
(1936) 08 BOM CK 0016
In the Bombay High Court
Case No : Civil Application No. 188 of 1936

Govindbhai Lallubhai Patel	Vs	APPELLANT
Dahyabhai Nathabhai Patel		RESPONDENT

Date of Decision : 07-08-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110(1)

Citation : AIR 1936 Bom 201 : (1937) 39 BOMLR 332

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

Bench : Division Bench

Judgement

Broomfield, J.—This is an application for leave to appeal to the Privy Council by the unsuccessful plaintiff in First Appeal No. 31 of 1932. The main question is whether the property is of the appealable value. The plaintiff claimed to be the owner of Immovable properties in the Narwadari village of Ode in the Anand Taluka, under the will of one Desaibhai. In the first instance he filed his suit in the Court of the Second Class Subordinate Judge, Umreth, claiming a declaration that he is the owner of various properties specified in the plaint, an injunction restraining the defendants from interfering with his possession, possession of specified properties from the defendants, one-third share in certain properties sold by the defendants and Rs. 2,400 for mesne profits for three years of the properties in the possession of the defendants. The suit was valued as follows : Rs. 130 for the declaration and injunction, Rs. 333 for plaintiff's share in the price of the properties sold, Rs. 2,400 for the mesne profits, Rs. 1,300 as the market value of the properties in the possession of the defendants, total Rs. 4,163.

2. Objection was taken that the suit had been undervalued and that the Second Class Subordinate Judge had no jurisdiction. In their written statement the defendants contended that the value of the suit property was over Rs. 50,000 and the value of the property in the actual possession of the defendants was more than Rs. 5,000. Issues were raised as to the Court's jurisdiction to hear

the suit and as to the value of the suit properties, and evidence was taken on these issues. The plaintiff produced witnesses and documents to show that the value of the property was only Rs. 50 to Rs 200 per bigha. The defendants produced evidence to show that the value was Rs. 500 to Rs. 1,200 per bigha. The trial Judge estimated the value at about Rs. 400 per bigha or more. He recorded no definite finding as to the value of the subject-matter, except that it exceeded Rs. 5,000, which was the only point he had to decide. The plaint was then returned and presented in the Court of the First Class Subordinate Judge. The valuation was then Rs. 9,760-5-6 which was made up as follows : Rs. 200 for declaration and injunction, Rs. 4,427-5-6 for possession of the properties in defendants' possession calculated at seven and a half times the assessment, Rs. 333 for plaintiff's share of the price of the properties sold and Rs. 4,800 for mesne profits. In paragraph 12 of his plaint the plaintiff stated that for the purpose of jurisdiction the valuation was Rs. 9,765-5-6 and for the purpose of Court-fees Rs. 9,760-5-6. Why there was a difference of Rs. 5 between the two it does not appear. Possibly it may have been a mistake.

3. The suit was dismissed by the trial Court. The plaintiff appealed valuing his claim in appeal at Rs. 9,760-5-6 for all purposes. The appeal was dismissed. Then comes this petition for leave to appeal, praying that a certificate should be issued u/s 110 para. 1, of the civil Procedure Code, that is to say, a certificate that the amount or value of the subject-matter of the suit in the Court of first instance, and of the matter in dispute on appeal to His Majesty in Council, is more than Rs. 10,000, and also a certificate that the appeal involves a substantial question of law, this Court having confirmed the decree of the trial Court.

4. Mr. Jayakar, who appears for the petitioner, relies on the Second Class Subordinate Judge's estimate of the value of the property and on the statements in para. 2 of the petition affirmed on affidavit, according to which the plaintiff's share in the estate at the Second Class Subordinate Judge's valuation per bigha would come to about Rs. 72,000. The difficulty in the petitioner's way is that he has himself valued the suit and the appeal at less than Rs. 10,000. Mr. Jayakar says, however, that this was merely a notional value which does not represent the value of the subject-matter within the meaning of Section 110. He relies on *Mokmlal Nagji v. Bai Kashi* ILR (1916) Bom. 477 : 18 Bom. L.R. 469, *Kishan Chand v. Lachmi Chand* ILR (1932) All. 941, *Mohun Lall Sookul v. Bebee Doss* (1860) 7 M.I.A. 428, and *Baboo Lekraj Roy v. Kanhya Singh* (1874) L.R. 1 IndAp 317. The facts in *Mohanlal Nagji v. Bai Kashi* were these. A suit for a declaration and injunction, in which the claim was valued at Rs. 135, was tried by a Subordinate Judge of the Second Class. The decree was confirmed by the District Judge, but reversed by the High Court on second appeal. The plaintiff having applied for leave to appeal to the Privy Council, the defendant contended that as the plaintiff himself had elected to value his suit at only Rs. 135, and conducted it in the Court of the Subordinate Judge, the limit of whose pecuniary jurisdiction was Rs. 5,000, he could not contend that the subject-matter of the suit was

worth Rs. 10,000. It was held by this Court, overruling the contention, that the suit being one for a declaration and injunction, the plaintiff, by suing in the Second Class Subordinate Judge's Court, made no representation directly or indirectly to the defendant as to the real or market value of the property to be affected, as distinguished from the fiscal value which, as the law allowed him to do, he placed upon the relief which he was seeking.

5. Mr. Thakor, who appears for the opponents, argues that the valuation for Court-fees was a notional valuation but the valuation for jurisdiction was not. So far as the suit was a suit for possession, it came u/s 7(5) of the Court-fees Act under which the Court-fees are seven and a half times the assessment. But the valuation for jurisdiction is not the same, Section 8 of the Suits Valuation Act not applying to a claim for possession of immove-able property. Jurisdiction depends on the value of the subject-matter : Bombay Civil Courts Act, Sections 24 and 26; and under Order VII, Rule 1, the plaint has to contain a statement of the value of the subject-matter for jurisdiction and Court-fees separately. The plaintiff did actually give separate valuations in para. 12 of his plaint. Mr. Thakor contends that as the plaintiff chose to value the subject-matter of his suit at less than Rs. 10,000, he cannot now turn round and say that the value is more than Rs. 10,000 in order to get a right of appeal to the Privy Council. The cases relied upon by Mr. Jayakar are, he says, not suits for possession and are no authority for holding that in such suits, i.e. in suits for possession, it is open to a plaintiff to say that the value he has placed on his claim is only the fiscal value and not the value of the subject-matter within the meaning of Section 110.

6. Of the cases cited by Mr. Jayakar two at any rate, Mohun Lall Sookul v. Bebee Doss and Baboo Lekraj Roy v. Kanhya Singh, were in fact concerned with suits for possession of property. Nevertheless, there might, in my opinion, have been considerable force in Mr. Thakor's arguments if this had been a suit for possession simply or a suit for a declaration of title with an alternative prayer for possession of the whole property. If that had been the case, it might perhaps have been said that the plaintiff had elected to put a valuation on the subject-matter of his suit which he could not afterwards change, on the principle laid down in (1873) L.R. 1 I.A. 84 (Privy Council) . But the actual facts are that, although the declaration prayed for by the plaintiff related to the whole of the property, the prayer for possession related only to comparatively few items. The prayer for a declaration could only be valued on a notional basis, and in the present case that means that the suit as a whole could only have a notional valuation even for the purposes of jurisdiction. That being so, the principles laid down in Mohanlat Nagji v. Bat Kashi and Baboo Lekraj Roy v. Kanhya Singh seem to me to apply to the case and the plaintiff is not estopped nor barred by the rule that a man cannot approbate and reprobate from showing that the value of the subject-matter of the suit and the appeal is Rs. 10,000 or over within the meaning of Section 110.

7. Mr. Jayakar also argued that his case could be brought under the second para,

of Section 110, which allows an appeal to the Privy Council where the decree or final order involves directly or indirectly some claim or question to or respecting property of the value of Rs. 10,000 or upwards. As I have mentioned, there is no prayer in the petition for the grant of a certificate under this part of Section 110. Apart from that, however, it appears to me that the second para, has no application to the present case. Mr. Jayakar's argument is this. Even on the footing that the value of the original suit was Rs. 9,760 only, the decree of this Court involves a claim or question to or respecting property of the value of Rs. 10,000 and upwards, by reason of the fact that mesne profits were claimed from the date of the decree of the trial Court. If this Court had reversed the decree of the trial Court instead of confirming it, the mesne profits would have amounted to thousands of rupees. I think this argument is based on a misconception of the scope of para. 2 of Section 110. According to *Subrammia Ayyar v. Sellammal* ILR (1915) Mad. 843, the words "some claim or question to or respecting property" must be interpreted to mean "some claim or question to or respecting property additional to or other than the actual subject-matter in dispute in the appeal." Mr. Jayakar says that the Bombay High Court has not taken this view of para. 2. But *Mohmlal Nagji v. Bai Kashi and Seshgiri Skambhulingam v. Manjayya* ILR (1925) Bom. 160 : 28 Bom. L.R. 454. the only cases which he has cited in that connection, are not, in my opinion, necessarily inconsistent with it. On the other hand, *Subrammia Ayyar v. Sellammal* has been generally approved, though possibly not specifically on this point, by the Judicial Committee in *Gudivada Mangamma v. Maddi Mahalakshamma* ILR (1929) IndAp 56 : 32 Bom. L.R. 517. I may say with respect that I agree with the reasoning in the Madras case. Mr. Jayakar's argument would apparently mean that if there were an increase in the value of the property between the date of the trial and the date of the appeal, so that property which was worth less than Rs. 10,000 at the time of the original suit was worth more than that sum at the time of the appeal, there would for that reason be a right of appeal to the Privy Council. That, I think, would be a result which the legislature evidently did not intend. However, the question of the application of para. 2 is not really material, because we are of opinion that the present case comes under the first para, of Section 110.

8. Mr. Jayakar submitted that if this Court were not satisfied with the evidence as to the value of the subject-matter, an inquiry should be directed under Rule 5 of Order XLV. But we hold that this is not necessary in view of the opinion expressed by the Second Class Subordinate Judge after inquiry, and the statements made in the petitioner's sworn application, which have not been controverted. Mr. Thakor for the opponent did not contend that the property is not in fact worth more than Rs. 10,000. His argument was in effect that the petitioner was estopped from asserting that that was the value. I have already mentioned the circumstance that in their written statement in the original Court the defendants themselves alleged that the property in suit is worth more than Rs. 50,000. There can be no doubt whatever in my opinion that the case involves a substantial question of law as to the construction of *Desaibhai's* will.

9. We accordingly certify that the value of the subject-matter of the suit in the Court of first instance was Rs. 10,000 or upwards, and that the value of the subject-matter in dispute on appeal to His Majesty in Council is the same sum or upwards, also that the appeal involves a substantial question of law. Costs costs in the appeal.

Tyabji, J.

10. I agree. The question depends upon the construction of the Civil Procedure Code, Section 110. It is admitted with reference to paragraph III of the section that the appeal must involve some substantial question of law before the case can be certified to be a fit one for appeal to His Majesty in Council. As to the existence of this requirement, I entirely agree with my learned brother and I have nothing to add.

11. The construction of the first two! paragraphs of Section 110 causes much greater difficulty. Paragraph I contains two requirements to be satisfied before the certificate can be granted, viz. :?

(1) the amount or value of the subject-matter of the suit in the Court of first instance must be Rs. 10,000 or upwards; and

(2) the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards.

12. Thirdly paragraph II supplies an alternative : the decree or final order must involve directly or indirectly some claim or question respecting property" of the like amount or value.

13. Paragraph II may grammatically be construed?

(a) as offering a single alternative requirement instead of the two requirements contained in paragraph I; or

(b) as supplying an alternative to each of the two requirements respectively contained in paragraph I; or

(c) as an alternative only to the second of the two requirements contained in paragraph I.

14. In this third case the first requirement of paragraph I may either be considered to be left untouched by paragraph II, so that the first requirement must be satisfied irrespective of paragraph II, or it may be considered to be Tendered unnecessary in case paragraph II is satisfied. This latter form of alternative (c) is the same as alternative (a). To put it in other words, paragraph II may be read (1) either as one composite alternative to the whole of the first paragraph, or (2) as supplying an alternative to each of the two requirements contained in paragraph I, or (3) as an alternative only to the second of the two requirements in paragraph I, in which case the first requirement may either be considered to be left unaffected as though paragraph II had not been enacted, or

it may be considered that the first requirement need not be satisfied if paragraph II is brought into operation : so that we come to the same construction as (1). There are difficulties in any of these constructions being adopted.

15. In (1929) L.R. 57 I.A. 56 (Privy Council) . Lord Dunedin held that paragraph II does not provide such an alternative to the first of the two requirements contained in paragraph I as to permit the amount or value at the date of the decree of the Court of first instance to be taken into account, instead of the amount or value at the institution of the suit. After referring to a prior decision of the Privy Council, *Moti Chand v. Ganga Parshad Singh : Moti Chand, ex parte* (1901) L.R. 29 IndAp 40 : 4 Bom. L.R. 159. Lord Dunedin says: "In that case the amount recoverable even under the decree in the first Court did not amount to Rs. 10,000, so that the present position did not arise," i.e., the position did not there arise whether in computing the amount or value of the subject-matter of the suit in the Court of first instance, interest had to be calculated not merely up to the date of the suit but up to the date of the decree. The question therefore was whether interest accrued between the date of the suit and the date of the decree in the Court of first instance could be taken into account for the purposes of the first requirement of paragraph 1. Lord Dunedin proceeds : "The question did, however, arise in India, and the Calcutta (see *Dalglish v. Damodar Narain Chowdhry* ILR (1906) Cal. 1286) and Madras Courts gave contrary decisions. Their Lordships consider that the Madras Court was right. The case is *Subramania Ayyar v. Sellammal* ILR (1915) Mad. 843. In that case the question was as to mesne profits. If mesne profits from the date of the institution of the suit to the date of the decree were added, the sum of Rs. 10,000 was exceeded, secus if not. The Courts held that they could not be added, and their Lordships agree with their reasoning, which, indeed, treated the question under the first part of the section as completely clear, but considered whether the second part, " or the decree or final order must involve," etc., made any difference, and held that it did not, for reasons which commend themselves to their Lordships.

16. In other words Lord Dunedin held that paragraph II of Section 110 could not be read as providing an alternative to the first requirement in paragraph I : he held that instead of the words "the amount or value of the subject-matter of the suit in the Court of first instance" it was not permissible to substitute the words taken from paragraph II "the decree must involve directly or indirectly some claim or question to or respecting property of like amount or value." If either of these two alternatives had been available, then in the place of the words "the value of the suit" occurring in the first requirement of paragraph I the words of paragraph II "the decree must involve" could have been substituted?and then the interest (or mesne profits) up to the date of the decree and not merely up to the date of the suit, could have been taken into account. It was held however that the subject-matter of the suit in the Court of first instance, which has to be valued, must mean the subject-matter of the suit at the time when the suit is brought?so that subsequent accretions cannot be added.

17. The difficulty in reading paragraph II as furnishing a separate alternative for each of the two requirements in paragraph I?viz., as furnishing alternatives both (1) for the value of the subject-matter of the suit in the Court of first instance, and (2) for the -value of the subject-matter in dispute in appeal,?is caused by the fact that paragraph II speaks of "the decree or final order involving, etc.", and the first words of Section 110 expressly restrict its own provisions to the cases mentioned in Clauses (a) and (b) of Section 109,?clauses which together include only cases of appeals from a decree or final order passed on appeal, or by a High Court in the exercise of original civil, jurisdiction : so that the words "decree or final order" in paragraph II must mean the decree or final order from which an appeal is sought to the Privy Council : and if so, the alternative in Section 110, paragraph II, cannot be taken as an alternative to the first requirement in paragraph I, except possibly in the somewhat special cases of decrees or final orders of the High Court exercising its original civil jurisdiction, where appeals are permissible from them direct to the Privy Council (Letters Patent, Clauses 39, 15). I observe on the other hand that Lord Dunedin seems to restrict the function of the first line of Section 110 to that of indicating under which of the cases mentioned in Section 109 the appeal to His Majesty falls, so that paragraph II of Section 110 may in this way be. perhaps construed so as to refer both (1) to the decree or final order in the Court of first instance, and (2) to the decree or final order in respect of the amount or value in dispute on appeal to His Majesty in Council. But Lord Dunedin's ultimate conclusion is expressed in words to the effect that paragraph II made no difference in the operation of the first requirement contained in paragraph I.

So far only one of the meanings that cannot be put upon paragraph II of Section 110 has been attained. For the meaning that paragraph does bear, *Subramania Ayyar v. Sellammal* must be referred to, the reasoning in that case having been approved by their Lordships.

18. Sir John Wallis (then Ag. C.J. Madras) referred in that case to the history of the first requirement relating to the value of the subject-matter in the Court of first instance. That requirement was first imposed in India by the Privy Council Appeals Act VI of 1874. He concludes that paragraph II must not be so read as to render this new provision nugatory. Then he observes (p. 846):

It is of course necessary to read the whole section together and to give effect to every part of it; and when doing so it becomes necessary in my opinion in order to give effect to the new provision in the first paragraph to put a restrictive construction on the general words of the second paragraph which are reproduced from Section 39 of the Letters Patent, and to read them in their present collocation as applying only to cases which involve some claim or question to or respecting property additional to the actual subject matter in dispute in the appeal and to be taken into account therewith in making up the appealable value...and in any case I think that in the section as it now stands the words involve directly" cannot be read as including cases which involve nothing but the

actual subject matter in dispute in the appeal. Cases which involve nothing else are in my opinion governed exclusively by the first paragraph.

He refers to the difficulty in restricting the words of paragraph II to "some claim or question other than that involved in the actual subject-matter of the suit"?a difficulty occasioned by the retention in the second paragraph of the words "involve directly," but by way of a solution of the difficulty he adds : "I think my learned brother in his judgment which I have had the advantage of reading, has shown how effect may be given to the word " directly" consistently with this construction.

19. Mr. Justice Srinivasa Ayyangar also holds that paragraph II should not be so read as to render the first requirement of paragraph I nugatory. He first explains his reasons for reaching the conclusions that the first requirement would be rendered nugatory if mesne profits subsequent to the date of the institution of the suit were added to calculate the value of the subject-matter of the suit. Secondly, he comes to the same conclusion?that the first requirement would be rendered equally nugatory if the other contention before him were accepted. That contention he states in these terms on p. 847 : "that whether the subject-matter of the suit in the Court of first instance was above Rs. 10,000 or not," an appeal lies to the Privy Council if "the final decree of this Court involves a claim to property of over Rs. 10,000 in value," and on p. 849 he explains it more fully : "As to the second point, petitioner contends that, inasmuch as the decree of this Court directs him to surrender possession of the house and pay mesne profits, the decree necessarily involved a claim to property of over the appealable value." After holding that acceptance of either of the two contentions before him would render the first requirement in paragraph I nugatory, he gives his ultimate decision in these words (p. 849):

In my judgment the first clause applies to cases where the decree awards a particular sum, or property of a particular value or refuses that relief (i.e.) to cases where the object matter in dispute is of a particular value. In fact the words " objects in dispute" are used in the provisions relating to appeals from Gurnsey. If the operation of the decision is confined only to the particular object matter, Clause (2) does not apply, and unless the case satisfies the conditions in Clause (1) there is no right of appeal. If the decision beyond awarding relief in respect of the particular object matter of the suit affects rights in other properties, Clause (2) would apply : also if the matter in dispute is one which is incapable of valuation as in the case of easements, Clause (2) may apply :....

Finally he refers to "a few illustrations from the decided cases "to" make the matter plain," viz, to illustrations of cases where the "value of the subject-matter of the suit in the Court of first instance," or "the value of the subject-matter in dispute on appeal," could be differentiated from "the value of the property, some claim or question to, or respecting which, is involved directly or indirectly in the decree or final order." He also refers to the difficulty in some cases "to determine under which clause a particular case falls"?but he says, "I do not think that this

would in any way affect the decision, as I think that in all cases in which the final decision involves a claim or question to property of a particular value, the decision of the first Court also would merely involve a claim or question in respect of property of the same value : " so that apparently the first requirement would not become nugatory.

20. I need not refer to the decisions in *Dalglish v. Damodar Narain Chowdhry*, *Gajadhar Mahton v. Ambika Prasad Tiwari* ILR (1922) All. 133, and *v. S. T. Thamasundaseen v. S. M. A. R. R. M. Chetty Firm* ILR (1925) Ran. 405, since the Madras decision has been preferred by the Privy Council.

21. Applying the Madras decision to the present case, it is not contended for the appellant that there is any claim or question to or respecting property directly or indirectly involved in the appeal which is of the required value unless the subject-matter of the suit in the Court of first instance with mesne profits up to the date of the suit is of that value. It is not alleged that the case involves some claim or question to or respecting property additional to the actual subject-matter in dispute in the appeal. I therefore think that the second paragraph may be considered in the words of Lord Dunedin to make no difference in deciding whether the certificate should in the present case be granted for the appeal.

22. I accordingly address myself to the requirements under paragraph I of Section 110 without reference to paragraph II. The difficulty in the appellant's way is to satisfy us that the value of the subject-matter in the Court of first instance was Rs. 10,000 or upwards. The obstacle is the statement in the plaint that, for the purposes of jurisdiction, the value of the suit is Rs. 9,765-5-6. The respondent claims that this statement precludes the appellant from now contending that the value is greater than he himself stated.

23. The appellant's first answer is that for the purposes of the appeal to the Privy Council the real value has to be taken into account, and that what is declared in the plaint is not required to be the real value of the suit: but that the law places an artificial value for fiscal purposes on certain claims, and the subject-matter of the suit is directed to be valued in the plaint in accordance with that fiscal valuation. He relies for this contention on Section 8 of the Suits Valuation Act which provides that in certain cases the value as determinable for the computation of Court-fees and the value for the purposes of jurisdiction shall be the same. This argument however cannot be upheld. Section 8 is no justification for valuing the subject-matter of the present suit, for purposes of jurisdiction, on the fiscal basis; for the present suit is for a declaration and for possession. In the first place in so far as the suit is for a declaration, Section 8 has no application, since that section is restricted to suits in which Court-fees are payable ad valorem, and the Court fee in a suit for a declaration is not payable ad valorem, (the Court-fee for a suit for a declaration being fixed in Schedule 2, para. 17, at Rs. 15). Therefore a suit for declaration is not to be valued u/s 8 on the same basis for purposes of jurisdiction as it has to be valued for the purposes of Court-fees. Secondly, in so far as the present suit is for possession, it has no doubt to

be valued for fiscal purposes according to the value of the subject-matter on the basis of so many times the assessment and the Court-fees on a suit for possession are payable ad valorem : but suits for possession are excepted from the operation of Section 8. The exception arises in this way : suits for possession are referred to in the Court-fees Act, VII of 1870, Section 7, paragraph V; and Section 8 is applicable to suits other than those referred to in that paragraph, and the other paragraphs specified.

24. It follows that in regard to suits (such as the present) seeking a declaration and possession, the value for fiscal purposes is not to be the value for purposes of jurisdiction. Nothing in Section 8 gives the protection of the fiscal value for the purposes of determining the value for jurisdiction of suits claiming a declaration and possession. On the other hand under the Civil Procedure Code, Order VII, Rule 1 (i), the value of the suit for purposes of jurisdiction is distinguished from the value for Court-fees, and the value for jurisdiction has to be the real value of the subject-matter. The Bombay Civil Courts Act, IV of 1869, Section 24, was also cited in this connection. It refers to the value of the subject-matter.

25. I, therefore, reject the appellant's first contention in this respect, viz., that the value for purposes of jurisdiction in respect of a suit seeking a declaration and possession is not required by law to be the real value.

26. I must proceed to deal with the question whether the suit being one for a declaration and possession, and its value for the purposes of jurisdiction having been declared to be Rs. 9,765-5-6 by the plaintiff, the value for purposes of jurisdiction being the same as the real value, he was precluded from contending before us that the real value of the subject-matter of the suit in the Court of first instance at the time when the plaint was filed, was more than the value of the suit declared by him for the purposes of jurisdiction. The argument in favour of holding the appellant bound by the value that he declared for the purposes of jurisdiction, is that the plaintiff was estopped from alleging that the real value of the suit was more than that which had been put upon it by himself for the purposes of jurisdiction. This seems to me to put the case too high. It is not true that whenever one of the parties has made a statement that may amount to an admission, he is estopped from proving something different. The statement in the plaint that for the purpose of jurisdiction the value of the suit is of a particular value, may, I will assume, be taken as an admission under Sections 21, 22 and 23 of the Indian Evidence Act. But an estoppel u/s 115 is a very different thing. For raising an estoppel, the declaration, act or omission must be made with the intention of causing or permitting another person to believe a thing to be true and act upon such belief. Estoppels must be specifically pleaded and strictly proved. They operate between the person making the declaration and the person believing and acting upon it and the representatives of those persons. Therefore before an estoppel could have been relied upon, it would in the first place have had to be alleged and proved that the plaintiff intentionally caused the defendant to believe that the subject-matter of the suit was Rs.

9,765-5-6 and not more. That position cannot be reached. No estoppel was set up, and if it had been, one sufficient difficulty in the way of the defendant would have been that he knew as much about the value of the property as the plaintiff and that he was never caused to believe the plaintiff's valuation to be true. The case relied upon for this contention is *Hirjibhai v. Jamshedji* (1913) 15 Bom. L.R. 1021, in which it was decided that the amount or value of the subject-matter of a suit can in no case exceed the pecuniary jurisdiction of the Court in which it is instituted. But it is expressly said : "Within the limits of that jurisdiction it may greatly exceed the plaintiff's own valuation for Court-fees and jurisdiction" and : "We are ready to assume that the amount or value of the subject-matter of the suit, within the meaning and intention of Section 110 is not determined by the valuation for purposes of Court-fees and jurisdiction." In *Iswarappa v. Dhanji Bhanji* ILR (1931) 56 Bom. 23, : 34 Bom. L.R. 44, the judgment in *Hkjibheti v. Jamskedji* is characterized as being obiter in several respects, and it is also stated that *Ambadas Harirao v. Vishnu Govind* ILR (1926) Bom. 839 : 28 Bom. L.R. 1461, is inconsistent with it.

27. In the present case in the first instance the plaintiff put the value of the suit at something less than Rs. 5,000 so as to enable the suit to be brought in a Court of a lower jurisdiction. The defendant on that occasion contended that the value of the suit was more than Rs. 50,000. He succeeded in the contention that it was at any rate more than Rs. 5,000 : that was all that was necessary. Thus on the one hand the plaintiff put forward the valuation first at less than Rs. 5,000, then at Rs. 9,765-5-6, and now above Rs. 10,000; and on the other hand the defendant. put the valuation at Rs. 50,000. "The value is a matter of fact" : *Baboo Lekraj Roy v. Kanhya Singh* (1874) L.R. 1 IndAp 317. Their Lordships did not disapprove of Markby J.'s observation that, in deciding that matter of fact, a mistaken valuation, based on a misunderstanding that the Act authorized the fiscal principle of calculation for other purposes, was not a fraud and could not deprive a party of a right of appeal; and in (1873) L.R. 1 I.A. 84 (Privy Council) , their Lordships held that the acts of the parties ought to be given weight to. The act there referred to was that the defendant had adopted the plaintiff's valuation which made the two suits consolidated together over Rs. 10,000 in value. Here the act of the defendant consisted in taking objection to the low valuation of the plaintiff and in getting the suit tried by a Court of higher jurisdiction on the allegation that the subject-matter of the suit was worth Rs. 50,000. I do not see how the principle of estoppel applies either to the plaintiff, or to the defendant, or how if it applies to the one it does not apply to the other. There has been no attempt on the part of the plaintiff to disguise the fact that the valuation for purposes of jurisdiction was made by him he now admits mistakenly?on the fiscal basis.

28. It is unnecessary to order another inquiry after the elaborate inquiry already made in which the lands were valued far above the value necessary for an appeal to the Privy Council. In my opinion paragraphs I and III of Section 110 of the CPC are satisfied and an appeal lies to His Majesty in Council.