
(1934) 08 CAL CK 0017
In the Calcutta High Court

Gajendra Nath Saha Chowdhury

APPELLANT

Vs

Sulochana Chaudhurani and Others

RESPONDENT

Date of Decision : 16-08-1934

Acts Referred:

Court Fees Act, 1870 — Section 12

Suits Valuation Act, 1887 — Section 9

Citation : AIR 1935 Cal 338 : 157 Ind. Cas. 356

Hon'ble Judges : Mitter, J;Edgley, J

Bench : Full Bench

Judgement

Mitter, J.

1. The question which we have to decide in the present case comes before us u/s 12, Court-fees Act. It appears that an appeal has been preferred by the plaintiff in a suit for restitution of conjugal rights to which is added a prayer for injunction restraining the parents and other relations of the wife from obstructing the recovery of the wife by the husband. The suit was valued at Rs. 5,001 in the Court below and a fixed fee of Rs. 15 was paid on the same and the prayer for injunction was valued at Rs. 25 and court-fees paid on the same. The suit was dismissed by the Court below and appeal has been taken to this Court by the plaintiff.

2. On the Stamp Reporter reporting that the court-fees on the memorandum of appeal was insufficient the matter was dealt with by the Registrar who is taxing officer u/s 5, Court-fees Act and he has held that the court-fees are insufficient and that ad valorem court-fees on Rs. 5,001 should be paid and that the appellant should pay the deficit both on the memorandum of appeal and on the plaint before the appeal can be further proceeded with. His decision so far as the court-fees on the memorandum of appeal is concerned is final u/s 5 of the Act and the appellant says that he is willing to pay the deficit so long as the order of the learned Registrar stands. But as stated above the Registrar has also directed the appellant to put in the deficit which would be due from the appellant on the

ad valorem scale as fees payable on the plaint in the lower Court. With reference to this order about deficit court-fees in the trial Court, the interference of this Court is sought under the provisions of Section 12, Court-fees Act. At the outset I had some doubt in my mind if Section 12 could apply to such a case seeing that it would lead to anomalous results. On the one hand, the Registrar's decision regarding court-fees on the memorandum of appeal would be final whereas if the Court did not agree with the Registrar a different result would be reached with reference to the court-fees payable on the plaint in the suit in which the appeal has arisen. But, having regard to the wide language of Section 12, Court-fees Act, it seems that we can determine the matter, notwithstanding the anomaly. It is for the legislature to cure it. We must administer the law as we find it. Section 12, in my opinion, makes the decision of the first Court as to value final as between the parties and enables a Court of appeal to correct any error as to this only when the first Court decided to the detriment of public revenue.

3. The question we have to decide is whether a fixed fee is payable or an advalorem fee. The three cases on which the learned advocate for the appellant has relied are *Golam Rahaman, v. Fatima Bibi* (1886) 18 Cal 232, *Mowla Newaz v. Sajidunissa Bibi* (1891) 18 Cal 378, *Aisha Bibi v. Faiyaz Husain* (1911) 33 All 767. These cases seem to suggest that in a suit for restitution of conjugal rights pure and simple a fixed fee is payable. When these cases were decided under Article 15, Schedule 2 a fixed fee of Rs. 5 was payable; when the case of *Jan Mahomed Mandal v. Mashar Bibi* (1907) 84 Cal 352 was decided Article 15, Schedule 2 was on the statute book, but it was repealed by Act 5 of 1908: see Schedule 5 to the Act of 1908. The following, passage from the judgment of that case would show that a fixed fee is payable in a suit for restitution of conjugal rights; *Mitra and Caspersz, JJ.*, observe this:

For fiscal purposes, the court-fee is a fixed sum under the Court-fees Act irrespective of valuation for the purposes of jurisdiction, and the jurisdiction was determined by the value put by the plaintiff.

4. It is true that in this case it has been held that in the absence of rules u/s 9, Suits Valuation Act, the plaintiffs should put any valuation he likes, but that is only for the purpose of jurisdiction and not for fiscal purposes, in other words for the purpose of stamping his plaint with the ad valorem court-fees calculated on that valuation. This would appear clear from the following passage in the judgment of the learned Judges at p. 356 of the *Jan Mahomed Mandal v. Mashar Bibi* (1907) 84 Cal 352;

Ss. 18, 19 and 24 of the Bengal, North-Western Provinces and Assam Civil Courts Act and the Suits Valuation Act, contemplate the valuation of every suit for the purposes of jurisdiction even if it is not capable of satisfactory money-estimate.

5. The question therefore is whether this is a suit for restitution of conjugal rights pure and simple between husband and wife. I have read the plaint which has been placed before us and it is clear that this is a suit for declaration that the

defendant is the legally married; wife to the plaintiff. There is no contest on that point between the husband and wife and it is true but the question that the defendant is the legally married wife of the plaintiff will have to be determined in presence of the other defendants and a declaration to that effect has to be obtained in their presence and it would appear from prayer (ka) that the plaintiff is asking for a decree in the first instance declaring that the plaintiff is entitled to restitution of conjugal rights and then for a decree directing her to live with the husband and then for an injunction on defendants 2 and 3 restraining them from preventing the wife from living with her husband. The decision in *Amirul Hossain v. Khairunnissa* (1901) 28 Cal 567 is attracted to the facts of the present case. There are passages in the decision of *Rampini and Brett, JJ.*, which would suggest that in a case of restitution of conjugal rights pure and simple where no declaration that the defendant is the legally married wife is sought for the fixed fee would be payable as would be payable under the law as it then stood.

6. The Stamp Reporter whose note we called for in this matter states that the suit really comes u/s 7(iv)(c), Court-fees Act, and if it does there can be no question that the valuation for the purposes of court-fee and valuation for the purpose of jurisdiction must be the same and in that case by valuing the relief sought at a certain figure for purposes of jurisdiction the plaintiff has committed himself to the value of the suit at that figure and it will be taken to be the proper value both for the purposes of court-fees and jurisdiction. Here the plaintiff states at the beginning of the plaint that he values the relief at Rs. 5,001 and files the suit in the Subordinate Judge's Court and by so valuing he gets an appeal direct to the High Court. But he states distinctly in para. 8 of the plaint that as under Article 17, Clause (6) a suit for restitution is incapable of valuation he will pay fixed under that article. It is difficult to say that this is not a suit for a declaratory decree, for in the prayer portion, as has been pointed out, he says that his right to be able to exercise conjugal rights be declared. But what is the substance of the plaint? In substance the plaint: (1) asks for declaration of the plaintiff's right to exercise conjugal rights, and (2) for an order that the wife may be directed to live with the husband although under C. 21, Rule 32, Civil P.C., as amended by Act 29 of 1923, a decree for restitution of conjugal rights cannot be enforced by detention in civil prison.

7. We are not unmindful of the rule that the mere form and language of a plaint is not the final test and to arrive at a sound conclusion the Court has to look beyond the mere form and verbiage of the plaint and to arrive at what is the real substance. But the plaint as framed asks in substance for declaration that plaintiff is entitled to exercise conjugal rights and injunction and before the plaintiff can get a decree for injunction as against the other defendants he will have to get a declaration that defendant 1 is his legally married wife. It may be easy to get that declaration by reason of admission of defendant 1, the wife, but still declaration has to be made in the first instance. Besides the case of plaintiff does not depend on the defence set up.

8. The suit in my opinion is a suit for a declaration that the plaintiff is entitled to exercise conjugal rights and injunction and comes within Section 7, Clause (4) (c). He has been valued his injunction at Rs. 25 and it was optional to so value the same. In *Zair Husain Khan v. Khurshed Jan* (1906) 23 All 545 has been held to lay down that the value of a suit for restitution of conjugal rights is as a rule the value which the plaintiff chooses to put upon it provided that the suit is not unwarrantedly overvalued for purposes of jurisdiction. The real question is whether the value put by the plaintiff is the value for jurisdiction as also for computation of court-fees. The rule deducible from the authorities is that in a suit for restitution of conjugal rights pure and simple where no injunction against third parties is sought for, the plaintiff's valuation will determine the jurisdiction of the Court to try it. On this point all the High Courts in India are agreed: see *Zair Husain Khan v. Khurshed Jan* (1906) 23 All 545, *Golam Rahaman, v. Fatima Bibi* (1886) 18 Cal 232, *Jan Mahomed Mandal v. Mashar Bibi* (1907) 84 Cal 352, *Jasadha v. Chotu* (1910) 34 Bom 236, and the case of *Vasireddi Veeramma v. M. Butchayya* 1927 Mad 563. In the last Madras case *Wallace, J.*, makes a very useful statement of the law in the following passage:

The general principles deducible for valuation for purposes of jurisdiction where no special method of valuation has been provided by statute, then, would seem to be (1) that where the subject-matter of a suit is wholly unrelated to anything which can be readily stated in definite money terms, then the plaintiff, having to put some money value for the purpose of jurisdiction, must put a more or less arbitrary value and there being no factors in the case from which the Court can say his valuation is wrong, or dishonest, the Court will accept that valuation. Such is the case of a suit for restitution of conjugal rights.

9. In a recent case *In the matter of Kalipada Mukherji* 1930 Cal 686, Sir George Rankin, C.J., makes the following weighty observations:

They are cases which are not easily valued and in many cases not capable of being valued in money terms on any precise principle. It does not strike me as being at all incredible that with regard to that limited class of cases the legislature should have thought it right to give to the plaintiff a certain amount of option as to the value which is to be put upon the claim, especially as I find that in certain cases the legislature has thought fit to allow people to pay a small fixed court-fee in respect of the relief claimed.

10. Ordinarily u/s 8, Suits Valuation Act, the valuation for the purposes of pecuniary jurisdiction is the same as the valuation for the purpose of court-fees except with reference to cases mentioned in that section, namely, cases which fall under 8. 7, paras. 4, 5 and 9 and para. 10, Clause (d), Court-fees Act. u/s 9, Suits Valuation Act (Act 7 of 1887):

where the subject-matter of suits of any class other than suits mentioned in the Court-fees Act 1870, Section 7, paras. 5 and 6, and para. 10, 01. (d), is such that in the opinion of the High Court it does not admit of being satisfactorily

valued, the High Court may with the previous sanction of the Local Government direct (a) that suits of that class shall for the purposes of the Court-fees Act 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

11. It is unfortunate that the High Court has not yet framed any rule u/s 9, Suits Valuation Act. In my opinion Article 17, Clause (6), Schedule 2, Court-fees Act, which prescribes the court-fee for every other suit where it is not possible to estimate at that money value the subject-matter in dispute, and which is not otherwise provided for by this Act, does not apply to the present case for the reasons given above, but it comes u/s 7 and has to be valued as a suit for declaratory decree and an injunction and the value for the purposes of jurisdiction and the purposes of court-fees is the same in both cases. The plaintiff has chosen to put the valuation at Rs. 5,001 in order to get an appeal to the High Court and he must be taken to have valued the suit both for the purposes of jurisdiction and the computation of court-fees. This decision will not make it difficult for a poor person to institute suits for declaration that he is entitled to exercise conjugal rights and to obtain an injunction for he can put any value he likes on his plaint. In this view the learned Registrar's decision seems to me to be right. The deficit in the plaint should be called for and the plaintiff ordered to furnish the deficit court-fees within a month from this date.

Edgley, J.

12. This is a matter which presents some considerable difficulty which is largely due to the fact that most of the decisions, in connexion with which the question of the valuation of suits for the restitution of conjugal rights has been considered, were decided with reference to the question as to the Court which had jurisdiction to entertain such suits, or to hear appeals in connexion with such suits. As pointed out by Mitra and Caspersz, JJ., in *Jan Mahomed Mandal v. Mashar Bibi* (1907) 84 Cal 352, the cases of *Golam Rahaman, v. Fatima Bibi* (1886) 18 Cal 232 and *Mowla Newaz v. Sajidunissa Bibi* (1891) 18 Cal 378, turned on the construction of statutes which contemplate a strict money value and not merely a valuation by a plaintiff for the purposes of ordinary jurisdiction. The same considerations appear also to govern the decision of the Court in *Aklemannessa Bibi v. Mahomed Hatem* (1904) 31 Cal 849, and even in *Jan Mahomed Mandal v. Mashar Bibi* (1907) 84 Cal 352 cited above. The main question before the Court was whether or not the District Judge was competent to entertain an appeal against a decision in a suit for the restitution of conjugal rights. In the abovementioned cases the question of the valuation of these suits for fiscal purposes was not one which came directly under the consideration of the Court. It is true that in *Jan Mahomed Mandal v. Mashar Bibi* (1907) 84 Cal 352 the judgment of the Court contained an observation to the following effect:

For fiscal purposes, the court-fee is a fixed sum under the Court-fees Act, irrespective of valuation for the purposes of jurisdiction and jurisdiction was

determined by the value put by the plaintiff, if the valuation was not unwarrantably and obviously improper,

13. It must however be remembered, with reference to this particular observation, that in 1907 when *Jan Mahomed Mandal v. Mashar Bibi* (1907) 84 Cal 352 was decided, the provision of the law which appears to have been applicable for fiscal purposes to suits for the restitution of conjugal rights, was Article 15, Schedule 2, Court-fees Act, which read as follows:

Plaint or memorandum of appeal in a suit for possession of a wife... Rs. 5

14. Article 15, Schedule 2 was repealed by Act 5 of 1908: it follows therefore that, after this appeal, the Court-fees Act of 1870, and the schedules annexed thereto, contained no express provision which directly regulated the valuation for fiscal purposes of suits for the restitution of conjugal rights. It therefore becomes necessary to examine the existing provisions of the law in order to ascertain how such suits should be valued for the purposes of the Court-fees Act. In this particular case both the Stamp Reporter and the Registrar are of opinion that the suit falls within the scope of Section 7(4)(c) of the Act. This section relates to declaratory decrees or orders in which consequential relief is prayed.

15. Although Section 42, Specific Relief Act, is not exhaustive, it contains some indication as to what should be regarded as a suit for a declaratory decree. This section lays down that any person entitled to any legal character or to any right as to any property, may institute a suit with a view to obtaining a declaration that he is so entitled. Ordinarily in a suit for restitution of conjugal rights the plaintiff asks for a declaration to the effect that he is married to the defendant. In such a case, as held in *Amirul Hossain v. Khairunnissa* (1901) 28 Cal 567 there is no doubt that Section 7, iv (c), Court-fees Act would apply. In the present suit as it has been framed, there is no specific prayer for any such declaration but it appears that the plaintiff in a suit such as the one that is now before us does, in effect, ask for a declaration that he is entitled to the society of his wife. In this connexion the remarks of Markby, J. in *Gatha Kara Mistree v. Mohita Kochin* (1875) 23 WR 179, are highly relevant. They are to the following effect:

Wherever the law recognises that the relation of husband and wife exists, it also recognises that the husband is bound to live with the wife, and the wife with the husband, and if that obligation be denied by either of the parties to the marriage the Court ought certainly to declare the right to exist. If also any person should interfere and prevent the wife from returning to her husband or the husband to the wife, there is no difficulty, as far as I can see, in punishing this invasion of the rights of others, and even in compensating the injured party to some extent. The real difficulty arises when we come to deal with a refusal to perform the conjugal duties by one of the parties to the marriage after existence of the matrimonial relation has been ascertained.

16. In the case now before us the marriage is admitted but the wife nevertheless seeks to avoid her obligation to live with her husband. The only legal method

open to him to enforce his right is to obtain a decree for the restitution of conjugal rights, which would in effect declare him entitled to the benefit of his wife's society. In such a case it does not appear to be necessary that the plaint should contain an express prayer for a declaration. In this case the plaintiff asks for a decree for the restitution of conjugal rights and as consequential relief he also asks that his wife may be directed to live with him and that her parents may be restrained from interfering with any attempt that the plaintiff may make to take her to his house. I am therefore of opinion that this suit comes within the scope of Section 7(iv)(c), Court-fees Act, and that the views of the Stamp Reporter and the Registrar as to its classification are correct. It has been argued before us at some length that for fiscal purposes a suit of this nature must be governed by Article 17(6), Schedule 2, Court-fees Act, which refers to

Every other suit, where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by this Act.

17. Even if it could be held that this case did not appropriately fall within the scope of Section 7(iv)(c), Court-fees Act, it is difficult to see how Article 17(6), Schedule 2, could in any event apply to the case now before us. As pointed out above, the earlier cases in which it was held that a suit for the restitution of conjugal rights was incapable of valuation were decided with reference to different considerations and, even with respect to the question of jurisdiction, it was recognized by Aikman J. in *Zair Husain Khan v. Khurshed Jan* (1906) 23 All 545 and by Mitra and Caspersz J J. in *Jan Mahomed Mandal v. Mashar Bibi* (1907) 84 Cal 352 that the earlier view was difficult to accept and would lead to serious practical difficulties. In this view Mitra and Caspersz, JJ. came to the following conclusion in *Jan Mahomed Mandal v. Mashar Bibi* (1907) 84 Cal 352.

We must, as pointed out by Aikman, J, read the words "incapable of valuation" as meaning incapable of satisfactory valuation, if we have to give effect to the obvious intention of the framers of the Bengal, North Western Provinces and Assam Civil Courts Act and the Suits Valuation Act.

18. It appears to have been the intention of the legislature that Article 17(6), Schedule 2 to the Court-fees Act should be very strictly interpreted, and this view seems to have been adopted by Mookerjee J., in *Banwari Lal v. Sheo Sanker Misser* (1911) 1 IC 670. In that case he held that

to bring a case within the scope of this clause, it must be established that it is not possible even to state approximately a money value for the subject matter in dispute.

19. In my opinion, it cannot be said that suit for the restitution of conjugal rights satisfies this test. It may not be possible to value satisfactorily the subject-matter of such a suit, but there are ordinarily several criteria available, to enable the plaintiff to arrive at an approximate valuation e.g. the dower, the amount which the husband may have to spend on the maintenance of his wife elsewhere than in his own house or the extra cost of domestic assistance for the

performance of household work. It was clearly in order to provide, among others, for cases of this nature that the legislature enacted Section 9, Suits Valuation Act, which refers to cases the subject-matter of which does not admit of being satisfactorily valued", an expression sufficiently wide to permit to be framed for the valuation of such subject-matter which can only be valued approximately e.g. in suits for the restitution of conjugal rights and certain other suits falling u/s 7(iv), Court Fees Act.

20. The difference in the language used in Article 17(6), Schedule 2 and that which has been employed in Section 9, Suits Valuation Act, is significant. As pointed out by Mitra and Caspersz, JJ., in *Jan Mahomed Mandal v. Mashar Bibi* (1907) 84 Cal 352, there are certain classes of suits which may for obvious reasons be really impossible to value, but, as regards suits for the restitution of conjugal rights, the true position appears to be that which was adopted by Aikman, J., in *Zair Husain Khan v. Khurshed Jan* (1906) 23 All 545, in which the learned Judge remarks as follows:

It was argued before the learned Judges that a suit for restitution of conjugal rights was incapable of being valued and this contention found favour with them. In the case before us the suit has been valued, and therefore I think that it is scarcely correct to say that such a suit is incapable of being valued. It appears to me that it would be more accurate to characterize a suit of this nature as one the subject-matter of which does not admit of being satisfactorily-valued. The Legislature (vide Section 9, Suits Valuation Act 1887, has recognised the existence of classes of suits, the subject-matter of which does not admit of being satisfactorily valued.

21. It is of course unfortunate that no rules u/s 9, Suits Valuation Act, have yet been framed by the Calcutta High Court, as the object which the Legislature seems to have had in view in enacting that section, was to provide some check, upon the practice under which the plaintiff in certain classes of cases, e.g., those u/s 7(iv), Court-fees Act, sometimes puts a purely arbitrary valuation upon the relief which he claims. Be that as it may, I do not think that the suit out of which this matter arises can be held to fall within scope of Article 17(6) of Schedule 2 to the Court-fees Act. I have already stated that in my view this suit is governed by Section 7(iv)(c), Court fees Act, but, if it could be held that no other provision of this Act, were applicable, I think that an ad valorem fee would be payable under Article 1, Schedule 1 to the Act. I am not unmindful of the fact that a different view was held by Tudball, J., in *Aisha Bibi v. Faiyaz Husain* (1911) 33 All 767, but, with great respect, with that view I must disagree.

22. In a case of this sort, as no rules have been framed u/s 9, Suits Valuation Act, it is for the plaintiff to put some valuation on the subject-matter of the relief which he claims, and, having regard to the provisions of Section 8, Suits Valuation Act, it is clear that the forum in which the suit is tried must follow the plaintiff's valuation.

23. In the suit out of which the present appeal arises, the plaintiff has for fiscal purposes treated the suit as coming under Article 17(6) of Schedule 2, Court-fees Act, a provision of the law which I have held cannot apply to this case. He has further valued the relief sought by him at Rs. 5,001 although he professes to have made this valuation merely for the purpose of jurisdiction. The fact remains however that by fixing this valuation, he has indicated that, in his opinion, the suit is to him of sufficient pecuniary value to merit a trial in a Court of a Subordinate Judge rather than in that of a Munsif, and to justify him, if necessary, in filing an appeal direct to the High Court rather than to the District Judge. He has therefore chosen the forum according to what he regards as the pecuniary value of the suit to him, and, in these circumstances, in my opinion, after he has enjoyed the advantage resulting from his choice of forum he cannot be heard to say that this valuation was made by him merely for the purpose of jurisdiction. This appears to have been the principle adopted by Sir George Rankin, C.J., in *In the matter of Kalipada Mukherji* 1930 Cal 686.

24. The question as to the fee payable upon the memorandum of appeal to this Court is not before us as the Registrar's order in this respect is final u/s 5, Court-fees Act but, as regards the fee payable in the Lower Court, I agree that on the facts of this particular case, this fee should be assessed on an ad valorem basis on the sum of Rs. 5,001.