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**(1937) 12 CAL CK 0003**  
**In the Calcutta High Court**

Anath Nath Banerjee and Others

APPELLANT

Vs

Sri Sri Kalimata Thakurani and Others

RESPONDENT

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**Date of Decision :** 14-12-1937

**Acts Referred:**

Court Fees Act, 1870 — Section 7(iv)(c), 8C

**Citation :** AIR 1938 Cal 865

**Hon'ble Judges :** Nasim Ali, J; Bartley, J

**Bench :** Full Bench

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**Judgement**

Nasim Ali, J.—On 16th January 1937 the Opposite Party No. 1, Sree Sree Goddess Kali Mata of Kalighat through her next friend H. N. Haider, instituted a suit in the First Court of the Subordinate Judge of 24-Parganas against the petitioners and the other opposite parties in this rule: (1) for declaration that certain properties mentioned in the schedule appended to the plaint are debutter properties; (2) for framing a scheme for management of the debutter properties; (3) for perpetual injunction restraining the defendants from appropriating the income or any part thereof or withdrawing certain money deposited in Bank; (4) for accounts; (5) for removal of those shebait of the plaintiff- petitioner from their office who will be found to have misappropriated the money belonging to the plaintiff. The defendants filed written statements alleging inter alia that the suit was insufficiently valued both for the purposes of jurisdiction as well as court-fees. On 12th July 1937 issues were framed in the suit, one of them, namely issue 2, being as follows : "Has the suit been properly valued and the plaint properly stamped?" The question of valuation and court-fees was taken up for consideration by the learned Subordinate Judge on 17th July 1937 and was disposed of by him by an order dated 30th August 1937. By this order the learned Judge overruled the defendants' objection-regarding the valuation and court-fees. The present rules are directed against this order. The learned Subordinate Judge has held that the reliefs claimed in the present suit excepting the relief for accounts come under Schedule 2, Article 17, Clause (vi), Court, fees Act, and that the value of these reliefs for purposes of jurisdiction must be taken

as the value put by the plaintiff in his plaint. As regards the relief for accounts he has taken its value as given in the plaint final for purposes of court-fees and jurisdiction.

2. Dr. Basak appearing on behalf of the petitioners did not challenge before us the valuation of the relief about accounts given in the plaint for purposes of court-fees and jurisdiction. He also conceded that but for the prayer for perpetual injunction the suit would have come under Schedule 2, Article 17 Clauses (i) and (vi). His contention however is that in view of the fact that in the plaint there is a prayer for perpetual injunction along with a prayer for a declaration, the suit so far it relates to these two reliefs is a suit for a declaration with consequential relief within the meaning of Section 7, Clause (iv) (c), Court-fees Act. This contention is well-founded. The prayer for a declaration that the properties are debutter and the prayer for perpetual injunction restraining the defendants from doing certain things taken together amount to this, that the plaintiff wants perpetual injunction as a consequential relief flowing from the declaration that the property is debutter. These two reliefs must therefore be taken to come not under Schedule 2, Article 17, Clause (vi) but u/s 7, Clause (iv) (c). By the latter Section the plaintiff is to state in his plaint the amount at which he values the relief sought. This the plaintiff has done. The contention of the petitioners however in the present rules is that in this case the plaintiff has put an arbitrary valuation and the valuation has been made too low in order to make the Court of the District Judge the forum of the appeal from the decisions in the suit. It is also contended by Dr. Basak that as the plaintiff wants perpetual injunction restraining the defendants from withdrawing an amount lying in deposit in the Bhowanipur Bank exceeding Rupees 10,000 the valuation of the suit u/s 7, Clause (iv) (c) ought to have been more than Rs. 10,000. u/s 8-C, Court-fees Act, the Court has power to revise the valuation and determine the correct valuation for the purposes of court-fees, if the Court is of opinion that the subject-matter of any suit has been wrongly valued. The Court for that purpose may hold such enquiry as it thinks fit. The learned Subordinate Judge has refused to exercise his jurisdiction u/s 8-C, Court-fees Act, apparently under the erroneous view that all the reliefs claimed in the suit excepting the relief for accounts comes under Schedule 2, Article 17, Clause (vi) of the Act. His order that the suit has been properly valued both for the purposes of jurisdiction and court-fees cannot therefore be sustained.

3. The result therefore is that these two rules are made absolute and the order complained of is set aside. The learned Subordinate Judge is directed to (a) to accept the valuation of prayer "chha" for the purposes of court-fees as well as jurisdiction given in the plaint as final for the present, (b) to treat the prayers "ga" and "jha" as incapable of valuation for the purposes of court-fees, (c) to treat the prayers "kha" and "gha" as prayers for a declaratory decree with a consequential relief, (d) to determine whether the prayers "Kha" and "Gha" have been wrongly valued for the purposes of court-fees, (e) to revise the valuation and determine the correct valuation for purposes of court-fees u/s 8-C, Court-

fees Act, if he finds that they have been wrongly valued, (f) to determine the valuation of the suit for the purposes of jurisdiction according to law. Costs in these two rules will abide the result, hearing fee being assessed at three gold mohurs.

Bartley, J.

4. I agree.