

(1925) 04 AHC CK 0044
In the Allahabad High Court

Chunni Lal and Others

APPELLANT

Vs

Sheo Charan Lal Lalman and Others

RESPONDENT

Date of Decision : 20-04-1925

Acts Referred:

Citation : (1925) 04 AHC CK 0044

Hon'ble Judges : Sulaiman, J;Boys, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sulaiman, J.—The preliminary question raised on behalf of the respondents is that the valuation of this appeal is improper. The appeal arises out of a suit for dissolution of partnership which was valued by the plaintiffs for purposes of jurisdiction at Rs. 4,500. The plaintiffs claimed that the partnership may be dissolved and that the defendants may be made to render an account and they asked for a decree for Rs. 4,500 and interest thereon or for any sum which may on account be found due. The Court of first instance found that the partnership had been dissolved more than three years before the suit and the claim was barred by limitation. It accordingly dismissed the suit in due. The plaintiffs appealed to the District Judge who took the view that the partnership had not been dissolved on the date of the filing of the suit. He also found that all the defendants were liable as partners. He accordingly reversed the decree of the first Court and directed that a decree be drawn up under Order 20, Rule 15, declaring that the partnership shall stand dissolved on the date of his judgment and declaring the shares of the parties as proved and directing the defendant Chunni Lal to render accounts on or before the 15th of July 1924. The appeal before the Judge was valued by the plaintiffs at their original valuation.

2. Chunni Lal and two other defendants have appealed to this Court from the preliminary decree. They have valued the appeal at Rs. 550 and paid a Court-fee of Rs. 41-4-0.

3. The learned vakil for the respondents has urged before us that the appeal has been wrongly valued. We may note that at the time when the appeal was presented the stamp reporter of this Court took no objection to the valuation) nor to the amount of Court-fee paid, and that there has been in this case no reference to the Taxing Officer or the Taxing Judge at all.

4. The first point to see is whether it is open to the respondents to raise such an objection. I think that the plaintiffs-respondents can raise this objection at the hearing of the appeal because the valuation affects not only the jurisdiction of the Court, but also the amount of costs and legal fees which would be taxable in a case. Where there has been a reference to the Taxing Officer or the Taxing Judge the question of insufficiency of the Court fees as paid on the memorandum of appeal, cannot be raised again at the time of the hearing of the appeal for Section 5 of the Court-fees Act would clearly be a bar to any such re-consideration. But where no reference u/s 5 has been made at all the Court hearing the appeal must decide it. This was the view clearly expressed by the Calcutta High Court in the case of Jugal Pershad Singh v. Parbhu Narain Jha (1910) 37 Cal. 914 with which I fully agree. A similar question arose before a Full Bench of the Madras High Court in the case of Dhupati Srinivasa Charlu v. Perindevamma (1916) 39 Mad. 725 and the Bench itself decided it.

5. The main question is whether it was open to the defendants to put a valuation different from that fixed by the plaintiffs in their plaint. The question is not free from difficulty because there is a clear conflict of opinion between the various High Courts. The Madras High Court has clearly laid down that the valuation once fixed by the plaintiff must be adhered to at subsequent stages, unless, of course, the identity of the subject-matter is different, vide the cases of Samiya Mavali v. Minammal (1900) 23 Mad. 490 and Dhupati Srinivasa Charlu v. Perindevamma (1916) 39 Mad. 725. The Punjab High Court in the case of Kunjimal v. Parna Lal (1915) 7 P.R. 1915 and the Calcutta High Court in the case of Bunwari Sal v. Daya Sunker Misser (1909) 13 C.W.N. 815 had inclined towards the same view.

6. On the other hand there is an observation of Tudball, J., in the case of Bhola Nath, In the matter Of (1910) 32 All. 517 which supports a contrary view, though it was not necessary to decide that point in that case. But in the case of Kanhaiya Lal and Another Vs. Seth Ram Sarup, Piggott, J., was of opinion that the view of the Full Bench of the Madras High Court was not correct. The case of this High Court has been followed by the Patna High Court in the case of 4 P.L.T. 638.

6. I may point out that the cases in ILR 44 Allahabad, p. 542, and 4 Patna Law Times, p, 638, are slightly distinguishable because in those cases the defendants, when appealing, had not appealed from the whole decree, but had admitted their part liability. Thus the identity of the subject-matters in the first Court and in the Court of appeal was not the same. It may, therefore, be said that as there was no valuation by the plaintiff of the subject-matter in dispute in appeal it was open to the defendant to value it according to his own estimate,

whereas in the present case the subject matter in the suit and in the appeal is identical. In the appeal the relief claimed is that the decree of the Court of first instance dismissing the suit in toto should be restored.

7. The difficulty is really due to the circumstances that the amendments of the Court-fees Act have not kept pace with the amendments of the Code of Civil Procedure. In 1870, when the Court-Fees Act was passed, Act No. VIII of 1859 as amended by the Act of 1860 was in force. Under those Acts there was no such thing as a preliminary decree distinct and separate from a final decree. Thus although in a suit disputes might arise as regards the valuation, the matter was bound to have been determined by the time the decree came to be passed. Thus for purposes of appeals it was sufficient to say "according to the amount of value of the subject-matter in dispute." And that is why, although there were elaborate provisions as regards the valuation of suits, there were very few for valuation of appeals. There was not even any general section under which principles applicable to suits were made applicable to appeal. Since then the CPC has undergone a marked change. In some cases there can be a preliminary decree followed by a final decree and an appeal is allowed from the preliminary decree even before any final decree is passed and thus the true value of the subject-matter in dispute may remain unascertained while appeals from preliminary decrees are preferred. The language of the old Court-fees Act is now to be applied to a state of things which could not have arisen in the same acute manner when the Act was passed. Furthermore the drafting of some of the sections was not quite happy, as a number of anomalies have crept in which I may briefly point out. Chapter II has the heading "Fees in the High Courts and in the Courts of Small Causes at the Presidency Towns." This obviously applies to all High Courts, as Section 5 of this chapter is invariably applied to the High Courts other than those at the Presidency towns. Chapter III has the heading "Fees in other Courts and in Public Offices." If these headings were to be accepted as accurate it would seem that Chapter III does not relate to matters pending in High Courts at all; but we find that Chapter III contains many important sections which have invariably been applied to appeals filed in the High Courts. I may refer to the methods of calculating amounts payable under Sections 7 and 8 of that chapter, the decision of question as to valuation u/s 12, the power to order refund of fee paid on memorandum of appeal u/s 13 as well as other sections of Chapter III. Courts have invariably applied these sections contained in Chapter III to appeals pending in High Courts though there is no specific provision in the Act under which these sections are made applicable to appeals in the High Court and though the heading of that Chapter points to a contrary direction.

8. But it is well-known that in construing a statute the headings are to be ignored and it is only the sections which the Courts are called upon to interpret as being the substantive part of the enactment. I must, therefore, in accordance with the uniform practice of all High Courts hold that the principles contained in Section 7 of Chapter III are applicable also to appeals before the High Courts.

9. Another anomaly is that the opening portion of Section 7 relates to suits and yet there is no other section in the Act which says that principles governing suits will also govern appeals.

10. A further anomaly is that although in Section 7, Sub-Clauses (1), (2), (3), (5), (7), (8), (9), (10) and (11) there is no mention of a memorandum of appeal, Sub-Clause (4) of that section specifically mentions plaint or memorandum of appeal.

11. And lastly, although Sub-clause (4) refers to plaint or memorandum of appeal the last two lines of that sub-clause refer to the plaintiff and do not expressly mention the appellant.

12. The view of the Madras High Court is that in cases where the subject-matter in dispute is not capable of being valued exactly the plaintiff's valuation must be accepted and the defendant should not be allowed to alter it at subsequent stages. This of course cannot be accepted in its widest scope for it is well known that if the plaintiff has valued his claim at a certain figure but the decree passed by the first Court is for a smaller amount the defendant in appeal is not bound by the valuation in the plaint. The other view of the Madras High Court that the valuation by the plaintiff in his plaint and by the defendant in appeal ought to be the same where the subject-matter in dispute is identical has certainly some force. After all it is the plaintiff who puts forward a claim, whether it is a true one, a false one or an exaggerated one. The subject-matter in dispute is the amount claimed by the plaintiff no matter whether that claim is just or unjust. It would therefore seem quite reasonable to say that when the subject-matters are identical the defendant ought to value his appeal according to the valuation put by the plaintiff in his plaint which really represents the amount claimed by him whether the defendant admits it or not.

13. On the other hand it must be conceded that in cases coming u/s 7, Sub-clause (4) the valuation made by the plaintiff of the subject-matter in dispute is often an arbitrary one and particularly in a case falling under Sub-clause (4)(f) the valuation is a tentative one, it not being known at the time what would be the exact amount found due to either party after the accounts are taken. If under such circumstances the plaintiff fixes a figure arbitrarily and haphazardly which no considers may be found due on account being taken, there is no just ground why the defendant when appealing should be tied down to this haphazard estimate when on the face of it the valuation is merely tentative.

14. It is a sound rule of interpretation that Fiscal Acts should be construed strictly against the Government. The present defendants cannot be called upon to put a higher valuation on their appeal and consequently to pay a larger sum of Court-fees unless the provisions of the Court-fees Act clearly require it. Schedule I, Article 1 requires an ad valorem fee on the amount or value of the subject-matter in dispute on a memorandum of appeal not otherwise provided for in the Act. The present appeal falls u/s 7, Sub-clause (4)(f) and therefore the amount

of fee payable is to be computed according to the " amount at which the relief sought is valued in the plaint or memorandum of appeal." Taking the words literally the defendants have valued the relief which they seek in their memorandum of appeal at Rs. 550. They can, therefore, be called upon to pay Court-fees on that amount only. The question remains whether there is anything else in thin section which justifies a contrary conclusion. The last words. "In all such suits the plaintiff shall state the amount at which ho values the relief sought" do not entitle us to import into the section words to the following effect and the amount stated by the plaintiff shall be the amount or purposes of memorandum of appeal." It is true that the legislature has omitted to say that the appellant shall state the amount at which he values the relief sought in the appeal and has merely required the plaintiff to state it although Sub-clause (4) clearly refers both to the plaint and the memorandum of appeal. But this omission does not justify an inference that the memorandum of appeal must necessarily have the same valuation as the plaint. It is unnecessary to speculate as what might possibly have been the reason for omitting the word "appellant" from the last two lines. It is sufficient to slay that the defendant cannot be called upon to pay Court-fees on the amount of valuation given by the plaintiff when the language of the section does not clearly DO demand. The statute must be construed in favour of the defendant who has to pay the Court-fees. If the legislature considers that the language is defective it is for the legislature and not the Court to cure the defect. The words must be interpreted as they stand.

15. It follows that in cases where the valuation has of a necessity to be arbitrary and tentative the person who has to present a petition of plaint or appeal and who is called upon to pay the necessary Court-fees will have to fix the valuation, and unless the Court is of opinion that the valuation has been put down fraudulently it will be difficult not to accept the valuation so made.

16. I am conscious of the fact that in some cases this interpretation of the section will be unsatisfactory and may lead to inconvenience, e.g., the plaintiff may value his suit for accounts at a certain figure in the first Court and may succeed, the defendant when appealing may value it at another figure and then the plaintiff in coming up in second appeal will have to re-value it at the original figure. The absence of uniformity is likely to be embarrassing but the result is due to the drafting of the section as it stands.

17. I am accordingly of opinion that although it was not absolutely necessary for Piggott, J., in the case before him to go to the ex-tent to which his remarks point, because in that case the defendant was appealing from part of the decree only, the view taken by him as to general principles governing valuation was quite correct. I am, therefore, unable to accept the view expressed by the Full Bench of the Madras High Court in ILR Mad 725 and must hold that the valuation made by the defendants cannot be challenged, and that accordingly there is no deficiency in the amount of the Court-fee paid.

Boys, J.

18. This was a suit for dissolution of partnership and accounts. The plaintiff valued the suit at Rs. 4,500. The defendant pleaded limitation and that nothing was due. The trial Court dismissed the plaintiff's suit on the ground that it was barred by limitation. In his appeal the plaintiff again valued his appeal at Rs. 4,500. The lower appellate Court held that the suit was not barred by limitation, and passed a preliminary decree for accounts.

19. The defendant has appealed here against the whole decree of the lower appellate Court and asks for restoration of the decree of the Court of first instance. He has valued his appeal not at Rs. 4,500, the valuation put on the suit and on his own appeal by the plaintiff, but at Rs. 550 and has paid Court-fee thereon. On behalf of the plaintiff-respondent objection is taken that the valuation of the appeal should be Rs. 4,500.

20. We have then u/s 12 of the Court-fees Act VII of 1870, to determine the question of right valuation. I may note here that the heading to Chapter III suggests that it does not apply to High Courts, but there is internal evidence in the chapter itself that some of the sections at any rate do so apply; and of course, the headings have no binding force in interpreting the sections. The case is admittedly governed by Section 7, Sub-section 4, Clause (f) of the Court-fees Act. That section runs as follows, so far as is material for the present purposes:

The amount of fee payable under this Act shall in suits for accounts be computed accordingly to the amount at which the relief sought is valued in the plaint or memorandum of appeal; in all such suits the plaintiff shall state the amount at which he values the relief sought.

21. In 39 Madras 725 Full Bench case, there was a preliminary decree for accounts followed by an appeal against the whole preliminary decree. The Full Bench following 23 Madras 490 and 13 Calcutta Weekly Notes 815, held that the defendant was bound by the plaintiff's valuation. I note here that Wallis, C.J., who delivered the very brief judgment of the Court was one of the Judges who had referred the case to the Full Bench on the ground that they felt some doubt about the correctness of the decision in 23 Madras 490; and further that the Full Bench was chiefly influenced apparently by the consideration that the decision in 23 Madras 490 had been consistently acted on. Further it may be noted that; 23 Madras 490 was a case u/s 7IV(c) while 13 Calcutta Weekly Notes 815 was a case u/s 7, Sub-section (i). The next case is a judgment of Mr. Justice Piggott, reported in 44 All. 542 in which the appeal was only against a portion of the decree. The defendant did not deny his liability to render accounts, which liability he had all along admitted, but he took exception to the decree and contended that it ought to have contained specification of the period over which the liability to render accounts should extend and the adjudication of a question which the defendant had raised as to the period of limitation applicable to the portion of the plaintiff's claim. Mr. Justice Piggott held that it was open to the defendant-appellant to fix his own valuation and this decision was followed in 4 PLT 638; 75 Ind Cas 871. In this latter case the defendant appealed against only so much of

the preliminary decree for accounts as gave the plaintiff a right to examine and criticize the accounts. It was held that the relief sought by the defendant was not capable of an exact estimate and that the Court-fees Act, Section 7, Sub-section IV, Clause (f), left the defendant-appellant free to fix his own valuation. This brings to the year 1923; since when the matter does not appear to have come before the Courts.

22. It will be seen that the decision of Mr. Justice Piggott and that note in the Patna Law Times did not cover the exact point before us. The question in those cases was as to the correct valuation and who should make it when the defendant had appealed only from a portion of the preliminary decree. The case we have before us is an appeal from the whole decree. Such a case is to be found in 39 Mad 725 in which the decision was adverse to the defendant-appellant and he was held bound by the plaintiff's valuation; but I have already discussed that case, and am unable to obtain much assistance from it.

23. A consideration of all the sub-sections of Section 7 would suggest that there is distinction to be found between the suit mentioned in Sub-section IV and the other sub-sections of Section 7 in that in the other sub-sections the suit is of a nature that permits of some measure of valuation being fixed upon which is independent of the sole volition of one of the parties, while in Sub-section IV it would be very difficult, probably impossible to find any such measure of valuation; and it is probably with this in mind that the legislature inserted in Sub-section IV the provision that "the plaintiff shall state the amount," merely in order to give a starting-point and not with any intention one way or the other that it should not or should govern the appeal whether from the preliminary or the final decree. As to the valuation for the purposes of appeal, the legislature did not then intend to say, and has not said, anything as to how the valuation should be arrived at. If this view of what was and what was not present in the mind of the legislature be correct, it may be the answer to the doubt expressed by Piggott, J., in 42 All. 542 at 545 where he said, "It is no doubt a little difficult to understand why the legislature should have felt it necessary to add this proviso in respect of the plaintiff without in express terms laying any analogous obligation upon the appellant."

24. I do not, therefore, in deciding by whom and how the appeal is to be valued feel myself influenced one way or the other by the omission in the section of words which Mr. Justice Piggott rightly says might in a certain view have been expected; and I have merely to consider what is an equitable decision in face of the silence of the statute, basing my decision on general principles, if I can find any such.

25. At first sight what appear to be three distinct cases present themselves for consideration:

(a) Where the defendant appeals against only a part of the preliminary decree; and

- (1) the plaintiff has not separately valued the two liabilities;
- (2) the plaintiff has separately valued the two liabilities;
- (b) where the defendant appeals against the whole preliminary decree.

26. I will consider first the case (a) where the defendant appeals against only a part of the preliminary decree; and will then consider whether there is any distinction in the principles applicable between it and case (b) is not case (a) analogous to the case where a decree in a suit for money having declared his liability in regard to determined amounts under two heads X and Y, the defendant is content as regards X to accept the decree; but as regards Y he appeals. He has to pay Court-fee only as to Y. He accepts one ascertained liability and objects to another. Similarly, where he appeals against only one condition affecting his alleged liability under a preliminary decree and temporarily accepts the other, there appears no reason why the same principle should not be applicable? Why should he not be made to pay on the valuation of the liability to which he objects and absolved from paying on the valuation of the liability which he temporarily accepts?

27. The next question for determination is how is the valuation of the liability to which he objects to be made separately? Here again two cases may arise:

- (1) Where the plaintiff has not separately valued the two liabilities:
- (2) where the plaintiff has separately valued the two liabilities.

28. In case (1) i.e., where the plaintiff has not separately valued the two liabilities, just as in the cases included in Section 7, Sub-section IV, the legislature had, in the absence of any other available measure, to leave it to the plaintiff to value his suit, so in the absence of any other measure it must be left to the appellant to value the liability against which he appeals. And therefore I find myself in agreement with Mr. Justice Piggott who had this particular case before him. This course further gives a meaning and scope to the words "memorandum of appeal" at the end of Section 7, Sub-section (IV).

29. Case (a)(2), where the defendant appeals against only a part of decree and the plaintiff has already in his suit separately valued the two liabilities; and case (b) where the defendant appeals against the whole preliminary decree (and this last is the present case before us) remain. Is there any real distinction between the principles applicable to these two cases and to that in which, as I have already held in agreement with Mr. Justice Piggott, the defendant must be allowed to put his own valuation?

30. I can find no reason for any variation in principle, if I am right in the view that I have already expressed that no conclusion of any sort; on this point can be drawn one way or the other from the last two lines of Section 7, Sub-section IV.

31. Again, it is not difficult to see that it might not be easy to determine in every case whether the appeal is to be regarded as an appeal against the whole

preliminary decree or an appeal against part only of the decree. The appellant might easily refrain from appealing against an entirely negligible portion of the decree against him solely with the deliberate intention of evading the rule if such rule were found to be law, that he must value at the total valuation made by the plaintiff if he appealed against the whole decree. I do not find in principle any marked dividing line.

32. Further, with the law as now worded, the desirability of uniformity reinforced by the equitable consideration referred to by Mr. Justice Piggott in 44 All. 542 would suggest that the appellant should be allowed to put his own valuation on his appeal in these two cases also.

33. The result is that I hold that the defendant-appellant is entitled to put his own valuation on the relief that he seeks.

Sulaiman and Boys, JJ.

34. This is a suit for dissolution of partnership and accounts. The trial Court held that, as a matter of fact, the defendants were joint in family, mess and estate, and that the family was also joint in business, and in this business in particular. It further held that the partnership had, in fact, dissolved by the closing up of the partnership business more than three years before the date of suit and therefore dismissed the plaintiff's claim. But the lower appellate Court, while agreeing with the other findings of the first Court, decreed the plaintiffs' appeal relying chiefly on Exhibits 1 and 2 in which it was stated, according to the lower appellate Court's reading that the partnership was not to an end until all accounts, etc., had been settled up. It, therefore, held that the mere cessation of the business did not amount to the dissolution of the partnership and that the suit was not barred by limitation. We have been addressed really on only two points.

35. The first of these is as to whether the partnership was really dissolved or not at the time the business closed. The words used in the notice given by the plaintiff himself were that 18 months before the date of the notice which was given on the 19th of June 1919, "dukan utha di gai" and "karobar band ho gaya," It has been much pressed upon us that this was an admission of a dissolution of the partnership. We are of opinion that such an interpretation; is justified in view particularly of the special contract as set out in Exhibits 1 and 2. The notice in view of those exhibits was really nothing more nor less than an allegation that all new dealings had, in fact, ceased. Now, if the partnership had dissolved it must have dissolved in one way or another recognized by and known to the law. It is admitted that a partnership existed. The plaintiff alleged that it continued to exist, it clearly did continue to exist, until it was in some way or another dissolved. In the circumstances the burden was heavily on the defendant to show that it had dissolved. He would in any circumstances have found this burden very difficult to discharge in face of the express terms of Exs. 1 and 2 in which it is in so many words declared that the defendant shall not leave the business until all accounts, etc., have been settled up. Apart even from this, we find that there is

no provision in law for a dissolution of the partnership being brought about merely by one partner neglecting to do anything further towards the carrying on of the objects of the partnership. That is all that appears to have happened in this case. A partner can retire; but if so, it is clear that that retirement can only be by one upon notice to the other side. In face of the particular terms of Exs. 1 and 2 it may be doubted whether the defendant could even have retired until he had settled up all accounts. In any case it is clear that in this case no notice of his desire to retire from the partnership was even given by the defendant. We hold therefore, that both on the general circumstances of the case, and in view of the terms of Exs. 1 and 2, it is clear that the partnership had not dissolved and that the suit was not barred by limitation. The second point that was urged before us, and is supported by a certificate, is that there was no evidence that the family was joint or that the business of partnership was entered into by the father as the head and manager of the family. Both the lower Courts seem to have read the evidence as if it did establish the fact that the business was on behalf of the family. But we have had the only evidence which has been referred to by the lower Courts or pointed out to us, here read to us, and it does not appear to us to go further than to suggest that the defendants said to the plaintiff : "You see our family, and that we are people of substance." We need not, however, enter further into this matter as Mr. B.K. Mukerji, on behalf of the plaintiffs respondents, says that he will be content to have a decree passed against the father alone. We do not in any way decide the question of the liability of the son of Chunni Lal under the Hindu Law in respect of his father's debt. For the above reasons we allow the appeal to this extent, that we modify the decree of the lower appellate Court by dismissing the suit against the defendants other than Chunni Lal. The appeal of Chunni Lal is dismissed. The parties will bear their own costs of this appeal. No Court-fees are necessary.