

IN APPEAL FROM ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Bhagwati.
 RUPJI JERAJ AND ANOTHERS, (ORIGINAL DEFENDANTS) APPELLANTS v.
 THE TRUSTEES OF THE PORT OF BOMBAY (ORIGINAL
 PLAINTIFFS) RESPONDENTS.*

1952
 August 7

Suit Valuation Act (VII of 1887), s. 8—Court-fees Act (VII of 1870), s. 7 (xi) (cc)—Bombay City Civil Court Act (Bombay Act XL of 1948), ss. 4, 13—Jurisdiction—Suit between landlord and tenant for the recovery of immovable property from tenant, after the determination of tenancy—Rent payable Rs. 300 per month—Suit filed in High Court—Whether High Court competent to try suit—Valuation of the suit for the purposes of jurisdiction, how made—True scope of ss. 4 and 13 of the Bombay City Civil Court Act.

The plaintiffs filed a summary suit in the High Court against the defendants who were their tenants for ejection on the determination of the lease on the expiry of a month's notice to quit. The rent of the demised premises was Rs. 300 per month. On the question whether the High Court had jurisdiction to try the suit:

Held, that the question which the Court has to consider is not whether the claim in suit relates to property worth over Rs. 25,000 but what is the proper valuation of the suit for the purpose of jurisdiction.

Kasturbhai, Manibhai, Nagarshet, v. Hiralal, D. Nanavati,⁽¹⁾ distinguished.

Held, that the suit fell under s. 7 (xi) (cc) of the Court-fees Act, 1870 and the valuation of the suit for the purposes of jurisdiction under s. 8 of the Suit Valuation Act, 1887, would be Rs. 3,600 and that, therefore, the City Civil Court, and not the High Court, had jurisdiction to try the suit.

Held, also, that s. 13 of the Bombay City Civil Court Act, 1948, deals only with cases where on the face of the plaint the High Court has jurisdiction.

Rupji Jeraj and another (defendant) were the monthly tenants of a vacant piece of land belonging to the Trustees of the Port of Bombay (plaintiffs) at a rent of Rs. 300 per month. On October 28, 1950, the plaintiff gave notice to the defendants to quit and deliver possession of the demised premises on or before November 30, 1950. On the defendants' failure to hand over possession of the demised premises on the expiry of notice, the plaintiffs filed a summary suit in the High Court on April 20, 1951. Shah J. gave leave to the defendants to defend the suit, the leave being limited to the question whether the High

* O. C. J. Appeal No. 51 of 1952; Summary Suit No. 405 of 1951

(1) (1922) 24 Bom. L. R. 350.

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Court had jurisdiction to try the suit. The issue as to jurisdiction was tried by Coyajee J. who following *Kasturbhai v. Hiralal*, held that valuation of the subject-matter of the suit would be well over Rs. 70,000 and that, therefore, the High Court had jurisdiction to try the suit.

The defendants appealed.

M. P. Amin, Advocate General, with *M. N. Shah*, for the appellants.

K. T. Desai, with *R. J. Joshi*, for the respondents.

CHAGLA C. J. The question that arises in this appeal is whether this Court has jurisdiction to try a summary suit filed by the plaintiffs. The suit was for ejecting the defendants who according to the plaintiffs were their tenants and whose tenancy they had terminated by a notice to quit given on October 27, 1950. The tenancy expired according to the plaintiffs on November 30, 1950, and the suit was filed on April 20, 1951. The learned Chamber Judge gave leave to the defendants to defend and the leave was limited to the issue of jurisdiction. The issue of jurisdiction was tried and the learned Judge came to the conclusion that this Court had jurisdiction to try this suit. It is from that decision that this appeal is preferred.

Now, it is clear from the plaint that the suit is between landlord and tenant and it is for the recovery of property demised to the tenant and the possession is sought from a tenant who is holding over after the determination of the tenancy. The rent of the demised premises is Rs. 300 per month. On these facts the question is, what is the proper valuation of the suit. If the valuation of the suit is below Rs. 25,000, then the City Civil Court has jurisdiction, and if the City Civil Court has jurisdiction, the jurisdiction of this Court is ousted. The learned Judge below took the view that the valuation of the subject-matter of the suit was over Rs. 25,000 because he capitalised the rent at 20 years' purchase and found that the valuation was much more than Rs. 25,000. In doing so he followed a judgment of this Court in *Kasturbhai v. Hiralal*. In that case a suit was filed on the Original Side for eviction by a landlord against the tenant. There was an appeal and the appellate Court reversed the decree of the lower Court and then an application was made for a certificate to appeal to the Privy Council, and the question that the

learned Chief Justice, sitting with Mr. Justice Coyajee, had to determine was whether the decree involved directly a claim or question to or respecting property over Rs. 10,000, and the learned Chief Justice held that it did because he capitalised the monthly rent at 20 years' purchase. In our opinion, that decision has no bearing whatsoever on the question that we have to consider in this appeal. In the case of *Kasturbhai v. Hiralal*⁽¹⁾ the suit was filed on the Original Side of the High Court where the Court-fees Act or the Suits Valuation Act had no application. The question that the appellate Court was considering was not the valuation of the suit, but whether the decree passed by the trial Court involved a claim or question to or respecting property over Rs. 10,000. Here we are not concerned as to whether the claim in suit relates to property worth over Rs. 10,000. What we are concerned with is, what is the proper valuation of the suit for the purposes of jurisdiction.

Now, under s. 8 of the Suits Valuation Act, the value of a suit as determinable for the computation of court-fees shall be the same as for the purposes of jurisdiction in all cases referred to in the Court-fees Act other than those referred to in s. 7, paras. v, vi, and ix and para. x, cl. (d), of the Court-fees Act, and the contention of the Advocate General is that this case falls under s. 7 (xi), (cc) of the Court-fees Act, and, therefore, the valuation of the suit for the purposes of court-fees is the same as the valuation of the suit for the purposes of jurisdiction. Now, it is well established that under the Court-fees Act all suits for possession fall under s. 7 (v) except those suits which are otherwise dealt with in that section and suits between landlord and tenant of certain kinds referred to in s. 7 (xi) are taken out of s. 7 (v) and one of such suits is a suit between landlord and tenant for the recovery of immovable property from a tenant including a tenant holding over after the determination of the tenancy. As we have pointed out, this is a suit which answers to the definition given in s. 7 (xi) (cc) and, therefore, the suit is to be valued for the purpose of jurisdiction in the same manner as it is to be valued for the purposes of court-fees and the court-fees payable on a suit of this character is the rent of the immovable property to which the suit refers payable for the year next before the date of presenting the claim, and if that test were to be applied, the valuation of

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the suit will be Rs. 3,600 and it will be clearly cognizable by the City Civil Court and not by the High Court. The answer given by Mr. Desai to this argument is that the jurisdiction conferred by the City Civil Court Act is under s. 4 which invests the City Civil Court with jurisdiction to receive, try and dispose of suits and other proceedings of a civil nature arising within Greater Bombay and of value not exceeding Rs. 25,000, and Mr. Desai's contention is that for the purpose of determining the jurisdiction of the City Civil Court the Legislature has not provided that the test laid down in the Suits Valuation Act should be applied. According to Mr. Desai, we must decide the jurisdiction of the City Civil Court independently of the Suits Valuation Act and we must give to the word "value" its plain natural meaning. In our opinion that contention is entirely untenable. All that s. 4 lays down is to limit and restrict the pecuniary jurisdiction of the new Court that was established in Bombay. The Legislature has not laid down in s. 4 how the suits filed in the City Civil Court have got to be valued for the purpose of jurisdiction. The Legislature has advisedly not laid that down because the Suits Valuation Act applying to the City Civil Court it would be the Suits Valuation Act which would determine the value of the suit for the purpose of jurisdiction. Therefore, s. 4 merely prescribes what the pecuniary jurisdiction of the City Civil Court is. As to how that jurisdiction is to be determined, as to how the suits are to be valued for the purpose of jurisdiction, it is not the City Civil Court Act that lays down the provisions but it is the Suits Valuation Act, and, therefore, we have to turn to the Suits Valuation Act in order to determine what is the value of the suit for the purpose of jurisdiction, and if we turn to s. 8, it is clear that the value of the suit for the purposes of jurisdiction is Rs. 3,600 and not more than Rs. 25,000. If that be the true position, then it is clear that the City Civil Court has jurisdiction to try the suit and not the High Court.

There are one or two other contentions that were put forward by Mr. Desai. One is that this is not a simple suit for recovering the demised property, but it is a suit to recover the demised property and also a suit for possession of certain buildings put up by the tenants, the value of which on their own admission is far more than Rs. 25,000. It is true that in paragraph 4 of the plaint the plaintiffs have averred that the tenants had a right to remove the buildings standing on the

demised land during the period of the notice, thereby suggesting that after the period of the notice the tenants had no right to remove the buildings standing on the demised land and the buildings would belong to the landlord. But when we turn to the prayer, the only prayer is for possession of the premises described in exhibit A and all that is described in exhibit A is the description of the land demised to the defendants. Therefore, the suit is a simple suit by a landlord against the tenant for recovering of demised premises; it is not a suit for recovery of demised premises plus a suit for possession of buildings standing on the demised premises. If that had been the nature of the suit, perhaps different considerations would have prevailed.

The other contention urged by Mr. Desai is that looking to s. 13 of the City Civil Court Act, once the suit is instituted in the High Court, the High Court must entertain it if the plaintiff avers that the value is more than Rs. 25,000, and if it is ultimately found that the suit was triable by the City Civil Court then certain consequences would follow with regard to costs as laid down in s. 13. Obviously, that is not the correct interpretation of s. 13. Section 13 does not deal with a case where on the face of the plaint the High Court has no jurisdiction. It only deals with cases where on the face of the plaint the High Court has jurisdiction. But when the suit is tried on evidence and a decree is passed in favour of the plaintiff, which decree he could have obtained in the City Civil Court, then the High Court is given the power to punish the litigant who came to this Court and involved the defendants in heavy costs when he could have filed the suit in the City Civil Court. Therefore, it is not true to say that when an issue as to jurisdiction is raised and when it is clear from the nature of the plaint itself that the suit is cognizable by the City Civil Court, the High Court should still continue to try the suit. It is unnecessary to state that the Letters Patent of the High Court have been amended and as they stand today the High Court has no jurisdiction to receive, entertain or try any suit which is cognizable by the City Civil Court. The learned Judge, with respect to him, was impressed by the decision of Sir Norman Macleod and Mr. Justice Coyajee in *Kasturbhai v. Hiralal*. The learned Judge did not give consideration to the fact that as far as the City Civil Court is concerned the question of jurisdiction is to be determined by the Court-fees Act and the Suits Valuation Act. If those two Acts apply, it

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is clear that the City Civil Court has jurisdiction to try this suit. If the City Civil Court has jurisdiction to try the suit, it is equally clear that the High Court has no jurisdiction to try that suit.

The result, therefore, is that we must hold that this Court has no jurisdiction to try the suit filed by the plaintiffs. The appeal will, therefore, be allowed with costs and the suit dismissed with costs. Summons for judgment dismissed with costs. Counsel certified. Costs of the issue as to jurisdiction will be costs in the cause. Costs of the order made by Mr. Justice Shah on September 17, 1951, costs in the summons. Taxed costs.

Attorneys for appellants: *Shah & Co.*

Attorneys for respondents: *Mulla & Mulla.*

Appeal allowed.

P. M. P.

INCOME-TAX REFERENCE

1951
 Sept. 7

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

COL. SIR J. N. DUGGAN AND LADY JEENA J. DUGGAN, APPLICANTS
 v. THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY,
 RESPONDENT.*

Indian Income-tax Act (XI of 1922), s. 12B—Income-tax and Excess Profits Tax (Amendment) Act (XXII of 1947)—Tax on "Capital gains" arising from sale, exchange or transfer of "capital asset"—Government of India Act 1935 (26 Geo. V. c. 2), Sch. VII List I entries 54, 55—Taxes on income other than agricultural income and taxes on the capital value of assets, exclusive of agricultural land, of individuals and companies and taxes on the capital of companies—Whether Act XXII of 1947 ultra vires of Central Legislature—Whether the impugned Act falls under entry 55 or 54 of List I, Sch. VII, Government of India Act, 1935.

The Income Tax and Excess Profits Tax (Amendment) Act, XXII of 1947, is not *ultra vires* the Central Legislature.

Per Chagla C. J.—The impugned legislation which provided that tax shall be payable by an assessee under the head "Capital gains" in respect of any profits or gains arising from sale, exchange or transfer of a capital asset fall within the scope and ambit of entry 55 in the List I of the Seventh Schedule of the Government of India Act, 1935.

* Income-tax Ref. No. 18 of 1950.