
(1939) 10 BOM CK 0020
In the Bombay High Court
Case No : First Appeal No. 205 of 1937

Gajramji Jasramji Maharaj	Vs	APPELLANT
Somnath Bhudardas Soni		RESPONDENT

Date of Decision : 06-10-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Suits Valuation Act, 1887 — Section 8

Citation : AIR 1940 Bom 242 : (1940) 42 BOMLR 443

Hon'ble Judges : Divatia, J;Broomfield, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Divatia, J.—This appeal has been preferred by defendant No. 1 in a suit by the plaintiffs for a declaration that the suit house belonged to a religious institution of the members of a sect known as Ramdwara sect, that it was public or private religious property, but that it was not in any case the private property of defendant No. 1. The plaintiffs also prayed for an injunction restraining the defendants from acting against the established usage of the institution, and there was a further prayer for accounts for moneys received from the tenants of the institution and other persons. There was also a prayer for accounts of the management of the suit property in possession of the defendant as a trustee for the institution. It must be noted here that the sanction of the Collector was not obtained u/s 92 of the Civil Procedure Code for filing the suit.

2. The defendant denied that the suit property belonged to the institution. His contention was that it was his private property and that the plaintiffs had no right to bring the suit.

3. Several issues were raised on the pleadings. One of the issues of a preliminary nature was issue No. 11 : Whether the suit is barred u/s 92 of the CPC and the Specific Relief Act as contended by the defendants. The other main issue was on the merits as to whether the property in dispute was religious or charitable trust

property.

4. The learned Judge held that the suit was not barred u/s 92 of the CPC and the Specific Relief Act, that the suit property was religious trust property, that it was not the private property of the defendant's predecessor in title, that the suit was not barred by limitation, that it was properly stamped and that the trust alleged by the plaintiffs was a public and not a private trust. A declaration was granted that the suit property belonged to the Ramdwara sect of Ahmedabad which was a public religious institution. The rest of the claim was disallowed. The relief for accounts sought by the plaintiffs was disallowed on the ground that although it was permissible for the plaintiffs to bring the suit in the form in which they had done, if the prayer for accounts remained, -and that prayer could not be regarded as a surplusage-the suit would fall u/s 92 of the CPC and barred as such, but the plaintiffs could be given the relief for a declaration though not for accounts. On that ground, the relief for accounts was disallowed.

5. Against this decree defendant No. 1 has appealed to this Court. A preliminary objection is taken on behalf of the respondents that the appeal lies to the District Court and not to this Court. The suit was originally filed in the Court of the Second Class Subordinate Judge. It was valued at Rs. 200 for the relief of declaration for which a court fee stamp of Rs. 15 was paid and at Rs. 5 for each of the reliefs 2, 3, 4 and 5. The total valuation was thus Rs. 220 and the Court fee of Rs. 16-8-0 was paid thereon. It appears that after the suit was filed, the plaintiffs applied for amendment of their claim, and one of the amendments which they sought was by way of amending the relief clause which they sought to re-value at a nominal sum of Rs. 200 for which a fixed Court fee of Rs. 15 was paid. The remaining reliefs were valued at Rs. 5 each as originally. The defendant in his written statement contended among other things that the value of the suit house was over Rs. 10,000 and that therefore the Second Class Subordinate Judge had no jurisdiction to hear the suit, and as the defendant was holding the property 5 by an independent title, the plaintiffs should pay full stamp according to the value of the property as in a suit for possession. The learned Judge disposed of the objection made by the defendant and made an endorsement on the plaint that Article 17 of schedule II of the Court-fees Act read with Section 8 of the Suits Valuation Act governed the plaint as amended by the plaintiffs, that the value of the property in dispute therefore governed the jurisdiction of the Court, and as its value was admittedly Rs. 10,000, he had no jurisdiction to try the suit. He therefore directed that the plaint should be sent to the Court of the First Class Subordinate Judge. It was accordingly sent to that Court and the suit was heard by the learned First Class Subordinate Judge without objection on the part of any of the parties. It is now contended that the suit, even after the plaint was amended, falls u/s 7(iv)(c) as well as (f) of the Court-fees Act inasmuch as it is for a declaration coupled with the relief for injunction as well as accounts, and that u/s 8 of the Suits Valuation Act the valuation for the Court fees determines the valuation for the purpose of jurisdiction. Therefore, a Second Class Subordinate Judge only would have the jurisdiction to hear the suit, with the

result that even though it was heard by the First Class Subordinate Judge, the appeal against his decree would lie to the District Court and not to this Court.

6. It is true that under the provisions of Section 7(iv)(c) and (f) a suit for declaration and for injunction either with or without relief for accounts would be governed by Section 8 of the Suits Valuation Act. The facts here are, however,; that the plaintiffs themselves admitted that the valuation of the property was Rs. 10,000 and they allowed the suit to be sent by the Second Class Subordinate Judge to the First Class Subordinate Judge's Court. They did not raise any objection with regard to the valuation for the purpose of jurisdiction at the time when the order was made. The learned advocate on behalf of the appellant says that in a somewhat similar case this Court directed that the suit as heard by the First Class Subordinate Judge was properly heard and that the plaintiff-respondent cannot be allowed to urge a preliminary objection to the effect that an appeal does not lie to the High Court when by his own conduct he allowed the suit to be heard by the First Class Subordinate Judge especially the relief that he claimed did fall as within the cognizance of the First Class Subordinate Judge.

7. In the case of Balkrishna v. Jmkibai (1919) 22 Bom. L.R. 289 the plaintiff filed a suit in which he valued the claim for the purpose of Court fees at Rs. 135, and for the purpose of jurisdiction at Rs. 16,000, and he instituted it in the Court of the First Class Subordinate Judge. The suit was tried on the merits and was dismissed. The plaintiff appealed to the High Court and at the hearing the plaintiff himself raised a preliminary objection that his appeal did not lie to that Court but lay to the District Court and that the memorandum of appeal should be returned to the District Court. He urged an objection of the same nature which has been urged in the present appeal, viz. that the suit fell u/s 7(iv)(f), and that therefore it could be tried by the Second Class, Subordinate Judge alone. This Court, however, held that the suit was properly heard by the First Class Subordinate Judge. It was observed in the course of the judgment (p. 293) :-

Under the circumstances I think that the plaintiff can be fairly taken, and ought to be taken, to have really valued his claim for the purpose of Court-fees not at Rs. 135 as he has apparently done, but at a sum exceeding Rs. 5,000, as he has himself acted and induced others to act on that basis. He cannot be allowed to use either of these inconsistent valuations in "different Courts according to his convenience. At this stage he can be properly held to have valued his claim for Court-fees and jurisdiction at Rs. 16,000 or at some figure exceeding Rs. 5,000, It may be that he has not paid sufficient Court-fees from this point of view : but we are not now concerned with the question of sufficiency of Court-fees either for the plaint or for the memorandum of appeal. We are concerned with the question of jurisdiction. On the special facts of this case I am of opinion that the plaintiff must be taken to have filed the suit properly in the Court below under its special jurisdiction, and to have filed the appeal properly in this Court.

I think these remarks would apply to the facts of the present case and that the present respondents are estopped from urging the objection for the same reason

for which the respondent in that appeal was also held estopped. Here also the respondents-plaintiffs have by their own conduct induced the defendant to act on the basis that the suit could be tried by the First Class Subordinate Judge when he conceded that the valuation of the suit property was more than Rs. 5,000. We think therefore that just as on the special facts of the case in *Bdkrishna v. Jankibai* it was held that the preliminary objection was not sustainable, similarly on the special facts of this case also the preliminary objection could not be sustained.

8. On the merits, the learned counsel on behalf of the appellant has argued the preliminary point with regard to the nature of the suit first. His case is that the lower Court erred in holding that the reliefs sought by the plaintiffs did not bring the suit u/s 92 of the CPC and that the plaintiffs were entitled to the relief for declaration even though they were not allowed the reliefs of injunction and accounts. The reasoning on which the learned Judge granted the relief for declaration and disallowed those for injunction and accounts seems to be somewhat curious. He refers to the two recent cases decided by this Court in *Narsidas Jekisondas Vs. Ravishankar Prabhashankar*, as well as *Annappa Ramchandra Pai Vs. Krishna Narayan Prasad*, wherein it has been held that if a plaintiff files a suit for enforcing a trust and for asking a relief which would fall under Clauses (a) to (h) of the first sub-Section of Section 92, the suit must be regarded as falling under that Section and that even if the plaintiff seeks to abandon such reliefs sought by him and wants to convert it into a suit for pure declaration, he cannot be allowed to do so because it is the nature of the suit when it is instituted that determines the applicability of Section 92, and that if a prayer for accounts is made in such a suit, such prayer cannot be regarded as a surplusage. Now, the learned Judge after referring to these two authorities does say that the prayer for accounts in the present suit could not be regarded as a surplusage and he further observes that in view of the clear and definite opinion expressed in the two cases referred to above, the suit would fall u/s 92 of the Civil Procedure Code. But he seems to think that a defect in the institution of the suit arising in consequence of the absence of a Collector's ; certificate could be cured by deleting the relief for accounts, etc., so that the suit could be regarded as one for pure declaration and as such outside the scope of Section 92. The learned Judge seems to rely for this opinion on some observations made by Tyabji J. in *Annappa v. Krishna*. But they do not support the reasoning of the learned Judge. Tyabji J. only stated the argument as could be urged by the defendant without expressing his own opinion on it. That argument no doubt was that the suit could be taken out of the scope of Section 92 after amendment of the plaint by way of abandoning the claim for accounts. On the other hand the decision in the case clearly is that the question whether Section 92 of the CPC applied depended upon the prayers in the plaint at the date when the suit was instituted. That decision follows the earlier decision in *Narsidas v. Ravishankar*. It may be noted that in the latter case the relief for accounts was sought to be abandoned by the plaintiff at a late stage in the suit, and that he was allowed to

do so. The trial Judge held that after the abandonment of those reliefs the suit was maintainable as an ordinary suit and he went into the merits of the case and held that the property had been dedicated in trust for public purposes. On appeal it was held, however, that the suit as instituted fell u/s 92. The learned Chief Justice observed that in order to bring Section 92 into operation, the suit must allege a breach of some express or constructive trust created for public purposes of a charitable or religious nature or the plaintiff must deem the direction of the Court necessary for the administration of any such trust. If either of those conditions is fulfilled and a suit is filed asking for any of the specific reliefs mentioned in the sub-heads, the case falls within Sub-section (2) of Section 92, and that once the suit does fall within Sub-section (J), it must be instituted as provided in the sub-Section ; otherwise it did not lie. Mr. Justice Blackwell also observed that the use of the word "instituted" made it incumbent upon the Court to see what were the prayers in the plaint at the date the suit was instituted in order to satisfy itself whether Section 92(2) had been complied with, and for that purpose the Court must pay no regard to what may happen by way of amendment or abandonment at some later stage in the suit. In that case therefore even though there had been an abandonment of the relief for accounts, it was held that the suit as instituted fell u/s 92, and as it was brought without the sanction of the Advocate General, it did not lie. It is clear therefore that under both these authorities the present suit must be regarded as falling u/s 92 and as such not maintainable without the sanction of the Collector.

9. The learned Judge has, however, held that the relief for declaration could be given to the plaintiffs on the ground that in the Privy Council decision reported in (1928) ILR 55 519 (Privy Council) a suit which had been instituted u/s 92 of the CPC was under certain circumstances treated as not coming within that Section after an amendment. In making this observation the learned Judge has entirely misread the decision of their Lordships of the Privy Council. In that case the question with which their Lordships were concerned was one of res judicata. A suit was brought in 1910 with the sanction of the Advocate General by seven Mahomedans as plaintiffs against one Rukia Bibi as defendant. This Rukia was the widow of one Mahommad Jan who was the mutawalli of the property. The reliefs sought in that suit were the removal of Rukia Bibi from the office of mutawalli for accounts and for settling a scheme for the management of the properties. During the pendency of the suit the plaintiff amended the plaint by the addition of all the heirs of Mahommad Jan as defendants as it was alleged that they were claiming the property as their personal property, and a prayer was also added for a declaration that the suit property was wakf property and not the personal property of the defendants. No sanction of the Advocate General was obtained for this amendment. The suit ended in a compromise between the parties under which some of the suit properties were agreed to be held as secular property and as such belonging to the heirs of Mahommad Jan who were subsequently added as parties. Eight years later a second suit was filed by five Mahomedans of the locality against the heirs of Mahommad Jan who were the

defendants in the first suit and the alienees for a declaration that the compromise decree in the suit of 1910 was not binding on the plaintiffs and that the whole of the property should be declared as wakf property. It was contended in that case that the second suit was barred by res judicata by virtue of the compromise decree in the first suit of 1910. But their Lordships held that there was no bar of res judicata because so far as the strangers to the first suit, viz. the heirs of Mahommad Jan who were subsequently added were concerned, the suit had ceased to be a representative suit. Their Lordships held that on account of the amendments by adding strangers to the trust as defendants and by prayers for reliefs not covered by Section 92, the suit ceased to be one of a representative character and that the decree based on the compromise, such as it was, was binding against at least six out of the seven plaintiffs in the suit, on the ground that they were consenting parties to the compromise decree, but the decree cannot bind the rest of the public and that therefore there was no bar of res judicata. There was no decision that the suit as originally instituted u/s 92 was treated as not coming within that Section after the plaint was amended. The only decision was that on account of the amendment in the plaint, so far as the strangers were concerned, the reliefs were granted because of the compromise, and as they were strangers to the trust, part of the compromise decree relating to them cannot be regarded as a representative decree in the sense that the whole of the Mahomedan public was bound by it. The point decided by their Lordships in that case therefore does not touch the point in the present case.

10. It is however contended on behalf of the appellant that the present suit as originally brought by the plaintiffs did not fall u/s 92 at all and it was especially so after the plaint was amended, and he has relied upon certain authorities of this Court, viz. Nilkanth Devrao v. Ramkrishna Vithal ILR (1921) 46 Bom. 101 : Section c. 23 Bom. L.R. 876, Madhavrao v. Shri Omkareshvar Ghat (1928) 31 Bom. L.R. 192 and Mahant Narsidasji Balmukunddasji Vs. Bai Jamna, None of these three cases applies to the facts of the present case. It was held in those cases on the construction of the reliefs sought in the plaint that the reliefs did not bring the suit u/s 92, In the last mentioned case it was expressly held that the relief claimed by the plaintiff for setting aside the wills on the ground of undue influence was claimed not on the basis of the trust but in spite of the trust. In the present case, however, there is no ambiguity in the plaint. The reliefs clearly are a declaration that the property is trust property and accounts of the property on that basis. The relief for accounts is not independent or surplusage in the sense that any of the reliefs could be granted even though the one for accounts would be deleted. But the real point is whether this relief was sought at the time when the suit was instituted, and if it was, then clearly under the authorities of Narsidas Jekisondas Vs. Ravishankar Prabhashankar, as well as Annappa Ramchandra Pai Vs. Krishna Narayan Prasad, , the present suit must be held as falling u/s 92 of the CPC and not maintainable without the sanction of the Collector.

11. For these reasons the appeal is allowed, the decree of the lower Court is set

aside and the suit is dismissed. The appellant will be entitled to the costs of this appeal from the respondents. The order for costs of the trial Court stands.

Broomfield, J.

12. As I was a party to Annappa v. Krishna I may add a few observations.

13. First of all as to the preliminary point the plaintiffs' contention that the appeal lies to the District Court can only be supported on the ground, firstly, that the case comes u/s 7(iv)(c) of the Court-fees Act, and, secondly, that the valuation placed by the plaintiffs under that Section should be taken to be less than Rs. 5,000. It is true that the lower Courts were wrong in treating it as a case for a fixed fee under Article 17 of the 11 schedule. The plaintiffs are claiming other reliefs besides a declaration which appear to be consequential on the declaration. The case therefore comes properly u/s 7(iv)(c). But how can the plaintiffs—who by paying the wrong fees are responsible for the whole trouble—ask this Court to deal with the case, not only as one coming u/s 7(iv)(c), but as one coming under that provision in which the relief has been valued at less than Rs. 5,000 ? There is no justification for this latter assumption at all. As in *Balkrishna v. Jankibai* (1919) 22 Bom. L.R. 289 all that has really happened is that the plaintiffs have contrived to get the case tried in the proper Court without paying the Court fees properly payable having regard to the nature of the suit. The objection now taken to the forum of appeal is rather like approbating and reprobating.

14. As regards the principal point in the appeal in *Annappa Ramchandra Pai Vs. Krishna Narayan Prasad*, . I expressed the view that if a suit claims the reliefs specified in Section 92 and should therefore have been brought under that Section, you cannot get rid of the difficulty by amending the plaint and abandoning those reliefs. I relied on the language of Section 92(2) and on *Narsidas Jekisondas Vs. Ravishankar Prabhashankar*, . I am still of the same opinion. Mr. Justice Tyabji preferred to give no opinion on this point but he thought that *Narsidas v. Ravishankar* did not bear upon it. With respect, I find it somewhat difficult to follow the learned Judge's observations on this point. It is true that there does not seem to have been any application to amend the plaint in that case. But it can surely make no difference in principle whether a particular relief is given up after a formal amendment of the plaint or whether it is abandoned without it.

15. The learned trial Judge has relied on (1928) ILR 55 519 (Privy Council) But I cannot see that that case has anything to do with the point now under consideration. What it decides is that a suit, which is partly u/s 92 and partly not u/s 92, (inasmuch as it seeks some reliefs against strangers and some reliefs not specified in the Section), is not a representative suit in so far as it goes beyond the Section. That does not touch the point that so far as a suit is within Section 92 it cannot be instituted without sanction, and there is no getting away from the fact that the present suit was instituted without sanction whether or no the plaint

was allowed to be subsequently amended.

16. I agree with the order proposed by my learned brother.