

(1941) 01 AHC CK 0004
In the Allahabad High Court

Babu Balmakund Gupta

APPELLANT

Vs

Secretary of State and Another

RESPONDENT

Date of Decision : 29-01-1941

Acts Referred:

Citation : AIR 1941 All 295 : (1941) 11 AWR 185

Hon'ble Judges : Braund, J

Bench : Division Bench

Judgement

Braund, J.—This is a first appeal from the Court of the Subordinate Judge of Bareilly in which a preliminary objection has been taken by the respondent to the valuation of the appeal by the appellant. In order to decide this preliminary objection it will be necessary to refer to the facts. The suit was brought by the Secretary of State complaining that the defendants motorgarage and showroom situated in a busy thoroughfare of Bareilly city encroached upon Government land and the Secretary of State sought on that account an order upon the defendant, in effect, to pull down that part of it which trespassed on Government property. In addition he claimed damages. It is not necessary for the present appeal to go through all the complicated facts in great detail. It is sufficient to tell the story in outline only. The defendant in 1923 or 1924 was minded to build this motor garage and showroom and for that purpose he took on lease a piece of land. Having taken that piece of land, he started making preparations to build by laying foundation and digging drains and so forth. It was then found, or claimed, by the Municipal Board of Bareilly that part of the site upon which he proposed to build was public land bordering on the road. According to the Municipal Board, part of the building which the defendant proposed to put up actually stood upon this public land, while a certain further strip of land claimed by the Board would be rendered virtually useless because of the building. There then ensued a long period of what, for want of a better term, I will describe as negotiations between the defendant and the Board.

2. The Board maintained that the defendant was trespassing on their property,

while the defendant took the line of negotiating with the Board for a lease of so much of the ground as the Board said belonged to them. But, in the meantime, the defendant went on putting up his building and it was completed at some date which I cannot fix precisely, but which was not very long after 1924. This led to a great deal of unpleasantness and the Board for long time adopted the attitude that, if the defendant chose to act in defiance of the Board, there was nothing that the Board could do but to demand that he pulled the building down altogether. For a long time they persisted in that attitude and made repeated claims on the defendant under Act 2 of 1916 to demolish the building. Eventually, however, owing to the intervention of the chairman of the Municipal Board, some sort of arrangement was come to between the defendant and the Board under which the defendant paid to the Board a thousand rupees and it was proposed that a lease should be granted to him of a sufficient part of the land in question to enable him to maintain the building. The matter might have ended happily at that point had it not been for the intervention of the Commissioner of the Eohilkhand Division. That; officer, learning that a thousand rupees had; been received by the Municipal Board, pure forward a claim that the land was Nazul land, that in consequence the thousand rupees which had been paid in respect of ifr ought to be paid to Government and not to the Municipal Board. This was countered by the Municipal Board by alleging that the thousand rupees was not received by them in respect of the price of the land at all, but was merely a consideration for their having refrained from prosecuting the defendant under Act 2 of 1916. I am not concerned at this stage with the rights and" wrongs of those points of view, except to notice that this argument between the Board and the Commissioner occupied several further years.

3. Meanwhile, the defendant having built his building some time shortly after 1924 has proceeded to carry on business there since-then. It was not until 17th September 1934 that the Secretary of State took the step of bringing this suit against the defendant eject him from that strip of land which it had been contended first by the Municipal" Board and later by the Secretary of State, had been encroached upon by the building he put up in 1924. It should perhaps be explained that the strip of land in dispute forms the site of the whole of the front of the defendant's motorgarage and showroom including its portico, embraoing altogether a frontage of about 125 feet. As has been said before, the defendant's premises are in a busy thoroughfare of Bareilly and it is obvious from the plans that it constitutes a considerable commercial building.

4. In those circumstances, the Secretary of State brought the suit claiming demolition and damages. He valued it at Rs. 6900, as to Rs. 6000 for the land, as to Rs. 900 in respect of damages. The actual area of the land encroached upon, in the sense that it constituted the site of the building itself, was 125 square yards and the area of the land which was not actually built upon but which was said to be rendered useless by the-building, was some 250 square yards. In the written statement the defendant pleaded that the plaintiff had exaggerated the value of the property in order to avoid the case being tried in

the Munsif's Court. When the case came to be heard by the Subordinate Judge of Bareilly in May 1935, he found that the plaintiff was right and gave him a decree for everything that he claimed in his suit, that is to say, he ordered the defendant to pull down so much of the building as stood upon the plaintiff's land and to give the plaintiff vacant possession of that land and, moreover, he gave the plaintiff the decree for damages he asked for. In the course of his judgment the learned Judge dealt with the defendant's contention that the value of the property had been deliberately exaggerated and found, as a fact, that the land was worth at least Rs. 6000. He said, after giving his reasons:

I hold that the area of the land in dispute is 361 square yards and that its market-value is about Rs. 6000 and that the suit is cognizable by this Court.

5. The defendant then came to this Court in appeal asking to have the decree of the Subordinate Judge of Bareilly set aside in its entirety. He valued the appeal at Eupeea 1800 and paid a Court-fee on it of Rs. 115. That is the valuation which is challenged. Now, what has to be stated is "the amount or value of the subject-matter in dispute." When the dispute is at the stage of an appeal by a defendant who seeks to set aside the whole decree then it appears to me that the value of the subject-matter in dispute must necessarily be the value of the relief granted by the decree which the appellant wishes to disembarass himself of. In such a case, one has to ask oneself this question: "What is the value to the appellant of immunity from the decree? " Upon the answer to that question must, I think, depend the value at which the appeal ought to be assessed. In other words, one has to find out the value of the relief granted which it is sought in the appeal to get rid of.

6. It is not, I think, necessary for me in this case to consider, and still less to decide, whether there is anything in the nature of a hard and fast rule that a defendant-appellant is bound to adopt the valuation attributed by the plaintiff to his suit. It has been said that for the purpose of fixing the forum of a case, it is prima facie the plaintiff's own valuation that must be looked at. In *Mt. Gaya Dei v. Mt. Tulsha Dei* (35) AIR 1935 Oudh 296, it has been held that, in appeals in suits for accounts, it is the plaintiff's own valuation of the suit that is material to be looked at when valuing an appeal. That can be readily understood. In the case in *Banwari Lal v. Daya Sunker Misser* (09) 13 C.W.N. 815 a plaintiff had brought a suit against the defendant for accounts and had obtained a decree?not for any specific sum of money but for the taking of an account. The plaintiff had valued his suit at a certain figure, which was presumably his estimate of what the accounts would show to be due to him. Before the accounts were actually taken, the defendant appealed. At that stage, accordingly, it was impossible to say what, if anything, would ultimately prove due to the plaintiff. The appellant, therefore, paid a court-fee of Rs. 10 only, leaving any balance to be made up when the figures should have been accurately ascertained. It was held that he could not do that, but that he was bound by the valuation that the plaintiff had put upon the suit. That case has been followed in the Patna High Court in

Deonandan Misra Vs. Ganga Prasad and Others, and in the Madras High Court in Srinivasacharlu v. Perindevamma (17) AIR 1917 Mad. 668.

7. It is true that the present case is not one involving the taking of accounts, but these cases do serve to show that it is not open to an appellant, defendant to avoid assessing his appeal at its full valuation merely because it may prove, as a result of the appeal itself, that the plaintiff's own valuation was excessive. In the cases to which I have referred in the Calcutta, the Madras and the Patna High Courts it might well have turned out as a result of the appeal that, upon the taking of the account, either nothing was due or that less was due than the plaintiff himself had assumed in making his original valuation. Yet that was no reason why the appeal should not have been valued at the full amount that the suit had been valued at. In the present case-it is argued that one of the matters decided by the Judge in the suit, and consequently one of the matters in issue in the appeal, is whether the property was worth Rs. 6000 or not. It is said, therefore, that the appellant was entitled to adopt his own view of the matter and to value his appeal at Rs. 1800. It seems to me that the same general principle applies as has been adopted in the cases to which I have referred. It is not open to a defendant, appellant, so to speak, first to decide the appeal in his own favour and then to value his appeal accordingly. Apart from that, however, there is another reason why in this case I am bound to conclude that this appeal is undervalued. Whatever may be the real value of this land whether its value is Rs. 3000, Rs. 6000 or Rs. 10,000 what we have to consider is what is the value of the relief which the appellant seeks, that is to say, what is the value to him of getting rid of the decree in its entirety. Now, if the decree stands in its present form what is the consequence to the defendant? Obviously, he will have to take down the whole of the front of the substantial and extensive garage and showroom which he had erected. If left in that condition, it would render the rest of his premises valueless. If not left in that condition, it would involve him in very substantial expense in reconstructing his building in such a way as not to encroach upon the land in question. In either case, it seems to me impossible, upon any reasonable view, to think that the value to the defendant-appellant of getting rid of this decree can be less than Rs. 6000. Upon that ground alone, I think that it is impossible for me to say that I think that this appeal is properly valued.

8. In those circumstances, it is my duty u/s 12, Court-fees Act, 1870, to require the appellant to pay such additional court-fee as would have been payable had he valued his appeal at the sum of Rs. 6900, and for that purpose u/s 10(2) of the same Act, I shall stay further proceedings in this appeal for a period of four weeks, or until such additional fee shall have been paid, whichever shall be the earlier. At the end of that period of four weeks or at such earlier time as the court-fee may have been paid, the appeal may be put into the list again. Presumably, when it is next heard, it will have to be heard before a Bench of two Judges, as it will then exceed the jurisdiction of a single Judge. It is not necessary for me now to deal with any question of costs. They can be dealt with

when the appeal is finally disposed of.