

(1956) 05 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 1 of 1956

Dhuru	Vs	APPELLANT
Chandu Ram and Another		RESPONDENT

Date of Decision : 14-05-1956

Acts Referred:

Court Fees Act, 1870 — Section 7(iv)(f)
Suits Valuation Act, 1887 — Section 11, 8

Citation : AIR 1957 HP 29

Hon'ble Judges : Ramabhadran, J.C.

Bench : Single Bench

Advocate : K.L. Mehra, for the Appellant; D.R. Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

Ramabhadran, J.C.

1. This revision petition, by a defendant, arises out of an appellate decision of Sri Lachhman Dass, Senior Subordinate Judge, Mandi, in a suit for rendition of accounts. On 14-3-1956, the revision petition was admitted on the following two points (a) Whether the Senior Subordinate Judge had jurisdiction to decide the appeal on 19-9-1955, in view of this Court's notification dated 15-9-1955 withdrawing appellate powers from Senior Subordinate Judges in Himachal Pradesh? (b) Whether apart from the above notification, the Senior Subordinate Judge had jurisdiction to hear the appeal, i. e. since the appeal arose out of an unclassified suit, exceeding Rs. 100/- in value?
2. Arguments of the learned counsel for the parties were heard on the 3rd instant at Mandi. I now proceed to deliver judgment.
3. (a) Mr. Mehra for the petitioner argued that Sri Lachhman Dass had no jurisdiction to decide the appeal, because his appellate powers were withdrawn on 15-9-1955, vide this Court's Notification No. J.C. 6 (31)/49 of that date. Judgment was delivered by Sri Lachhman Dass on 19-9-1955, i. e. four days

after his appellate powers had been withdrawn. Mr. Mehra further pointed out that the notification, withdrawing appellate powers from Senior Subordinate Judges, was published in the State Gazette on 17-9-1955. This, he contended, amounted to adequate notice to all concerned. It was, therefore, urged that it was incumbent upon Sri Lachhman Dass to return the appeal for presentation to the learned District Judge of Mandi for disposal.

Mr. D.R. Chaudhary for the respondents argued that since the appeal was filed in the Court of Sri Lachhman Dass, while he possessed appellate powers, and arguments on the appeal were concluded on 12-9-1955, i. e. before the appellate powers were withdrawn, he had jurisdiction to decide the appeal. In this connection, Mr. Chaudhary cited (i) *In re Hargulal v. Abdul Gany Hajee Ishaq* AIR 1936 Ran 147 where a Full Bench of that High Court, with reference to the provisions of Order 20, Rule 2, held that:

"A judgment written by an ex-Judge, after he has ceased to be a Judge is valid as a judgment, which may be pronounced by his successor-in-office under Order 20, Rule 2."

(ii) *Ghulam Rasul v. Mt. Gul Jan* AIR 1943 Pes 11 where, following AIR 1936 Ran 147 *Almond, J. C.*, observed that:

"A judgment written by a Judge, who has ceased to exercise Jurisdiction, and pronounced by his successor is a valid judgment."

I was, therefore, requested to hold that Sri Lachhman Dass was competent to deliver judgment on 19-9-1955. In my view, however, it is not necessary to give a finding on this point, since, on the other point on which this revision was admitted, it is clear to me that the Senior Subordinate Judge had no inherent jurisdiction to entertain the appeal. That brings me to (b).

4. (b) The suit was one for rendition of accounts and for a decree for the sum ultimately found-due to the plaintiffs. The suit, accordingly, fell u/s 7(iv)(f) of the Court-fees Act, whereby Court-fees are payable according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. In such a suit, it is incumbent upon the plaintiff to state the amount at which he values the relief. Under the proviso to Section 3(2) of the Court-fees (Himachal Pradesh Amendment) Act, 1952, the minimum Court-fee in a suit of the above description shall be Rs. 10/-.

A perusal of the plaint shows that a court-fee of Rs. 15/- was paid thereupon, although in paragraph 7 of the plaint, it was stated that, for the purpose of jurisdiction and court-fees, the suit was "tentatively valued at Rs. 100/-. This was wrong on the face of it, because on a sum of Rs. 100/-, the court-fee payable comes only to Rs. 7/8/-. The sum of Rs. 15/-, paid as court-fee on the plaint, would connote a valuation of Rs. 200/- and not Rs. 100/-, as stated in para 7 of the plaint. It is also noteworthy that when Dhuru appealed to the Senior Subordinate Judge, he affixed court-fees worth Rs. 15/- on the

memorandum of appeal, although, in the opening-sheet, it was stated that the value of suit and appeal for purpose of jurisdiction and court-fee was Rs. 100/-.

This was also erroneous on the face of it. I notice that when the appeal was presented to the Senior Subordinate Judge, his office pointed out that court-fee paid (Rs. 15/-) connoted a valuation of Rs. 200/- and not Rs. 100/-, as stated in the plaint. Under the circumstances, doubt was expressed as to whether the appeal lay to that Court. This objection was, however, brushed aside by the learned Senior Subordinate Judge with the remark that

"the court-fee does not determine the jurisdiction. For purposes of jurisdiction both the suit and the appeal have been valued at Rs. 100/-, hence within the jurisdiction of this Court."

I am afraid the learned Senior Subordinate Judge overlooked the fact that u/s 8 of the Suits Valuation Act, which applied to the present suit, the valuation for purposes of court-fees and that for jurisdiction, must be one and the same. As already pointed out, under the local amendment to the Court-fees Act the minimum court-fee payable on a suit of this nature is Rs. 10- which would mean a valuation between Rs. 130/- & Rs. 140/-.

Having paid court-fees of Rs. 15/- of their own accord, it was not open to the plaintiffs to fix the valuation at Rs. 100/-. The appellate powers of the Senior Subordinate Judge were confined to appeals arising out of land suits or unclassified suits not exceeding Rs. 100/- in value. Therefore, it comes to this that the Senior Subordinate Judge had no jurisdiction to entertain or dispose of the appeal, because the suit was one which although shown as valued at Rs. 100/- must all the same be deemed as having been valued at Rs. 200/- in view of the court-fee of Rs. 15/- paid thereupon. It was suggested that the defect may be cured under the provisions of Section 11 of the Suits Valuation Act.

In my opinion, however, Section 11 of the above Act has no application to the facts of the present case. This was not a case of over valuation or under valuation of a suit or appeal. It was, on the other hand, a case of not noting the proper valuation, after paying the correct court-fee. In other words, the mistake was one of calculation and not of valuation. The principle laid down by Section 11, Suits Valuation Act, cannot be extended to a case like this, where there is want of inherent jurisdiction. I am supported in my view by a ruling of the former Chief Court of Oudh, reported in AIR 1942 481 (Oudh) There, the facts were that one Sita Ram sued for partition of his share in certain properties.

For purpose of jurisdiction, the plaint was valued at Rs. 5,516/7/4. The trial Court (Additional Civil Judge) decreed the suit for partition of one-third share of the property. Aggrieved by that decree, the defendants went up, in appeal, to the District Judge. In the memorandum of appeal to that Court the same valuation was given, although the value of Sita Ram's share came to only Rs. 4,430/-. The District Judge set aside the decree of the trial Court and Sita Ram went up in second appeal to the Chief Court. No objection was taken by the parties before

the District Judge that the appeal lay to the Chief Court and not to him. Nor did the District Judge himself notice it. Under the circumstances, Bennett and Madeley, JJ., held that:

"Where the first appellate Court had no pecuniary jurisdiction to entertain the appeal, its decree is a nullity and it is incumbent upon the second appellate Court to consider an objection on that ground, however late it may have been brought to its notice."

"Where the question is one of want of pecuniary jurisdiction and not of over-valuation or undervaluation, Section 11, Suits Valuation Act cannot apply. Nor can Section 21, Civil P. C., have any application as it is concerned only with territorial jurisdiction. The principle u/s 11, Suits Valuation Act, cannot be extended to a case, where there is a want of inherent jurisdiction."

5. On the same analogy, it can be said here that the Senior Subordinate Judge of Mandi had no inherent jurisdiction to decide the appeal, because as already pointed out the court-fee paid of Rs. 15/- connoted a valuation of Rs. 200/- and not Rs. 100/-, as mistakenly shown in the plaint. This was an error of calculation and not a case of undervaluation or over-valuation. Therefore, the defect cannot be cured by the principles of Section 11, Suits Valuation Act.

6. I allow this revision petition and set aside the decision of the Senior Subordinate Judge of Mandi dated 19-9-1955 in appeal No. 14 of 55. The memorandum of that appeal should be returned for presentation to the proper Court. There is no order, under the circumstances as to the costs of this revision petition. Entire Court-fee paid on this revision petition should be refunded to the petitioner under paragraph 36(2) of the Himachal Pradesh (Courts) Order.