaint is valued at that amount. But it is mentioned in the plaint that the value of the subject-matter of the suit is more than Rs. 5,000 and thus the suit became cognizable by the Court of the First Class Subordinate Judge of Belgaum in its special jurisdiction and the decree was appealable to the High Court: sections 24, 25 and 26 of the Bombay Civil Courts Act XIV of 1869. The District Judge has jurisdiction to hear appeals where the value of the subject-matter of the suit is less than Rs. 5,000: section 8 of the Bombay Civil Courts Act.

In the present case the property in suit is the subject-matter and not the relief claimed. If the value of the property had been less than Rs. 5,000, the plaintiff would have had to file the suit either in the Court at Athni or at Chikodi. Both those Courts are presided over by Subordinate Judges of Second Class: sections 15 and 16 of the Civil Procedure Code.

In a suit for a bare declaration affecting property worth more than Rs. 5,000 the test for determining the value of the property for the computation of Court-fee is different from that for determining value for the purposes of jurisdiction. It is only in a few cases that the value for both purposes is the same: section 8 of the Suits Valuation Act VII of 1887. In a suit for a mere declaratory decree the value for determining

(1) (1908) 33 Bom. 307.

jurisdiction must be taken to be what it would be if the suit had been for the possession of the property: *Ganapati* v. *Chathu*[1]. If the present suit had been for the possession of the property, the valuation for the purposes of Court-fees would have been Rs. 69,000 and odd. The suit was, therefore, properly brought in the Court of the First Class Subordinate Judge in its special jurisdiction. An appeal against the decree in such a suit lies to the High Court and not to the District Court: *Ajubhai Rawabhai* v. *Bai Hiraba*[2], *Bai Mahkor* v. *Bulakhi Chaku*[3], *Chingacham Vitil Sankaran Nair* v. *Chingacham Vitil Gopala Menon*[4], *Shrimant Sagajirao* v. *S. Smith*[5], *Ganapati* v. *Chathu*[1], *Ibrayan Kunhi* v. *Komamutti Koya*[6].

The decision in *Vachhani* v. *Vachhani*[7] has no application because the injunction therein asked for related to the very property with regard to which a declaration was sought for, and the suit came under section 8 of the Suits Valuation Act VII of 1887. In the present case the injunction is sought with respect to a very small part of the property and a bare declaration is asked for with respect to the bulk of the property. The suit comprises two subjects arising out of the same cause of action, but those subjects are quite independent of each other. It would not have been necessary for us to ask for an injunction with respect to the house if the defendant had not threatened obstruction to our possession.

Coyaji and *Jayakar* with *K. A. Padhye* for the respondent (defendant) :—The decree of the lower Court is correct and should be upheld. The injunction was prayed for in consequence of the declaration and also as a consequential relief. The suit being for a declaratory decree and consequential relief it fell under section 8 of the Suits Valuation Act. The Court Fees Act provides only for two kinds of suits, namely, those for a declaration and those for a consequential relief, which in the present case would be the injunction. It does not contem-

(1) (1889) 12 Mad. 223.
(2) (1896) P. J. 327.
(3) (1874) 1 Bom. 538.
(4) (1906) 30 Mad. 18.
(5) (1895) 20 Bom. 736.
(6) (1891) 15 Mad. 501.
(7) (1908) 33 Bom. 307.

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plate a third kind of suit, namely, partially for a declaration only and partially for both a declaration and injunction. Such being the present suit, the value to be determined for computing the Court-fees is the same as the value for the determination of jurisdiction: section 8 of the Suits Valuation Act. Therefore the District Court had jurisdiction to entertain the appeal: *Vachhani* v. *Vachhani*[1], *Rhimbai Jamalbhoy* v. *Mariam Binte Abdul*[2], *Pherozshaw* v. *Waghji*[3], *Collector of Belgaum* v. *Shrimant Sundrabai*[4].

With respect to the place of suing section 21 of the Civil Procedure Code and section 11 of the Suits Valuation Act will apply.

CHANDAVARKAR, ACTING C. J.:—This appeal arises out of a suit which had been brought by the present appellant in the Court of the Subordinate Judge, First Class, Belgaum, for a declaration that he was the adopted son of one Venkatrao, deceased, and that as such he was entitled to his property.

The plaint was valued at Rs. 130 for a declaration of the right, and at Rs. 69,016-9-0 for pleaders' fees. The plaintiff alleged in the plaint that a house forming part of the subject-matter of the suit was in the possession of the plaintiff himself and that the defendant was obstructing him. He prayed for an injunction to issue restraining the defendant from interfering with the plaintiff's rights in respect of that house. The injunction was valued at Rs. 5. The plaintiff further alleged that the rest of the property, belonging to the deceased Venkatrao and valued at Rs. 69,016-9-0, was in the possession of the Collector, having been attached by him after the death of Venkatrao. As to that property, the plaintiff sought a bare declaration of his right as Venkatrao's adopted son. As all the property was partly in Athni and partly in Chikodi, and, therefore, outside the ordinary jurisdiction of the Subordinate Judge's Court at Belgaum, that Court could try the suit only under its special jurisdiction.

(1) (1908) 33 Bom. 307.
(2) (1909) 34 Bom. 267.
(3) (1911) 13 Bom. L. R. 158.
(4) F. A. No. 121 of 1910 (Unrep.).

The Subordinate Judge tried the suit under his special jurisdiction and held that the appellant was the adopted son of Venkatrao. A decree was accordingly passed in favour of the plaintiff.

The defendant appealed to the District Court at Belgaum. There a preliminary objection was raised by the present appellant, who was respondent in the appeal, that the appeal lay, not to the District Court, but to this Court, because the suit had been tried in the Court of the Subordinate Judge at Belgaum under that Court's special jurisdiction. The learned District Judge held that the Subordinate Judge, First Class, at Belgaum, had no jurisdiction to try the suit under his special jurisdiction, because the suit having been for a declaration with consequential relief and the relief having been valued at Rs. 5 for the purposes of Court-fee, the valuation for the purposes of jurisdiction was the same as that for the purposes of Court-fee and that valuation was less than Rs. 5,000, according to the decision of this Court in *Vachhani v. Vachhani*[1]. The District Judge was also of opinion that the Subordinate Judge had no jurisdiction to try the suit under his ordinary jurisdiction, because the property to which the suit related was outside that jurisdiction. Nevertheless, the District Judge held that he had jurisdiction to dispose of the appeal on the merits, because neither party "hinted that he had been prejudiced by the lower Court's erroneous assumption of jurisdiction". The District Judge found the adoption set up by the plaintiff not proved and disallowed his claim.

From that decree this second appeal has been filed. The principal contention in support of the second appeal is that the suit was within the special jurisdiction of the Subordinate Judge, First Class, Belgaum, and that, therefore, an appeal from his decree lay, not to the District Court, but to the High Court.

The appellant's argument is as follows: the suit comprised two subjects—(1) property in the custody of the Collector, of the value of more than Rs. 5,000, and (2) property in the

(1) (1908) 33 Bom. 307.

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plaintiff's possession of the value of less than Rs. 5,000. Plaintiff asked for a bare declaration of title as to the former; as to the latter he asked for a declaration with consequential relief, valued at Rs. 5. Though the latter relief was of a value less than Rs. 5,000, the former exceeded that value; hence the suit was within the special jurisdiction of the Subordinate Judge, First Class, at Belgaum.

It has been argued for the respondent that as this was a suit for a declaration with a consequential relief and the consequential relief had been valued at Rs. 5, the suit must be treated as one for a declaratory decree with consequential relief and that, therefore, the valuation having been less than of Rs. 5,000, the suit lay in the First Class Subordinate Judge's Court at Belgaum under its ordinary jurisdiction.

But that is not the correct view to take of the plaint. In the plaint, the appellant distinctly states that he laid claim to two subjects, *i. e.*, two kinds of properties. First, there was property in the possession of the Collector and its value exceeded Rs. 5,000. That property having been in the possession of the Collector, it was not necessary for and allowable to the plaintiff to ask for an injunction. He was entitled to ask only for a declaration of his title. Then there was the other subject-matter of the suit, namely, the house as to which the plaintiff was entitled to ask for a declaration and consequential relief. With reference to this second subject-matter, it was open to the plaintiff to put his own valuation on the plaint, and he did it, and if the suit had been confined to this second subject-matter, then it would have been within the ordinary jurisdiction of the Subordinate Judge's Court at Belgaum, provided the house was within the limits of that jurisdiction. But plainly it was not.

It is, however, contended before us for the respondent that, according to the Court Fees Act, read with the Suits Valuation Act, we have provision made only for two classes of suits, one a suit for a bare declaration and the other a suit for a declaration with consequential relief. There is, it is urged, no third class of suits provided for, namely, a suit for a bare declaration

and also for a declaration with consequential relief. Upon this reasoning we are asked to ignore the relief in the plaint for a bare declaration and to look solely to the relief by way of declaration and consequential relief.

Section 17 of the Court Fees Act is an answer to the argument in question. It provides that—

"Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act."

Here there are two distinct subjects, one, the property with the Collector valued at Rs. 69,000 odd; the other, the house valued at less than Rs. 5,000. The declaration as to the former can only be of a valuation of more than Rs. 5,000 both for Court-fee and jurisdiction. The valuation of both would be the aggregate of the fees to which the plaint would be liable, having regard to these two subjects. Therefore the suit lay within the special jurisdiction of the Subordinate Judge, First Class, at Belgaum and the appeal could lie only to this Court and not to the District Court.

The decree, therefore, of the District Court must be reversed and the memorandum of appeal to that Court must be returned to the respondent in this appeal for presentation to this Court.

The appellant must have his costs of this appeal and also of the appeal to the District Court.

Decree reversed and memorandum of appeal returned for presentation to the High Court.

G. B. R.