

(1922) 08 PAT CK 0010

In the Patna High Court

Babu Ram Sekhar Prasad Singh and Others

APPELLANT

Vs

Sheonandan Dubey and Others

RESPONDENT

Date of Decision : 01-08-1922

Acts Referred:

SUITS VALUATION ACT, 1887 — Section 3, 4

Citation : AIR 1923 Patna 137 : 68 Ind. Cas. 316

Hon'ble Judges : Dawson Millar, C.J;B.K. Mullick, J

Bench : Division Bench

Judgement

B.K. Mullick, J.—The plaintiffs allege that they held under the proprietor, defendants Nos. 4 to 18, a holding of 11 bighas, 3 kathas, which, by private partition, has been split up into three sets of parcels, Survey Plots Nos. 253 and 72 being allotted to defendant Nos. 4 to 14, Survey Plots Nos. 253 1136 and 263 to defendants Nos. 15 to 17, and plot No 177 to defendant No. 18. The rent of plat No. 253 is shown in the Record of Rights as Rs. 4 2-0, where as the plaintiffs state that it is Rs. 1 13-6, and plot No. 712 is shown as kabil-lagan, whereas the plaintiffs stats that it is part and percel of plot No. 253.

2. The plaintiffs also allege that the defendants have conspired together and got the name of defendant No. 1 entered as a raiyat of the entire 11 bighas 3 kathas, although he has no interest in the same. The plaintiffs accordingly pray for a declaration that the Record of Rights is wrong. In regard to possession, they state that the defendants are resisting their possession and they, therefore, ask for confirmation of possession.

3. In the Court of the Munsif the land was valued at Rs, 100 evidently for the purpose of jurisdiction and a fee of Rs. 10 was paid upon the plaint upon the footing that the suit was for a declaration only. The Munsif dismissed the suit and the same amount of Court-fee was paid by the plaintiffs in their appeal to the Subordinate Judge.

4. The Subordinate Judge having decreed the suit, the defendants have preferred

the present second appeal and have paid the same Court fee as the plaintiffs did in the Courts below.

5. The Stamp Reporter, however, found that the market-value of the land affected was Rs. 1,239-10-6 and that an ad valorem fee was payable thereon, and, as the appellants had paid Rs. 10, he claimed a deficit of Rs. 80. There being a difference of opinion between the Stamp Reporter and the appellants the case was referred to the Taxing Officer who has affirmed the view of the Stamp Reporter and called up-on the appellants to pay the deficit. As the appellants have refused to do so, the case has been sent up to this Bench in order that final orders may be passed on the appeal.

6. Now, the first question to be decided is, whether the Taxing Officer's decision as to the amount of the Court fee due on the memorandum of appeal is final. Section 5 of the Court Fees Act would seem to conclude the matter, but the learned Vakil for the appellants before us contends that, as the case comes u/s 7(iv)(c) of the Act, the appellants are entitled to value the relief at their own figure, that in declining to accept their valuation the Taxing Officer has exceeded his jurisdiction, and that his decision can, therefore, be revised by the Court.

7. Now, it seems to me that the wording of Section 5 is so explicit and general that it leaves the Court no option. The Taxing Officer has jurisdiction to fix the amount of fee payable, and if he decides that the valuation put by the appellants upon the relief was incorrect he has the power to correct it. Even if he has done anything which the law does not allow him to do, the Court Fees Act gives the High Court no jurisdiction to interfere with his decision as to the amount of the fee.

8. This view is also completely covered by authority. In *Balkaran Rai v. Gobind Nath Tewari* 12 A 129 : 39 CWN 1890 : 6 Ind. Dec. 831 (F. B.) it was held that a decision u/s 5 of the Court Fees Act is not open to appeal, revision or review and is final for all purposes and that no means have been provided or suggested by the Legislature for questioning it. In *Koer Karan Singh v. Gopal Rai* 4 Ind. Cas. 133 : 32 AC 59 : 6 ALJ 972 it was held that the decision of a Taxing Officer as to the category within which a suit falls for the purpose of ascertaining the proper amount of Court-fees payable on a memorandum of appeal, as also his decision as to the amount of fee, "is final and binding upon the Court u/s 5 of the Court Fees Act and that the Court cannot go behind the order of the Taxing Officer to examine the method which he adopted to arrive at his decision, This Court also has uniformly adopted this view of Section 5 and, I think, it is too late for the appellants to attack the Taxing Officer's decision on the ground that he has illegally assumed jurisdiction. See *Lagan Burt Kuer v. Khakhan Singh* 43 Ind. Cas. 962 : 3 PLJ 92 and *Chanderbati Kuer v. Gorey Lal Singh* 52 Ind. Cas. 508 : 4 PLJ 700.

9. Then it is contended that the Taxing Officer has jurisdiction only to deal with fees payable under Chapter II and that as the fee now demanded is one payable

under Schedule I of the Act, it is not a fee in respect of which his decision is final, The reply to this is, that Schedule I is merely supplementary to Section 7 : it is a table provided for ready reckoning and indicates how the ad valorem fee prescribed by Section 7 is to be calculated.

10. But, apart from this preliminary point, I think it is quite clear that the Taxing Officer's procedure was perfectly correct and that his decision must be affirmed,

11. The plaintiff pray for a declaration and for confirmation of possession. It may be Contended that the prayer for Confirmation of possession is nothing more than a prayer that the fact of, and his right to, possession may be declared but the words "confirmation of possession" have now acquired a technical meaning and include a prayer for reconvey of possession if the Court thinks the plaintiff is out of possession; and it is for this reason that for over half a century confirmation of possession has been held to be consequential relief within the meaning of Section 7(iv)(c) of the Court Fees Act. See *Bohuroonissa Bibi v. Kureemoonissa Khatoon* 19 W. Rule 18, *Jhuman Kamti v. Debu Lal Singh* 16 Ind. Cas. 898 : 22 CLJ 415 *Dina Math Bas v. Rama Nath Pas* 34 Ind. Cas 702 : 23 CLJ 561.

12. I have been unable to discover how and when this form of pleading originated but, at the present time, I think, it is indisputable that, though it may be often unnecessary to ask for it, a prayer for confirmation of possession is added as an useful precaution against failure to prove possession up to the date of the suit. In the present case the plaintiff states in paragraph 15 of his plaint that, owing to the resistance of the defendants, he is compelled to bring a regular suit. This is, therefore, in essence a suit for possession which is a form of consequential relief.

13. That being so, how is the consequential relief to be valued in this case? Are the plaintiffs entitled to put their own valuation or is the Court or, in a High Court, the Taxing Officer competent to correct such valuation?

14. The learned Vakil for the appellants relies upon various decisions in the High Courts of Bombay and Madras and of the Chief Court of the Punjab which, though affirming the principle that the plaintiffs' valuation must be accepted, do not seem really to cover the case now before us. I proceed to refer to these briefly.

15. (1) *Parathayi v. Sankumani* 15 M 294 : 5 Ind. Dec. 556 In this case the plaintiff sought to set aside a deed of sale of which the consideration was Rs. 60,500. He paid a Court-fee of Rs. 10 only as on a declaratory suit but the Court held that he must pay ad valorem fee on the value of his interest on the document.

16. (2) *Samiya Matali v. Minammal* 23 M 490 : 10 MLJ 24C : 8 Ind. Dec. 744. In this case the plaintiff sued to set aside a, sale-deed and valued his relief at Rs. 800. The Trial Court assessed the value at Rs. 2,000, the amount mentioned in the sale-deed. The High Court on second appeal held that the plaintiffs'

valuation should be accepted, The report does not show whether in the opinion of the Court that was the proper valuation of the relief.

17. (3) Vachhani Keshabhai v. Vachhani Nanbhu Bavaji 1Ind. Cas. 108 : 33 BC 307 : LT 11 Bom 30 : 5 MLT 210. The plaintiffs prayed for a declaration of title to certain lands,; recovery of a sum of Rs. 637 being their share of the income for the years 1956-1960, Sambat and for an injunction. They valued the first relief at Rs. 130, the-second at Rs. 637 8. and the third at Rs. 25. The High Court held that both for Court-fess and jurisdiction the plaintiffs' valuation must be accepted and that notwithstanding the defendants' objection that the property was worth Rs. 5,000 the suit was triable by a Second Class Subordinate Judge whose jurisdiction was confined to suits less than Rs. 5,000 in value.

18. Their Lordships, however, were of opinion that the valuation would be determinable by the Court if a claim for possession were, made and on this ground they distinguished the previous ruling of their own Court in Dayaram. Jagjivan v. Gordhandas Dayaram 31 B. 73 : 8 Bom. L.B. 885.

19. (4) Sunderbai v. Collector of Belgaun 52Ind. Cas. 97 : 43 B 376 : (1919) MWN 254 : 23 CWN 758 : 21 Bom L 1148 :LR 46 I. A. 15. This was a suit for a declaration and an injunction. Their Lordships of the Privy Council cited with approval the observation of the Bombay High Court that jurisdiction should be determined by the plaintiff's valuation.

20. (5) Barru v. Lachkman 22Ind. Cas. 503 : 228 PW 1913 : 111 PR 1913 : 23 PLR 1914. In this case the plaintiffs sought a declaration and an injunction and valued the relief at Rs. 130 for purposes of Court fee and at Rs. 1,100 for purposes of jurisdiction though the value of the land was Rs. 73,192. A Fall Bench of the Punjab Chief Court held that as the case fell within Section 7(iv)(c) of the Court Fees Act the valuation was proper.

21. (6) Hai Sanker Dutt v. Kali Kumar Patra 32 C 734 : 9 CWN 690. In this cafe the plaintiff sought a declaration of title to some jangle land, damages for the cutting of some trees and an injunction. He valued the declaration together with the injunction at Rs. 130, and the damages at Rs. 79. The High Court of Calcutta held that though the value of the whole jungle was Rs. 1,200, it was neither the duty nor within the power of the Court to ascertain the value of the property for purposes of jurisdiction.

22. It will be observed that none of the easements relate to possession. They would all seem to relate to claims in which the Court had no option but to accept the plaintiffs' valuation. No case has been shown to us where there was a claim for possession and where the plaintiff was allowed to put a valuation upon it which the Court knew to be false.

23. On the other hand, it was observed by, Richards, C. J., in Jageshra v. Durga Prashad Singh 24Ind. Cas. 679 : 12 ALJ 44 : 36 A 500 that subsection 7, Clause (iv) (c) requires that the plaintiff shall truly state the value of his relief; to the same

effect is *Umatul Batul v. Musammat Nanji Koer* 11 CWN 705 : 6 CLJ 427 *Krishna Das Laha. v. Hari Charan Banerjee* 10Ind. Cas. 705 : 14 CLJ 47 : 15 CWN 823 and *Raj Krishna Dey v. Bepin Behary Dey* 17Ind. Cas. 162 : 16 CLJ 194 : 17 CWN 591 : 40 C 145 and in the High Court at Patna the authorities are unanimous that it is not open to the plaintiff to give an arbitrary and incomes Valuation--see *Brij Krishna Das v. Murli Rai* 56Ind. Cas. 316 : 4 PLJ 703 *Shama Pershad Sahi v. Sheoperson Singh* 41Ind. Cas. 95 : 5 PLJ 394 : 2 PLW 1173.

24. In this state of the authorities I think the Taxing Officer was dearly right in following the practice prevailing in this Court.

25. Apart from authority, it is also quite clear that the interpretation put by the appellants on Section 7(iv)(c) cannot be accepted; for if pushed to its logical conclusion it would lead to manifest absurdities. It is admitted that a suit for declaration of title and recovery of possession is a suit for declaration with consequential relief. If the section is to be literally construed, then, while a plaintiff suing simply for possession would, u/s 7(v) have to pay ad valorem fees on the value of the property, he would, by joining a prayer for declaration, pay an ad valorem fee on whatever smaller value he chose to put upon the consequential relief. Again, when a plaintiff had valued his prayer for nonsequential relief at a certain figure in his plaint and had failed in the trial Court, it would have been open to him in appeal to value the consequential relief at any lower figure he might choose. These inconsistencies and anomalies would not occur if the section were held to mean that the valuation for the purposes of Court-fee is to be made in the first instance by the party concerned but is finally determinable by the Court.

26. The next question is, what is the proper value of the consequential relief in this case. No rules have been made under sections 3 and 4 of the Suits Valuation Act in this Province for the valuation of an interest in land which is the subject-matter of a suit u/s 7, clause (to) of the Court Fees Act. Sections 3 and 4 of the former Act provide for the valuation of land for the purposes of jurisdiction and u/s 8 the value as determinable for the computation of Court fees is to be the same as the value for the purposes of jurisdiction. No rules having been framed, we must look to the value of the subject matter of the relief, that is to say, the money value of the loss which the plaintiffs apprehend; and in this case we must follow the practice of this Court and assess the value of the relief at the value of the 11 bighas 3 kathas, in respect of which possession is claimed. The Taxing Officer finds that in 1910 the plaintiffs purchased the entire holding of 11 bighas 18 kathas at a Civil Court auction sale for Rs. 1,323-10-6 and that the proportionate value of the 11 bighas 3 kathas is Rs. 1,239-10-6. The ad valorem fee payable upon this sum is Rs. 90 and there is, therefore, a deficit of Rs. 80 in the present case. It may be that the value of the property at the time of the suit was less, though this is not probable, than its value 8 years earlier, but the appellants had an opportunity of proving its real value before the Taxing Officer, and as no proof was given we are not in a position to say that the Taxing

Officer's decision is incorrect. I think, therefore, that his decision must be affirmed.

27. The learned Vakil for the appellants desires two days' time to pay the deficit Court-fee. If the amount is not paid by the 3rd instant the appeal will be dismissed without farther reference to a Bench.

Miller, C. J.

28. I agree.