

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Shah.

MOHANLAL NAGJI (ORIGINAL PLAINTIFF) APPELLANT *v.* BAI KASHI
(ORIGINAL DEFENDANT) RESPONDENT.*

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February 2.

Civil Procedure Code (Act V of 1908), section 110—Privy Council—Leave to appeal—Suit for declaration and injunction tried by the Second Class Subordinate Judge—Value of the subject matter can be shown by evidence for the purposes of the leave.

A suit for declaration and injunction, in which the claim was valued at Rs. 135, was tried by a Subordinate Judge of the Second Class. The decree was confirmed by the District Judge, but reversed by the High Court on second appeal. The plaintiff having applied for leave to appeal to the Privy Council, the defendant contended that as the plaintiff himself had elected to value his suit at only Rs. 135 and conducted it in the Court of the Subordinate Judge, the limit of whose pecuniary jurisdiction was Rs. 5,000, he could not contend that the subject matter of the suit was worth Rs. 10,000.

Held, overruling the contention, that the suit being one for declaration and injunction, the plaintiff by suing in the Second Class Subordinate Judge's Court seemed to have made neither directly nor indirectly any sort of representation to the defendant as to the real or market value of the property to be affected, as distinguished from the fiscal value which, as the law allowed him to do, he placed upon the relief which he was seeking.

Hirjibhai v. Jamshedji,⁽¹⁾ distinguished.

THIS was an application for leave to appeal to the Privy Council.

Suit for declaration and injunction.

The plaintiff brought the suit to obtain a declaration that he was the adopted son of one Nagji and an injunction restraining the defendant from obstructing him in getting possession of the properties belonging to Nagji. The claim in the suit was valued at Rs. 135. The suit was tried by the Second Class Subordinate Judge at Broach, who decreed the claim. The decree was confirmed by the District Judge, but reversed by the High Court on second appeal.

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The plaintiff thereupon applied to the High Court for leave to appeal to the Privy Council.

Jayakar, with *G. N. Thakor*, for the opponent :—We have a preliminary objection to urge. The petitioner has valued his claim in his plaint at Rs. 135. It is not now open to him to show that the value of the subject matter is Rs. 10,000 for the purposes of sections 109 and 110 of the Civil Procedure Code : see *Hirjibhai v. Jamshedji*.⁽¹⁾

Setalwad, with *N. K. Mehta*, for the petitioner :—The case of *Hirjibhai v. Jamshedji*⁽¹⁾ is clearly distinguishable. In that case, the Subordinate Judge could not have passed a decree in plaintiff's favour for more than Rs. 5,000, even if on taking accounts, a sum exceeding that amount had been found due. In the present case, however, the relief asked for was declaration and injunction, which the trial Court could grant irrespective of the value of the subject matter : see also *Chunilal Parvatishankar v. Bai Samrath* ;⁽²⁾ *Baboo Lekraj Roy v. Kanhya Singh* ;⁽³⁾ *Pichayee v. Sivagami* ⁽⁴⁾ and *Hari Mohan Misser v. Surendra Narain Singh*.⁽⁵⁾

BATCHELOR, J. :—This is an application for leave to appeal to the Privy Council, the applicant being the original plaintiff in the suit. The suit was filed for a declaration that the plaintiff was the adopted son of one Nagji Vithal and for an injunction restraining interference by the defendant

The suit was originally instituted in the Court of the First Class Subordinate Judge at Broach. It so happened that he was the only Subordinate Judge then at Broach,

⁽¹⁾ (1913) 15 Bom. L. R. 1021.⁽³⁾ (1874) L. R. 1 I. A. 317.⁽²⁾ (1914) 38 Bom. 399.⁽⁴⁾ (1891) 15 Mad. 237.⁽⁵⁾ (1903) 31 Cal. 301.

and by him the suit was transferred for hearing to the Second Class Subordinate Judge. It was contended by Mr. Jayakar that as the trial before the Second Class Subordinate Judge was acquiesced in by the plaintiff, the result is the same as if the suit had been filed in the Court of the Second Class Subordinate Judge. That position has not been contested, and I will assume for the purposes of my judgment that this part of Mr. Jayakar's argument is unassailable.

The trial Court found in favour of the plaintiff, and that decree was confirmed on appeal by the learned District Judge. But in the appeal to the High Court, which was heard by my learned brother Shah and myself, we came to another conclusion, being satisfied that there had been the exercise of undue influence by the plaintiff. Therefore we reversed the decision of the lower Court and dismissed the plaintiff's suit. From that decree the plaintiff now seeks to go in appeal to the Privy Council.

The suit as instituted by the plaintiff was valued by him at the sum of Rs. 135, and this present application is met at the outset by the objection that the plaintiff cannot now be heard to say that, within the language of section 110 of the Civil Procedure Code, the amount or value of the subject-matter in dispute on appeal is Rs. 10,000 or upwards. The argument is that since the plaintiff himself elected to value his suit at only Rs. 135 and conducted it in the Court of the Subordinate Judge, the limit of whose pecuniary jurisdiction was Rs. 5,000, he cannot now contend that the subject-matter of the suit is worth Rs. 10,000. It is urged in support of this argument that the word 'subject-matter' occurring in section 110 of the Civil Procedure Code must be used in the same sense which the expression bears in section 24 of the Bombay Civil Courts Act. This argument is

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based upon the decision of the Chief Justice and Mr. Justice Beaman in *Hirjibhai v. Jamshedji*.⁽¹⁾ That was a suit brought in the Court of the Second Class Subordinate Judge for taking accounts, and the claim was valued at Rs. 101 for the purposes of court-fees and jurisdiction. The plaintiff, however, in applying for leave to appeal to the Privy Council alleged that the amount or value of the subject-matter of his suit was far in excess of Rs. 10,000. The Court decided against him, and the scope of the decision is stated very clearly towards the end of Mr. Justice Beaman's judgment where we read :—

“ We are, therefore, very clearly of opinion that the proposition we began by stating is correct, and has been supported by good reasoning in the case of *Golap Singh v. Indra Coomar*.⁽²⁾ That proposition is that the amount or value of the subject-matter of a suit can in no case exceed the limits of the pecuniary jurisdiction of the Court in which it is instituted. It follows that the amount or value of the subject-matter of a suit, for the purposes of section 109, clauses (a) and (b) and section 110 of the Civil Procedure Code, if that suit is instituted in a Court the pecuniary limit of whose jurisdiction is Rs. 5,000, can never be greater than Rs. 5,000.”

Though the facts of the present case are in some respects different from those of the application before the Chief Justice and Mr. Justice Beaman, notably in this respect that whereas that was a suit for accounts, this was merely a suit for an injunction and declaration, yet I am not prepared to hold that the present application can be taken out of the scope of the decision in *Hirjibhai v. Jamshedji*⁽¹⁾ in so far as that decision interprets the words occurring in the first paragraph of section 110 of the Civil Procedure Code—I mean the words ‘the amount or value of the subject-matter in dispute on appeal to His Majesty in Council.’ But even supposing that Mr. Jayakar is successful in bringing this part of his application within the ambit of the decision which I have quoted, it remains to consider

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whether the petitioner is not entitled to obtain leave to appeal under the second paragraph of section 110. For the section enacts that a petitioner is so entitled if, in the circumstances which are now before us, the decree or final order must involve directly or indirectly some claim or question to or respecting property of like amount or value. For the purposes of the present argument we are assuming that the property affected by our decree exceeds in value the sum of Rs. 10,000. And the argument which we have to consider is whether upon that assumption there is anything in the past conduct of the present petitioner which should, as by a species of an estoppel, debar him from asserting and proving, if he can, that such is the value of the property affected. In my opinion there is nothing which should debar him. And in this respect the application is, I think, clearly distinguishable from the facts which were before the Court in *Hirjibhai's case*.⁽¹⁾ That, as I have said, was a suit for accounts, and the plaintiff elected as his forum the Court of a Subordinate Judge whose pecuniary jurisdiction was limited to Rs. 5,000. The Court, therefore, for reasons which may readily be appreciated, held the plaintiff bound by this action of his to acquiescence in the statement that the value of the subject-matter of his suit could not exceed Rs. 5,000. Here, however, our facts, are otherwise. The suit was, as I have said, brought only for an injunction and a declaration. By a series of decisions of this Court, which are at present binding upon us, and of which I need notice only the case of *Vachhani Keshabhai v. Vachhani Nanbha*,⁽²⁾ it is the law in this Presidency that it is open to a plaintiff to sue in a Second Class Subordinate Judge's Court for a declaration and injunction even though the immoveable property referred to or affected by the injunction exceeds the pecuniary limit, i.e., Rs. 5,000, of the Second Class Subordinate

⁽¹⁾(1913)15 Bom. L. R. 1021.⁽²⁾(1908) 33 Bom. 307.

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Judge's jurisdiction. That being so, the plaintiff in this case by suing in the Second Class Subordinate Judge's Court seems to have made neither directly nor indirectly any sort of representation to the defendant as to the real or market value of the property to be affected, as distinguished from the fiscal value which, as the law allowed him to do, he placed upon the relief which he was seeking.

Admittedly, the decision in *Hirjibhai v. Jamshedji*⁽¹⁾ proceeds upon the reasoning that a plaintiff should not be allowed to put inconsistent values upon the subject-matter of his claims at different times according to the shifting character of his interests. But if I am right in what I have already said, it will be clear that this reasoning cannot affect the present plaintiff. For the merely fiscal valuation which he put upon the injunction and declaration which he sought is wholly independent of the real or market value of the immoveable properties.

I am consequently of opinion that the decision in *Hirjibhai v. Jamshedji*⁽¹⁾ cannot be invoked so as to shut out the present plaintiff from appealing to the Privy Council if he succeeds in proving that the condition described in the second paragraph of section 110 is in his case satisfied, that is to say, if he can succeed in proving that the decree or final order must involve directly or indirectly some claim or question to or respecting property of the value of Rs. 10,000.

In my opinion, therefore, he must have an opportunity of proving that that is the value of the property.

As the affidavits which have been put in on both sides with reference to the question as to the value of the property are in direct conflict, we think it desirable to act under the powers given to us by Order XLV,

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Rule 5 of the Code. Under that Rule, therefore, we refer to the Court of first instance the dispute as to the amount or value of the property which must be involved directly or indirectly by the decree or final order in this appeal. It is conceded that the Sutare property is no part of the property in suit which is concerned only with the property at Derol. The Court of first instance will take evidence and report on the question referred to it.

SHAH, J. :—I entirely agree.

Order accordingly.

R. R.

APPELLATE CIVIL.

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

CHHITA BHULA (ORIGINAL DEFENDANT NO. 3), APPELLANT *v.* BAI JAMNI, DAUGHTER OF BHIMA BHULA (ORIGINAL PLAINTIFF), RESPONDENT.*

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Delkhan Agriculturists' Relief Act (XVII of 1879)—Redemption suit—Tagavi advance by Government, nature of—Auction sale for non-payment of the advance—Benami purchase by the mortgagee—Advantage gained in derogation of the rights of the mortgagor—Purchase enures for the benefit of the mortgagor—Indian Trusts Act (II of 1882), section 90—Transfer of Property Act (IV of 1882), section 76, clause (c)—Land Revenue Code (Bom. Act V of 1879) sections 56, 153—Land Improvement Loans Act (XIX of 1883), section 7.

One B passed a San mortgage of the properties in suit in favour of N on the 20th September 1894. After B's death his widow K, for herself and on behalf of her minor daughter, the plaintiff, executed a fresh possessory mortgage in favour of defendant No. 1. in 1903 and put him in possession. Before the date of this mortgage K had obtained a tagavi advance from Government on Survey No. 311 which was included in the mortgage. In 1905 Survey No. 311 was sold by public auction for the arrears of tagavi

* Second Appeal No. 41 of 1915.