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only the point of law, was to be decided by the Judge or Judges to whom the reference was made. Under these circumstances as the order is consequential, I have consulted Mr. Justice Heaton about it, and he agrees that that is the order which he would have made if he had been able to dispose of the appeal.

This case illustrates the desirability of making definite rules regulating such references.

Appeal allowed.

J. G. R.

PRIVY COUNCIL.*

RACHAPPA SUBRAO (DEFENDANT) *v.* SHIDAPPA VENKATRAO (PLAINTIFF)

P. C.* 1918. October 25, 28; December 3.

[On appeal from the High Court of Judicature at Bombay.]

Valuation of Suit—Suit for declaration of Title without consequential Relief—Court-Fees Act (VII of 1870) Schedule II, 17 (iii)—Suits Valuation Act (VII of 1887), section 8—Objection to jurisdiction not taken in First Court—Illegal and misconceived practice of valuing suit.

The plaintiff (respondent) brought a suit against the appellant for moveable and immoveable property left by one V of whom he claimed to be the adopted son. The property was stated in the plaint to exceed Rs. 60,000 and to be in the hands of the Collector (with the exception of a house worth Rs. 250) at the instance of the appellant, who claimed to be the nearest heir of the deceased. The plaint prayed for a declaration (valued at Rs. 130) of the respondent's title, and for an injunction (valued at Rs. 5) to prevent obstruction by the appellant to the property in the respondent's possession. The appellant denied the adoption, but he made no objection either in his written statement or in his memorandum of appeal to the District or the High Court to the jurisdiction of the First Class Subordinate Judge to try the suit. That Court decided the suit in favour of the respondent. From that decision the appellant appealed both to the District Judge and to the High Court, and the latter appeal stood over until the former had been decided by the District Judge who on the ground that the valuation of the suit was less than Rs. 5,000 reversed the decision of the First Court and made a decree in favour of the appellant, but

* *Present*: Lord Buckmaster, Lord Dunedin, Sir John Edge, and Sir Lawrence Jenkins.

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that decree was reversed on appeal to the High Court by the respondent, and it was held that the appeal lay not to the District Judge but to the High Court, which then heard the appellant's appeal from the original decision of the First Class Subordinate Judge and affirmed his decision. By order in Council leave was granted to the appellant for a special appeal to His Majesty in Council, on the hearing of which the appellant raised the contention that the value of the subject matter of the suit was a sum not exceeding Rs. 5,000 and, therefore the decision of the First Class Subordinate Judge had been without jurisdiction, and the appeal to the High Court was not competent.

Held, that the value of the subject matter of the suit exceeded Rs. 5,000 and it was rightly instituted in the Court of the First Class Subordinate Judge in the exercise of his special jurisdiction, and the appeal from his decision properly lay to the High Court. If any part of the court fee payable and paid was a fixed fee under section 2 of the Court-Fees Act the notional value of the property could not displace its real value for the purposes of jurisdiction.

The objection of the appellant to the First Class Subordinate Judge not having been raised in his Court could not be made at any subsequent stage of the suit.

A practice of valuing a prayer for a declaratory decree at Rs. 130 as being the value on which the fee nearest to Rs. 10 would be leviable deprecated as being illegal and misconceived. It was contrary to the scheme of the Court-Fees Act that there should be any valuation of such a suit.

APPEAL No. 109 of 1916 from a final order (26th June 1912) of the High Court at Bombay, which set aside, on the ground of want of jurisdiction a decree (4th November 1910) passed on appeal by the District Court of Belgaum; and against a decree (10th December 1913) of the same High Court which affirmed a judgment and decree (23rd March 1910) of the Subordinate Judge of Belgaum.

The main question for determination in this appeal is whether an appeal from the Court of first instance lay to the District or to the High Court.

One Venkatrao Shidappa died on 24th January 1909 leaving property exceeding in value Rs. 60,000, situate partly in the sub-districts of Athni and Chikodi in the District of Belgaum, and partly in the District of Satara, and on 27th January 1909 the Collector of Belgaum took possession of the whole of this property

(with the exception of one small house) at the instance of the appellant (defendant) who claimed to be the nearest heir of the deceased.

The respondent (plaintiff) claimed to be entitled to the property as the duly adopted son of the deceased, and this claim being disputed by the appellant the respondent, on 3rd February 1909, instituted the present suit against him in the Court of the First Class Subordinate Judge of Belgaum.

The pleadings and other proceedings are sufficiently stated in the report of the appeal to the High Court (Sir Narayan Chandavarkar, Acting C. J. and Batchelor J.) which will be found in I. L. R. 36 Bom. 628 and also in the judgment of the Judicial Committee.

On this appeal,

P. O. Lawrence K. C., *DeGruyther K. C.*, and *O' Gorman* for the appellant contended that the District Court had jurisdiction to determine the appeal and its findings on all questions of fact were final; and that as the District Court had such jurisdiction all the subsequent proceedings in the High Court were null and void and of no effect as being without jurisdiction. An appeal from a First Class Subordinate Judge lies under sections 26, 27 of the Bombay Civil Courts Act (XIV of 1869) to the District Court where the value of the suit does not exceed Rs. 5,000. Under the Suits Valuation Act (VII of 1887), section 8, the valuation for court fees and for jurisdiction is the same; and that rule applies to the appellate jurisdiction. Reference was made to *Kannayya Chetti* v. *Venkata Narasayya*[1]; and *Sunderbai* v. *Collector of Belgaum*[2]; and to the Court-Fees Act, section 12 and Schedule II, Article 17 (*iii*). The plaint merely claims a declaratory decree with an injunction as consequential relief and

(1) (1916) 40 Mad. 1.

(2) (1918) L. R. 46 I. A. 15; 43 Bom. 376.

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comes within section 7, iv (*c*) of the Court-Fees Act. The suit, it was submitted, was not one which embraced two or more distinct subjects within section 17 as held by the High Court. *Gulabsingji* v. *Lakshmansingji*[1] was referred to. Under section 7, iv (*c*) of that Act it lay on the plaintiff to determine the value as he pleased: see Order VII, Rule 1 (*i*); and he valued the suit at Rs. 130 and the injunction at Rs. 5. This valuation was liable to alteration by the Court, if it was incorrect, under section 12 of the Act. The plaintiff paid the court fees which he was asked to pay which in all were Rs. 135. The High Court, therefore, erred in treating it as a suit for two or more distinct reliefs under section 17.

E. B. Raikes for the respondent contended that the First Class Subordinate Judge had jurisdiction to try the suit in the exercise of the special jurisdiction conferred upon him by section 25 of the Bombay Civil Courts Act, and the appeal from his decision lay to the High Court under section 26: and no objection to that jurisdiction should have been given effect to having regard to section 11 of the Suits Valuation Act, 1887, and section 21 of the Civil Procedure Code. In any case the District Judge had no jurisdiction to entertain the appeal. The property in suit not being within the local jurisdiction of the trial Judge, he could only legally hear it if the valuation exceeded Rs. 5,000. No objection was taken to his hearing it by the appellant who could not now contend that the value did not exceed Rs. 5,000. The suit was tried as being one for a declaratory decree without consequential relief, a case for which a fixed fee of Rs. 10 is provided by Schedule II, 17 (*iii*) of the Court-Fees Act; that this was the view taken was probable from the amount of the fee paid which was Rs. 10, and 6 annas, the amount over

[1] (1893) 18 Bom. 100.

Rs. 10 being in respect of the value put upon the injunction as being consequential relief. Reference was made to *Mul Chand* v. *Shib Charan Lal*[1]. The value of the property was the only material valuation, and that was stated by the plaintiff to exceed Rs. 60,000. If section 7, Clause (*c*) was applicable the claim to the injunction as being consequential relief might have been given up as unnecessary on the objection of the appellant: but later such objection could not have been taken: see section 11 of the Suits Valuation Act and the Civil Procedure Code, 1908, sections 18 and 21.

P. O. Lawrence, K. C. replied submitting that section 11 of the Suits Valuation Act was not applicable as it only applied to a case where a suit had been overvalued or undervalued. The question whether the trial Judge had jurisdiction was not material.

1918, December 3rd:—The judgment of their Lordships was delivered by

SIR LAWRENCE JENKINS:—This suit was instituted in the Court of the First Class Subordinate Judge of Belgaum to establish the plaintiff's claim as adopted son to the property of Venkatrao Desai.

The prayers of the plaint are for

"(1) a declaration that the plaintiff being the lawfully adopted son of the deceased Venkatrao Desai is owner of all his property . . . Rs 130; (2) a permanent injunction may be issued to the defendant prohibiting him from causing obstruction to the immoveable and moveable property that is in the plaintiff's possession. Valuation for this purpose is Rs. 5; (3) if it be deemed desirable to grant to the plaintiff any other relief besides this the same may be given."

and so forth. It is alleged in the plaint that the property forming the subject-matter of the suit is worth Rs. 69,000, that it is situate in the districts of Belgaum and Satara, and that the portion in Belgaum is in the talukas of Athni and Chikodi.

[1] (1880) 2 All. 676.

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At the date of the suit the only item in the plaintiff's possession was a house valued at Rs. 250; the rest of the property was in the Collector's possession. On the 23rd March, 1910, a decree was passed by the Subordinate Judge in the plaintiff's favour. On the 23rd March, 1910, two appeals were preferred by the defendant from this decree, one to the District Court, the other to the High Court.

That in the District Court was heard first, and it resulted in a reversal of the First Court's decree. From this appellate decree a second appeal to the High Court was preferred by the plaintiff. On the 10th March, 1911, issue of the usual notice was directed, and on the same date the defendant withdrew the first appeal that he had previously preferred to the High Court on the 23rd March, 1910.

The plaintiff's appeal from the appellate decree was heard, and on the 26th June, 1912, the decree of the District Court was reversed on the ground that the appeal from the original decree did not lie to that Court, but to the High Court.

Finally, the High Court heard the defendant's appeal to it from the original decree of the Subordinate Judge, and affirmed his decision on the merits.

The defendant applied to the High Court for leave to appeal to His Majesty in Council, but with no success. By an Order in Council, however, dated the 23rd March, 1915, special leave to appeal was granted, and so the present appeal has been preferred.

Looking at the broad results, apart from any technicality, two things are clear in this tangle of litigation. First, that the adoption was affirmed as a fact by the Subordinate Judge by whom the case was tried and by the two Judges of the High Court, but was negatived by the District Judge; and, secondly, that in no event had the District Judge any authority to deal with the

case as he did. The plaintiff instituted the suit in the First Classs Judge's Court, where it could be entertained only in the exercise of the Judge's special original jurisdiction. No objection was taken by the defendant and the Judge heard and decided the case without any demur, and there can be no doubt that the litigants and the Court intended and understood the disposal of the case to be in the exercise of that jurisdiction. But the District Judge has brushed this aside and foisted on the plaintiff a view of the First Court's jurisdiction that was impossible, and on that footing treated the case as one in which the appeal would lie to his Court. To appreciate the matter now in contest it is necessary to examine certain Acts of the Indian Legislature.

In the mofussil of Bombay there are two classes of Subordinate Judges, designated respectively as those of the First Class and those of the Second Class. Under the Bombay Civil Courts Act, section 24, the jurisdiction of a Subordinate Judge of the First Class extends to all original suits and proceedings of a civil nature, and that of a Subordinate Judge of the Second Class to all original suits and proceedings of a civil nature wherein the subject-matter does not exceed in amount or value five thousand rupees.

By section 25 it is provided that a Subordinate Judge of the First Class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature wherein the subject-matter exceeds five thousand rupees in amount or value as may arise within the local jurisdiction of the Courts in the district presided over by Subordinate Judges of the Second Class.

Under section 8, with certain exceptions not now material, the District Court is the Court of Appeal from all decrees passed by the Subordinate Courts when an appeal lies; but in all suits decided by a Subordinate

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Judge of the First Class in the exercise of his ordinary or special original jurisdiction of which the amount or value of the subject-matter exceeds five thousand rupees, the appeal from his decision is direct to the High Court.

It is common ground that this suit could not have been heard by the First Class Subordinate Judge in the exercise of his ordinary jurisdiction. This is obvious from the local situation of the property in suit. At the same time it is equally clear that the suit could be heard by him in the exercise of his special original jurisdiction if the amount or value of the subject-matter exceeded five thousand rupees. And this it undoubtedly did ; in fact, it exceeded Rs. 60,000, and there is no dispute as to this.

Why, then, is it contended that the suit ought not to have been instituted in the Court of the First Class Subordinate Judge ? It is argued that this is the result of provisions contained in the Court-Fees Act and the Suits Valuation Act, which, it is said, impose a notional value on the property distinct from its real value, and that this notional value is less than Rs. 5,000.

By section 6 of the Court-Fees Act it is enacted that except as therein mentioned no document of any of the kinds specified as chargeable in the First or Second Schedule to the Act shall be filed, exhibited or recorded in any Court of Justice unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the Schedules as the proper fee for such document.

Among the documents so specified is a plaint presented to a civil Court.

Section 7 deals with the computation of fees payable in certain suits, and among them are a suit to obtain a declaratory decree where consequential relief is prayed, and a suit to obtain an injunction. In each case the fee

is to be computed according to the amount at which the relief sought is valued in the plaint, and it is provided that in such suits the plaintiff shall state the amount at which he values the relief sought. By Schedule II to the Act a fixed fee of Rs. 10 is prescribed for a plaint in a suit to obtain a declaratory decree where no consequential relief is prayed.

By section 8 of the Suits Valuation Act it is provided that the value as determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same.

The argument is that as the prayer for a declaration is valued at Rs. 130 and that for an injunction at Rs. 5, the value for the purposes of jurisdiction must be taken to be this figure, though the real value exceeds Rs. 60,000.

If this be sound, then the First Class Subordinate Judge had no power to entertain the suit in the exercise of his special original jurisdiction, and, as a consequence, the appeal to the High Court was not competent.

The fee paid by the plaintiff on his plaint was Rs. 10-6-0, and this cannot be reconciled with the theory that the prayer for a declaration was valued at Rs. 130.

At the same time, there is an evident explanation how this fee was computed, and it is this.

Section 17 of the Court-Fees Act provides that where a suit embraces two or more distinct subjects, the plaint shall be chargeable with the aggregate amount of the fees to which the plaints embracing separately each of such subjects would be liable. In accordance with this provision the suit was apparently treated as embracing two subjects, and an aggregate fee of Rs. 10-6-0 was paid. The injunction which was limited to the house was valued at Rs. 5. The balance of Rs. 10 can only be the fixed fee

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payable on a plaint in a suit to obtain a declaratory decree where no conseqential relief is claimed. And this is what the plaint in effect shows, for it alleges that the "suit is brought for a declaration of title only." This may have been an oversight and an error as to the house, but it was correct as to the rest of the property. No doubt at the first blush a certain degree of obscurity is occasioned by the allegation that this prayer for a declaration of title *only* is valued at Rs. 130; it is contrary to the scheme of the Act that there should be any valuation of such a suit. But all obscurity is dispelled when the explanation of this valuation is realised. It is to be traced to a practice not uncommon in Bombay of valuing a prayer for a declaratory decree at Rs. 130 as being the value on which the fee nearest to Rs. 10 would be leviable.

This practice has no warrant in law, but has been followed from a misconceived notion of what caution requires. But never was caution more misplaced, and their Lordships feel strongly that they ought not to allow the true facts to be distorted out of deference to an erroneous practice. And here it may be noted that the Rs. 130 cannot have been treated as the measure of the fee, for on such a value Rs. 9-12-0 and not Rs. 10 would have been paid.

Then, again, when the plaint is examined, it is at once apparent that as to the whole of the property except the house no consequential relief could have been prayed, and that even as to the house the injunction prayed was demurrable in the sense that no cause of action was disclosed which could have supported this relief.

If regard be had to the real as distinct from the imputed value of the property, the suit was properly instituted in the Court of the First Class Subordinate

Judge, and if any part of the fee payable and paid was a fixed fee under Schedule II of the Act, then the notional value of the property or any part of it could not displace its real value for the purposes of jurisdiction.

If as to any other part of the suit a deficient or no fee was paid, the objection would be, not that the suit was outside the Court's jurisdiction, but that the proper fee had not been paid, and that in contravention of section 6 of the Court-Fees Act a document had been filed in Court in respect of which the fee indicated in the schedules had not been paid.

In this case no objection to the Court's jurisdiction was taken in the written statement or the issues, nor was it even suggested in the defendant's memorandum of appeal either to the District Judge or the High Court that the suit was not properly brought in the Court of the First Class Subordinate Judge, to be there heard and decided by him in the exercise of his special original jurisdiction.

Had the objection been taken, as it should, if at all, in the First Court, it would have been by no means insuperable. It might have resulted in the rejection of the plaint; but even this extreme measure would not have precluded the plaintiff from presenting in the same Court a fresh plaint, properly framed and valued, in respect of the same cause of action. Probably, however, the objection would have led to the more practical solution of an amendment of the prayer to the plaint by excluding from it the futile and demurrable claim for an injunction. Then the suit would have been in order, and it is because the defendant did not take the objection at the proper stage that he has been able to prolong this litigation, commenced so far back as the 3rd February, 1909, by an appeal to this Board, which,

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when analysed, rests on no sort of merit, but on the most technical of technicalities.

Their Lordships are of opinion that they would not be justified in assisting an objection of this type; but more than that, they hold that even the technicality on which the defendant relies cannot prevail.

The Court-Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State. This is evident from the character of the Act, and is brought out by section 12, which makes the decision of the First Court as to value final as between the parties, and enables a Court of appeal to correct any error as to this, only where the First Court decided to the detriment of the revenue.

The defendant in this suit seeks to utilise the provisions of the Act, not to safeguard the interests of the State, but to obstruct the plaintiff; he does not contend that the Court wrongly decided to the detriment of the revenue, but that it dealt with the case without jurisdiction.

In the circumstances this plea, advanced for the first time at the hearing of the appeal in the District Court, is misconceived, and was rightly rejected by the High Court.

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be dismissed, and the appellant will pay the costs of this appeal.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

Solicitor for the respondent: Mr. *Edward Dalgado.*

Appeal dismissed.

J. V. W.