
(2006) 07 SHI CK 0002
In the High Court Of Himachal Pradesh

Ajay Singh (Since Deceased) through his Lrs. Meenakshi Singh and Others APPELLANT

Vs

Tikka Brijendra Singh and Others
 Tikka Brijendra Singh Vs Land Acquisition Officer, Pong Dam Project and Others RESPONDENT

Date of Decision : 25-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : AIR 2007 HP 52 : (2006) 2 ShimLC 394

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Judgement

V.K. Gupta, C.J.—By this common judgment, both the aforesaid appeals are being disposed of together.

2. In these two appeals the judgment and decree dated 1st September, 2003 passed by the learned Additional District Judge (1), Kangra at Dharamshala in Civil Suit No. 199/1995: (RBT No. 4/2002) titled Tikka Brijendra Singh v. Smt. Usha Rani and Ors. is under challenge. Whereas RFA No. 271 of 2003 was filed by defendant No. 1 Ajay Singh (since deceased), RFA No. 310 of 2003 has been filed by the plaintiff Tikka Brijendra Singh Appellant Ajay Singh in RFA No. 271 of 2003 (who was defendant No. 6 in the Suit) had died during the pendency of the appeal. His legal representatives were brought on record and substituted as appellants vide order passed by this Court on 19th March, 2004 in CMPM No. 179 of 2004.

3. Before I proceed to deal with the issues involved for adjudication in the two appeals, I indicate hereinbelow brief facts leading to the filing of the suit, from out of which these two appeals have arisen and consequently the filing of the appeals by the two appellants.

4. Sole plaintiff Tikka Brijendra Singh had filed the aforesaid Civil Suit originally against three defendants only who were his father Raja Harmohindra Singh

(defendant No. 1), his mother Smt. Usha Devi (defendant No. 2) and the Land Acquisition Officer, Pong Dam Project, Talwara (defendant No. 3). It was during the pendency of the suit and based on various inputs received in the suit by the Court from various parties who had, inter-alia, also filed applications under Order 1 Rule 10, CPC that other defendants including deceased appellant Ajay Singh in RFA No. 271/2003 and respondents Shri Bali Ram Sharma, Smt. Snehlata Sharma and Shri Anil Kumar Sharma came to be added as defendants in the suit

5. In the suit, the plaintiff claimed himself to be the son of defendant No. 1. Defendant No. 1 Raja Harmohindra Singh had died during the pendency of the suit. His legal representatives were substituted after his death. The suit was filed for the partition of the property finding a mention in Schedule I and Schedule II to the plaint, for rendition of accounts and for the relief of injunction. The plaintiff in the suit had claimed that he was entitled to 1/2 share in the property and further claimed that based on his claim of such entitlement the property be partitioned. The plaintiff also claimed that he was entitled to 1/2 share in the compensation amount which had already been received by defendant No. 1 as also similar 1/2 share in the compensation amount that defendant No. 1 would be receiving in future (pending adjudication of the compensation dispute in The Court of District Judge, Kangra at Dharamshala as well as the Land Acquisition Officer, Talwara). The compensation already received as well as that to be received was with respect to the land belonging to defendant No. 1 which had been acquired for the construction of Pong dam. The plaintiff claimed that defendant No. 1 had received Rs. Eighty five lacs with accrued interest which he wrongly appropriated to himself to the exclusion of other members of Hindu Undivided Family, namely, the plaintiff as well as defendant No. 2. Actually, the plaintiff's contention in the suit was that he alongwith defendant No. 1 (his father) and defendant No. 2 (his mother) constituted HUF. The plaintiff further prayed in the suit for rendition of accounts with respect to compensation amount already received by defendant No. 1. Injunction restraining defendant No. 1 from alienating or parting with the possession of the suit property was also claimed by the plaintiff.

6. The plaintiff pleaded that he was the grand-son of late Raja Sham Singh of Dada Siba and son of defendant No. 1 and defendant No. 2. Raja Sham Singh had died in the year 1932 and after his death defendant No. 1 succeeded to Siba Jagir. After the coming into force of Constitution of India, Jagirdari was abolished and property of Jagir was converted into joint family property. With the enactment of Hindu Succession Act, 1956 Jagirdars of erstwhile estates were treated as Kartas of joint Hindu family property. The plaintiff claimed himself to be only son of defendant No. 1 and grand-son of Raja Sham Singh and in that capacity as the sole heir to the estate of his grand-father which was in the possession of defendant No. 1 at the relevant time. On this basis he had claimed that he had a right to seek partition of the suit property and also the relief of injunction.

7. Furnishing material particulars, the plaintiff averred in the plaint that it was on 25th April, 1945 that defendant No. 1 had married defendant No. 2 who was the daughter of late Maharaja Kumar Mahijit Singh of Kapurthala and it was out of wedlock of defendant No. 1 and defendant No. 2 that plaintiff was born on 17th June, 1946. During the year 1947 some differences arose between defendant No. 1 and defendant No. 2 and because of these differences defendant No. 2 was forced to leave the matrimonial house. She started living with her parents alongwith the plaintiff. In 1963 defendant No. 2 filed a suit against defendant No. 1 for maintenance. This suit was contested by defendant No. 1 but was decreed on 30th September, 1965. Despite defendant No. 1 having lost in the aforesaid suit, he did not prefer any appeal against the judgment and decree passed therein which on 30th September, 1965 had assumed finality. Defendant No. 1 had purchased property detailed in Schedule I and Schedule II to the plaint from out of the compensation received from the Government. The plaintiff pleaded that the property being ancestral and he being the only son of defendant No. 1 was entitled to his share in the coparcenary property but defendant No. 1 had squandered away the property as well as the amount without legal necessity to satisfy his whimsical and luxury life style. The plaintiff alleged that he came to know that defendant No. 1 had assigned/sold 47% of the compensation amount and other rights in the property in favour of respondents No. 3, 4 and 5 in the appeal for paltry consideration vide three different sale deeds executed on 11th/12th October, 1993 by defendant No. 1 in favour of these three persons. Since defendant No. 1 had received the compensation amount as Karta of HUF property and he also reflected the same in his returns filed by him with the Wealth Tax and Income Tax Authorities the plaintiff was entitled to receive his share.

8. The plaintiff further pleaded in the suit that he had approached Land Acquisition Officer, Talwara with request not to disburse any amount of compensation to defendant No. 1 but despite such request defendant No. 1 managed to receive some amount of compensation even though disputes relating to compensation in respect of substantial portion of land had been still pending adjudication before the Reference Court.

9. Defendant No. 1 contested the suit by filing written statement raising various pleas including some preliminary objections about the maintainability of the suit etc. He had raised a basic objection in the suit that the plaintiff was not his son and therefore, he had no right or interest in the property. He had also averred that the suit property was not ancestral in nature and that it was the self acquired property of defendant No. 1. It was claimed that in Land Reference Case No. 107 of 1974 claim for maintenance and right to get compensation with respect to the land acquired for Pong Dam was settled between defendant No. 1 and defendant No. 2 on payment of Rs. 40,000/- in favour of defendant No. 2. In this case the plaintiff had given up his claim and therefore, at this stage now the plaintiff was estopped from filing the suit. Various facts with respect to illegality attached to the marriage between defendant No. 1 and defendant No. 2 were

averred by defendant No. 1 in the written statement including the fact that the marriage between them was a result of fraud and deceit and that since defendant No. 1 did not live with defendant No. 2 there was no question of plaintiff being born out of wedlock between two of them. Defendant No. 1 claimed that after the death of Raja Sham Singh, Jagir of Dada Siba reverted to the Paramount power and entire property was given afresh to defendant No. 1 by the Government of Punjab under the Descent of Jagir IV of 1900 vide Notification No. 5032 dated 16th January, 1993. Defendant No. 1 further specifically pleaded that property in Schedule I and II was the self acquired property of defendant No. 1. Defendant No. 1 denied that the plaintiff and he alongwith defendant No. 2 Usha Rani constituted joint Hindu family or that he was the Karta of HUE

10. From the pleadings of the parties it was revealed that at one stage defendant No. 1 had been married to Suraj Devi even though this marriage was also shrouded amidst certain controversies between the parties.

11. Defendant No. 2 Usha Devi filed her separate written statement wherein she admitted all the facts pleaded by the plaintiff in the plaint. She alleged that she was the wife of defendant No. 1 and that plaintiff was born out of their wedlock. She also averred that not only the plaintiff but she had a right to claim equal share in the property of defendant No. 1 being his legally wedded wife.

12. Defendants No. 3 to 5 in the suit (respondents No. 3 to 5 in the appeal) also filed their separate written statement in which they, inter-alia, pleaded that defendant No. 1 had sold his right to the extent of 47% with respect to compensation amount, as re-determined, in terms of Section 28A of the Land Acquisition Act. This sale was effected by execution and registration of three separate sale deeds in favour of these three defendants. These defendants alleged and averred that the aforesaid three sale deeds were executed by defendant No. 1 in their favour for valid, lawful consideration and thus they are entitled to receive their 47% share from out of re-determined compensation amount. It is claimed that their interest is protected u/s 41 of the Transfer of Property Act, they being transferees for valuable consideration.

13. Defendant Ajay Singh (deceased appellant in RFA No. 271 of 2003) filed his separate written statement in which he claimed that he is the only son of defendant No. 1.

14. Defendants No. 10 to 12 (respondents No. 8 to 10 in the appeal) filed their separate written statement in which, inter-alia, they claimed that the plaintiff was not the son of defendant No. 1 and that they were the children of defendant No. 1. Actually, they claimed to be the only children of defendant No. 1 born out of wedlock of defendant No. 1 and their mother Smt. Suraj Devi and in their capacity entitled to inherit the property left by defendant No. 1.

15. In the written statement, various objections were raised about the suit being not maintainable in the present form, it not having been valued properly and appropriately for purposes of Court fee and jurisdiction etc. etc.

16. Following issues were framed by the learned trial Court for adjudication in the suit:

1. Whether the plaintiff is the son of defendant No. 1 as alleged? If not, its effect? OPP
2. Whether the suit property is joint Hindu family or coparcenary/ancestral property in the hands of defendant No. 1, as alleged? If not, its effect? OPP
3. Whether the plaintiff has any right, title and interest in the suit property and is entitled to the relief as alleged? OPP
4. Whether the present suit is maintainable in its present form? OPP
5. Whether the plaintiff has any right to seek partition, rendition of account or injunction? OPP
6. Whether the suit is properly valued for the purpose of Court fee and jurisdiction? If not, its effect? OPP
7. Whether the suit is bad for non-joinder of necessary parties, as alleged? If so, its effect? OPD-1
8. Whether the property in dispute is the self acquired property of defendant No. 1, conferred on him by the Descent of Jagir IV of 1990 Act? If so, its effect? OPD-1
9. Whether the suit is within limitation as alleged? OPP
10. Whether the suit is not barred by principle of res judicata? OPP
11. Whether the plaintiff constitute a joint Hindu family with the defendant and the defendant is the Karta of the joint Hindu family? OPP
12. Whether the defendant Nos. 4 to 6, are the bona fide purchasers for valuable consideration of the 47% rights of re-determined compensation due to defendant No. 1? If so, its effect? Onus on parties.
13. Whether the plaintiff is estopped by his conduct to file the suit with regard to the compensation of the acquired property? If so, its effect? Onus on parties.
- 8-A. Whether the defendant No. 1 has already received the compensation of Rs. 85 lacs under the provisions of the Land Acquisition Act, 1894, if so, to what effect? O.P.P.

(framed on 10.11.1998)

14. Relief.

17. As the arguments in these two appeals were near conclusion, some statements made in these two appeals at the Bar reduced considerably the area and extent of controversy between the parties.

18. First and foremost, in RFA No. 310 of 2003 I refer to the following three interlocutory applications:

1. CMP No. 44 of 2004 filed by respondent No. 8 Smt. Rajiv Singh.
2. CMP No. 45 of 2004 filed by respondent No. 9 Smt. Raj Kumari Rajina Singh.
3. CMP No. 46 of 2004 filed by respondent No. 10 Shri Vijay Singh.

19. In these three applications the above named three respondents who were the contesting defendants in the Civil Suit claiming therein that the plaintiff was not the son of defendant No. 1 and that they were the only children of defendant No. 1 born out of the wedlock of defendant No. 1 and their mother Smt. Suraj Devi, have now stated that they have settled the dispute amicably, outside the Court between themselves and the plaintiff-appellant in RFA No. 310 of 2003 and that they have no objection if the suit is fully decreed in favour of the plaintiff - appellant after modifying the judgment and decree impugned in the appeal. Para No. 4 of all the three applications is identical and contains the aforesaid averments by the aforesaid three respondents. Prayers in all the three applications are identical. Shri Bhupeshwar Singh Verma, learned Counsel appearing for the aforesaid three respondents in the appeal verifies, at the Bar, the fact of the aforesaid three applications having been filed and also states at the Bar that indeed and in fact his clients, namely, the aforesaid three respondents have compromised the matter with the plaintiff-appellant and that they have no claim with respect to the suit property and that the decree as claimed by the plaintiff be passed in its entirety in favour of the plaintiff, and that the appeal be allowed after modifying the judgment and decree to the extent that the plaintiff-appellant alone is entitled to succeed to the property of late Raja Harmohindra Singh and that these three respondents have no right, title or claim to the said property or any part of it. Because of this statement having been made by the learned Counsel for respondents No. 8, 9 and 10 and because of the aforesaid three applications, Mr. Kuldip Singh, learned Senior Counsel appearing for the appellant submits that subject to this Court, based upon the aforesaid statement and the aforesaid prayers in the aforesaid three applications modifying the impugned decree, he has instructions not to press this appeal.

20. In the suit filed by the plaintiff, there was a very serious dispute between the plaintiff on the one hand and respondents No. 3 to 5, namely Shri Bali Ram Sharma, Smt. Snehlata Sharma and Shri Anil Kumar Sharma on the other, about the assignment/sale of 47% of re-determined compensation amount in favour of these three respondents by the deceased defendant No. 1. In the suit, it was claimed by these three respondents that vide three different sale deeds defendant No. 1 had sold/assigned 47% of re-determined compensation amount in their favour and that these three sale deeds were executed and registered for valuable and lawful consideration. The learned trial Court in the impugned judgment and decree found this fact in favour of these three respondents. In the appeal filed by the appellant-plaintiff, being RFA No. 310 of 2003 the appellant-

plaintiff challenged this finding of the learned trial Court. While the arguments in the appeals were at concluding stage, Mr. Kuldip Singh, learned Senior Counsel appearing for the appellant assisted by Mr. Manohar Lal Sharma, Advocate, accompanied by Mr. Tapan Kumar Mukherjee, general power of attorney holder of the appellant-plaintiff, all three of them together stated before me that the plaintiff-appellant concedes the claim of respondents No. 3, 4 and 5 about their being entitled to 47% share in the re-determined compensation u/s 28A of the Land Acquisition Act. They accordingly submitted that the plaintiff-appellant gives up his claim totally and absolutely qua the aforesaid 47% share in the re-determined compensation amount and admits the right and entitlement of the aforesaid three respondents to receive the aforesaid 47% share in the re-determined compensation amount. Mr. Tapan Kumar Mukherjee, general power of attorney holder of the plaintiff-appellant was identified by Mr. Kuldip Singh. Actually, Mr. Tapan Kumar Mukherjee himself personally stated this fact before me in clear and absolute terms. They accordingly submitted that they have no objection if this Court passes an order at the stage of conclusion of the appeal for the release of the aforesaid 47% of the re-determined compensation amount, lying in deposit in this Court or elsewhere, in favour of the aforesaid three respondents, subject to these three respondents making formal applications for the release of this amount in this Court or elsewhere.

21. The third development, narrowing the area of controversy in these two appeals, apart from the aforesaid two developments, which took place on the concluding day of arguments was the statement made by the aforesaid three persons, namely, S/Shri Kuldip Singh, Manohar Lal Sharma, and Tapan Kumar Mukherjee that the plaintiff-appellant concedes the fact that the property forming the subject matter of the suit was not coparcenary property and that it was the self acquired property of deceased defendant No. 1 Raja Harmohindra Singh, the father of the plaintiff. This statement actually narrows down the scope and area of controversy in the appeals because a lot was said in the suit by both the sides about the fact whether the property forming the subject matter of the suit was the ancestral property (coparcenary property), or was it the self acquired property of defendant No. 1. Because of this statement now having been made, this Court should have no hesitation in holding that the property should be treated indeed was the self acquired property of defendant No. 1, in the process affirming the finding to this effect given by the trial Court as well.

22. I now come to the main issue involved for consideration in RFA No. 271 of 2003. This is the appeal filed originally by Shri Ajay Singh who claimed to be the son of deceased defendant No. 1 through his alleged mother Smt. Bhagyawati, respondent No. 7 in RFA No. 271 of 2003. The entire thrust of the case set up by the deceased appellant Ajay Singh would revolve around the proof of a basic fact, viz. as to whether he was the son of deceased defendant No. 1. If Ajay Singh succeeded in proving this fact, other issues in the suit concerning him would follow. If however, in the suit Ajay Singh failed to prove this basic fact, his defence and counter assertions against the plaintiff would be knocked out

because the very edifice of his claim to succeed to the property of deceased defendant No. 1 would be the fact of his being son of defendant No. 1 through his stated mother Smt. Bhagyawati. Before however, I take up the consideration of this aspect, I must deal with the preliminary objection raised by Mr. Kapil Dev Sood, learned Counsel appearing for the appellant in RFA No. 271 of 2003 that the judgment and decree impugned in the appeal suffered from a grave illegality because of a patent error of jurisdiction on the part of learned Additional District Judge in trying the suit. This objection is based upon the fact that the suit was not valued properly for the purposes of Court fee and jurisdiction and therefore, it being beyond the pecuniary jurisdiction of the learned Additional District Judge, he had improperly tried the suit. In support of his argument, Mr. K.D. Sood relied upon Section 7(iv)(c) including the last proviso thereof, of the H.P. Court Fees Act, 1968 as well as Section 8 of the Suits Valuation Act, 1887 to contend that the suit was not properly valued for the purposes of Court fee and jurisdiction and that since its valuation for these purposes ought to have been more than Rs. Ten lacs, the Court of Additional District Judge did not have the pecuniary jurisdiction to try the suit. In reply to this argument of Mr. K.D. Sood, Mr. Kuldip Singh, learned Senior Counsel appearing for the plaintiff has relied upon Sections 21 and 99 of the CPC as well as Section 11 of the Suits Valuation Act, in the light of the pronouncement of law on the subject by a judgment of the Supreme Court in the case of Kiran Singh and Others Vs. Chaman Paswan and Others,

23. It shall be worthwhile here to take note of the fact that the suit was originally instituted in this Court when, in terms of Section 10 of the H.P. Courts Act the limit of pecuniary jurisdiction of the District Courts was Rs. Five lacs and below. In other words, at the stage of institution of the suit in this Court in 1995 all suits valued at Rs. Five lacs or above were required to be instituted and tried in this Court but in the meanwhile Section 10 of H.P. Courts Act underwent an amendment resulting in upward increase in the pecuniary jurisdiction of the District Courts from Rs. Five lacs to Rs. ten lacs. Because of this legislative amendment, on 9th October, 2001 this Court passed an order, after noticing the aforesaid increase in the limit of pecuniary jurisdiction of the District Court, and vide this order, this Court transferred the suit in question to the Court of learned District Judge, Dharamshala. For ready reference this order may be reproduced hereunder, which thus reads as under:

In view of the amendment in the Himachal Pradesh Courts Act (Act No. 16 of 2001), whereby the pecuniary jurisdiction of the District Judge has been enhanced to Rs. Ten lacs, this suit is liable to be transferred to the Court of learned District Judge Kangra at Dharamshala.

Mr. Anuj Nag, learned Counsel for the plaintiff submits that he has filed an application for amendment of the plaint (O.M.P. No. 440 of 2001) seeking certain amendments and if such amendments are allowed, the valuation of the suit for the purposes of jurisdiction will exceed Rs. Ten Lacs and, therefore, suit may be retained in this Court.

As the jurisdiction of the District Judge has been enhanced to Rs. Ten Lacs, it will only be appropriate, if this application is decided by the District Judge.

The Civil Suit in the facts and circumstances is transferred to the Court of learned District Judge, Kangra at Dharamshala, for disposal in accordance with law.

The parties shall appear before that Court on 10th December, 2001. The records of the case be sent immediately to the concerned Court....

24. It shall also be worthwhile to notice that after the suit stood transferred to the District Court, application seeking amendment of the plaint for enhancing the valuation of the suit for the purposes of Court fee and jurisdiction was rejected by the learned District Judge. No appeal was however filed against this order.

25. To come back to the argument of Mr. K.D. Sood about the Court of learned Additional District Judge suffering from lack of jurisdiction on the ground of the suit not being valued for the purposes of Court fee and jurisdiction, I notice that Section 8 of the Suits Valuation Act, 1887 does lay down and stipulate that where in suits Court fee is payable ad valorem under the Court Fees Act, the value as determined for the computation of Court fee and the value for purposes of jurisdiction shall be the same. Taking a cue from this, let us now refer to Section 7(iv)(c) of H.P. Court Fees Act, 1968. This provision clearly says and lays down that in suits for obtaining a declaratory decree and consequential relief the plaintiff shall state the amount at which he values the relief(s) sought. The last proviso to Sub-section (iv) reads as under:

Provided further that in suit coming under Sub-clause (c), in case where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by paragraph (v) of this Section.

26. Since a reference is made to Sub-section (v) of Section 7 of the H.P. Court Fees Act it clearly emerges that where the property is either a land or a house etc. the suit has to be valued on the basis of market value of the property. Even though I am noticing the aforesaid submission of Mr. K.D. Sood, I must at the same time hasten also to notice the counter argument of Mr. Kuldip Singh, learned Senior Counsel appearing for the plaintiff, while relying upon Sections 21 and 99 and Section 11 of the Suits Valuation Act, by which he contends that since the suit had been actually instituted in this Court and because it had been transferred by order of this Court to the learned Additional District Judge, and because no prejudice has either been alleged or has actually been caused to the client of Mr. K.D. Sood or to any other party in the suit, the objection regarding valuation of the suit for the purposes of Court fee and jurisdiction and consequently the error of jurisdiction should be over-ruled. Sections 21 and 99 CPC and Section 11 of the Suits Valuation Act, all three are reproduced hereunder. These read as under:

21. Objections to jurisdiction. - (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction. - No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any mis-joinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:

Provided that nothing in this Section shall apply to non-joinder of a necessary party.

11. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes. - (1) Notwithstanding anything in Section 578 of the Code of Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had no jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless-

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or

in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or undervalued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

27. A combined reading of the aforesaid three provisions of law clearly suggests, first and foremost that no objection as to the competence of a Court with reference to its pecuniary limits of jurisdiction shall be allowed unless there has been a consequential failure of justice, and secondly, that no decree shall be

reversed or substantially varied etc. on account of any error etc. including an error of jurisdiction which does not affect the merits of the case and thirdly, no objection about the jurisdiction of a Court for over-valuation or under-valuation of a suit etc. shall be entertained by an Appellate Court unless, apart from the objection having been taken in the Court of first instance etc., the Appeal Court is satisfied for reasons to be recorded in writing that such over-valuation or under-valuation has prejudicially affected the disposal of the suit by the trial Court. In the case of *Kiran Singh and Others Vs. Chaman Paswan and Others*, , while dealing with the aforesaid aspect, their Lordships of the Supreme Court held as under:

Section 11 enacts that notwithstanding anything in Section 578 of the CPC an objection that a Court which had no jurisdiction over a suit or appeal had exercised it by reason of over-valuation or under-valuation, should not be entertained by an appellate Court, except as provided in the Section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the Section has come in - and deservedly - for considerable criticism; but amidst much that is obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a Court, which would have had no jurisdiction to hear a suit or appeal but for over-valuation or under-valuation, is not to be treated as, what it would be but for the Section, null and void, and that an objection to jurisdiction based on over-valuation or under-valuation, should be dealt with under that Section and not otherwise.

The reference to Section 578, now Section 99, C.P.C., in the opening words of the Section is significant. That Section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the Courts which passed them lacked jurisdiction as a result of over-valuation or under-valuation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a Court based on over-valuation or under-valuation shall not be entertained by an appellate Court except in the manner and to the extent mentioned in the Section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on over-valuation or under-valuation can be raised otherwise than in accordance with it.

With reference to objections relating to territorial jurisdiction, Section 21 of the CPC enacts that no objection to the place of suing should be allowed by an appellate or revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99, C.P.C., and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a Court on the merits and judgment

rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained u/s 11 of the Suits Valuation Act.

28. Dwelling on the aspect relating to the causation of prejudice and as to what is the meaning of word "prejudice", their Lordships of the Supreme Court held as under:

That brings us to the question as to what is meant by "prejudice" in Section 11 of the Suits Valuation Act. Does it include errors in findings on questions of fact in issue between the parties? If it does, then it will be obligatory on the Court hearing the second appeal to examine the evidence in full and decide whether the conclusions reached by the lower appellate Court are right. If it agrees with those findings, then it will affirm the judgment; it does not, it will reverse it. That means that the Court of second appeal is virtually in the position of a Court of first appeal.

The language of Section 11 of the Suits Valuation Act is plainly against such a view. It provides that over-valuation or under-valuation must have prejudicially affected the disposal of the case on the merits. The prejudice on the merits must be directly attributable to over-valuation or under-valuation and an error in a finding of fact reached on a consideration of the evidence cannot possibly be said to have been caused by over-valuation or under-valuation. Mere errors in the conclusions on the points for determination would therefore be clearly precluded by the language of the Section.

It must further be noted that there is no provision in the Civil Procedure Code, which authorizes a Court of second appeal to go into question of fact on which the lower appellate Court has recorded findings and to reverse them. Section 103 was relied on in - "AIR 1949 Pat 278 (FB) (A)" as conferring such a power. But that Section applies only when the lower appellate Court has failed to record a finding on any issue, or when there has been irregularities or defects such as fall u/s 100, C.P.C. If these conditions exist, the judgment under appeal is liable to be set-aside in the exercise of the normal powers of a Court of second appeal without resort to Section 11 of the Suits Valuation Act. If they do not exist, there is no other power under the CPC authorizing the Court of second appeal to set aside findings of fact and to re-hear the appeal itself on those questions.

We must accordingly hold that an appellate Court has no power u/s 11 of the Suits Valuation Act to consider whether the finding of fact recorded by the lower appellate Court are correct, and that error in those findings cannot be held to be prejudice within the meaning of that Section.

So far, the definition of "prejudice" has been negative in terms-that it cannot be

mere change of forum or mere error in the decision on the merits. What then is positively prejudice for the purpose of Section 11? That is a question which has agitated Courts in India ever since the enactment of the Section. It has been suggested that if there was no proper hearing of the suit or appeal and that had resulted in injustice, that would be prejudice within Section 11 of the Suits Valuation Act. Another instance of prejudice is when a suit which ought to have been filed as an original suit is filed as a result of under-valuation on the small cause side. The procedure for trial of suits in the Small Cause Court is summary; there are no provisions for discovery or inspection; evidence is not recorded "in extenso", and there is no right of appeal against its decision. The defendant thus loses the benefit of an elaborate procedure and a right of appeal which he would have had, if the suit had been filed on the original side. It can be said in such a case that the disposal of the suit by the Court of Small Causes has prejudicially affected the merits of the case.

No purpose, however, is served by attempting to enumerate exhaustively all possible cases of prejudice which might come u/s 11 of the Suits Valuation Act. The jurisdiction that is conferred on appellate Courts under that Section is an equitable one, to be exercised when there has been an erroneous assumption of jurisdiction by a Subordinate Court as a result of over-valuation or under-valuation and a consequential failure of justice. It is neither possible nor even desirable to define such a jurisdiction closely, or confine it within stated bounds. It can only be predicated of it that it is in the nature of a revisional jurisdiction to be exercised with caution and for the ends of justice, whenever the facts and situations call for it. Whether there has been prejudice or not, is, accordingly, a matter to be determined on the facts of each case....

29. In Para 17 of the same judgment, it was held by their Lordships that Clauses (a) and (b) of Sub-section (1) of Section 11 have to be read conjunctively, even though the word "or" has been used between these two clauses.

30. In the face of the aforesaid binding proposition of law and based upon this authoritative pronouncement by the" Apex Court, without going into the question whether in fact the suit was under-valued or not, I overrule the objection raised by Shri K.D. Sood and hold that since neither any prejudice has been alleged to have been caused nor has any prejudice actually been caused nor has any party been prejudicially affected with respect to the disposal of the suit nor has alleged under-valuation of the suit affected the merits of the case, there is no merit in the preliminary objection of Mr. K.D. Sood.

31. Having thus over-ruled Mr. K.D. Sood's preliminary objection, I now come to the main thrust of his challenge to the impugned decree on the ground that the learned Court below incorrectly found that the appellant Ajay Singh was not the son of Raja Harmohindra Singh. The evidence of only three witnesses, namely, Urmila Devi, Bhagyawati and Ajay Singh himself can be said to have any relevance to this aspect. Urmila Devi does not help Ajay Singh but as far as Bhagyawati is concerned, she is the only person who states that she was married

to Raja Harmohindra Singh. Ajay Singh, of course, is in no position to give any factual, first hand account with respect to marriage of his mother with Raja Harmohindra Singh.

32. Smt. Bhagyawati has not filed any written statement. Of course, in the written statement filed by Raja Harmohindra Singh, defendant No. 1 there is a bald, out of context, assertion that Ajay Singh and Vikram Singh were his sons. He does not say that he was married to Bhagyawati. He does not explain as to how did Ajay Singh and Vikram Singh become his sons. Bhagyawati while appearing as DW 3 and while making the aforesaid bald assertion about her marriage with Raja Harmohindra Singh did not refer to any material fact or material particular, or any proof or evidence with respect to such bald assertion. None whatsoever. Apart from the fact that second marriage of Raja Harmohindra Singh could not have been solemnized in the face of his subsisting marriage with Suraj Devi, a very careful perusal of the evidence on record convincingly suggests that Bhagyawati miserably failed to prove that she had been married with Raja Harmohindra Singh. Actually, a look at her statement as DW 3 suggests that at the time of her alleged marriage. Raja Harmohindra Singh was posted in Hyderabad as a Major in the Army. It is commonly known and this Court must take judicial note of the fact that whenever an Army Officer is married, the fact of such marriage is duly recorded by the Army. If therefore, Bhagyawati had been married to Raja Harmohindra Singh and as claimed by her at the time of her marriage he was a Major in the Army, the factum of such marriage ought to have found a mention in the Army records and such records could have been tendered in evidence to prove the factum of the marriage. This is apart from the fact that in the face of Raja Harmohindra Singh's subsisting marriage with Suraj Devi, being an Army Officer, apart from the applicability of Hindu Marriage Act he was specifically barred from marrying the second time as this would have constituted an offence under the Army Act, 1950.

33. Reliance upon Section 16 of the Hindu Marriage Act is of no avail or help to the appellant because a bare look at Section 16 pre-supposes the factum of a marriage, whether it was a void marriage or it was not a void marriage. The issue of the marriage is a question of fact and as held earlier the trial Court as well as this Court has found that Bhagyawati was not married to Raja Harmohindra Singh. If therefore, Bhagyawati was not married to Raja Harmohindra Singh, there is no question of the appellant being the son of Raja Harmohindra Singh because there is no other evidence at all indicating in any manner the linkage of the appellant with Raja Harmohindra Singh either in his capacity as his alleged son or otherwise.

34. At this stage I may also deal with the prayer of the appellant in RFA No. 271 of 2003 for permission to lead additional evidence in terms of Order 41 Rule 27, CPC. Through the medium of this prayer the appellant wants to lead additional evidence with respect to proving a so called school leaving certificate showing a discrepancy in his date of birth and the execution of a Will allegedly written by

Raja Harmohindra Singh. It is claimed by the appellant that the date of birth which came to be mentioned in evidence during the trial of the suit was incorrect and that the aforesaid school leaving certificate would reveal his correct date of birth. I have perused the copy of school leaving certificate and have no hesitation in holding that it does not at all inspire confidence of this Court because it does not seem to be a genuine document. Actually, I have been told that the Institution which issued this document is under prosecution for issuing forged documents. Even though I do not rely upon this assertion, I have no hesitation in holding that document actually does not look to be a genuine document and if anyone wanted to prove his date of birth with reference to an academic qualification the best mode of doing so would be to prove the Matriculation certificate issued by the Board of School Education. It is not the contention of the appellant that he did not study up to Matriculation or that the Matriculation certificate was not in his possession.

35. In so far as the proof regarding Will is concerned, the Will had allegedly been executed much before the appellant had filed his written statement in the trial Court. Actually it had allegedly been executed even before defendant No. 1 had filed his written statement in the trial Court. None of them had made a mention about this fact either in their respective written statements or otherwise during the course of the trial of the suit. For both the reasons therefore, I reject the prayer of the appellant for leading additional evidence.

36. Since in RFA No. 271 of 2003 I am affirming the finding of the learned trial Court that the appellant was not the son of Raja Harmohindra Singh, and his being a son of Raja Harmohindra Singh being a sine qua non, a condition precedent to his claim, right or entitlement qua the property and estate of Raja Harmohirtdra Singh, I have no hesitation in holding that the appellant has no right or title at all with respect thereto and accordingly the finding to that effect returned by the learned trial Court is affirmed. RFA No. 271 of 2003 therefore, is liable to be dismissed.

37. In the operative part (para 44) of the judgment impugned in the appeals the learned trial Court had decreed the suit of the plaintiff to the extent that he being the son of Raja Harmohindra Singh alongwith defendants No. 8 to 10 who also are daughters and son respectively of Raja Harmohindra Singh, all four of them are entitled to succeed to the entire estate of Raja Harmohindra Singh after his death by way of succession in equal shares except the share relating to 47% of re-determined compensation u/s 28A of the Land Acquisition Act. For ready reference, the aforesaid operative part is reproduced hereunder, which reads thus:

...In view of my findings to the above referred issues, the suit of the plaintiff is decreed (under the changed circumstances i.e. death of Raja Harmohinder Singh which occurred during the trial of the suit who was defendant No. 1) to the extent that he being the son of Raja Harmohinder Singh alongwith defendants No. 8 to 10 namely Smt. Rajiv Singh, Smt. Raj Kumari Rajina and Shri Vijay

Singh who are also daughters and son of Raja Harmohinder Singh are entitled to succeed to the entire estate left by Raja Harmohinder Singh after his death by way of succession, in equal shares except the share of Raja Harmohinder Singh to the extent of 47% in re-determined compensation amount as detailed in Ex. PW 5/A for which the defendant Nos. 3 to 5 are entitled as they held to be the bona fide purchasers for valuable consideration in the interest of Raja Harmohinder Singh. The remaining amount of re-determined compensation shall be shared equally by the plaintiff and defendants No. 8 to 10. Keeping in view the peculiar facts, circumstances of the case, the parties are left to bear their own costs. Decree sheet be drawn up accordingly....

38. I have already noticed three intervening developments having taken place on the concluding day of the arguments in the case and one of them was the filing of CMPs No. 44, 45 and 46 of 2004 by the aforesaid three defendants (in the suit) who are respondents No. 8, 9 and 10 in the appeal. Since they have relinquished their all claims by settling the disputes amicably outside the Court between themselves and the plaintiff-appellant and since they have no objection if the suit is fully decreed in favour of the plaintiff-appellant, as a consequence of the aforesaid statements made by these three respondents, while allowing the aforesaid three applications being CMPs No. 44, 45 and 46 of 2004 I modify the decree impugned in this appeal to the extent that the plaintiff-appellant in RFA No. 310 of 2003 alone, to the exclusion of respondents No. 8, 9 and 10 is held entitled to succeed to the estate of Raja Harmohindra Singh, deceased defendant No. 1 by way of succession. Of course, the other part of the decree that the appellant is not entitled to succeed to the estate of Raja Harmohindra Singh to the extent of 47% in re-determined compensation amount u/s 28A of the Land Acquisition Act is upheld. It is accordingly held that respondents No. 3, 4 and 5 in RFA No. 310 of 2003, namely, Shri Bali Ram Sharma, Smt. Snehlata Sharma and Shri Anil Kumar Sharma are entitled to receive and be paid, 47% in the re-determined compensation amount u/s 28A, Land Acquisition Act. Subject to the aforesaid modification in the impugned decree, RFA No. 310 of 2003 is disposed of.

39. Mr. B.K. Malhotra and Mr. Ajay Kumar, learned Counsel appearing for respondents No. 3, 4 and 5 respectively in RFA No. 310 of 2003 submitted that because of the aforesaid judgment by this Court, I should pass a specific order and issue a binding direction for the release of 47% of the aforesaid re-determined compensation amount in favour of their clients. Agreeing with their submissions, I hereby order and direct that the aforesaid amount, being 47% of the re-determined compensation amount u/s 28A of the Land Acquisition Act shall be released in their favour/paid to them. If this amount is lying in this Court in deposit and/or is lying in deposit elsewhere, including the Court of learned District Judge, Kangra at Dharamshala, or in any other Court, it shall be made over to them on their making applications to that effect.

40. In RFA No. 310 of 2003 Income Tax Department has filed an application for

impleadment, being CMP No. 145 of 2005. Thereafter it filed a second application, being CMP No. 372 of 2005 for amendment of the aforesaid earlier application on the ground that the tax liability of Raja Harmohindra Singh has been reduced in appeal from Rs. Two crores to Rs. Twelve lacs. Reply to this application has been filed by the appellant in which the appellant has disputed his tax liability. Because of the pending litigation between the parties before the Tax Authorities and the fact that the tax liability of Raja Harmohindra Singh has been disputed, I am not inclined to pass any order on the aforesaid application of the Revenue. The application accordingly is dismissed. However, the Revenue is at liberty to take such steps for recovery of tax due as are available to it under the law.

41. RFA No. 271 of 2003 is dismissed but without any order as to costs. RFA No. 310 of 2003 is partly allowed, to the limited extent hereinabove mentioned and the impugned judgment and decree in the said appeal are modified only to the extent indicated hereinabove. Parties to bear their own costs.

42. All CMPs in both the appeals shall also stand disposed of accordingly.