

(1913) 06 BOM CK 0001
In the Bombay High Court
Case No : Civil Application No. 181 of 1913

Hirjibhai Navroji Anklesaria	Vs	APPELLANT
Jamshedji Nassarwanji Ginvalla		RESPONDENT

Date of Decision : 24-06-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109
Suits Valuation Act, 1887 — Section 8

Citation : (1913) 06 BOM CK 0001

Hon'ble Judges : Beaman, J; Basil Scott, J

Bench : Division Bench

Judgement

Beaman, J.—The first question needing to be answered is whether this case fulfils the pecuniary conditions imposed in Sections 109, no of the Civil Procedure Code, read together, Section 109 provides that--

Subject to such rules an appeal shall lie to His Majesty in Council-

(a) from any decree or final order passed on appeal by a High Court ...

(b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction ; and

(c) from any decree or order, when the case, as hereinafter provided, in certified to be a fit one for appeal....

2. Then follows Section 110, which provides :

In each of the cases mentioned in Clause (a) and (b) of Section 109, 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 the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards, or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value, and where the decree or final order appealed from affirms the decision of the Court immediately below the

Court passing such decree or final order, the appeal must involve some substantial question of law.

3. The natural meaning of the first para, of Section no appears to us to be that the amount or value of the subject matter of the suit in the Court of first instance may exceed by any amount, but must not be less than Rs. 10,000 while the amount or value of the subject-matter in dispute on appeal while it may be less than the amount or value of the subject-matter of the suit in the Court below, must not be less than Rs. 10,000. It seems plain that in enacting this section the Legislature was contemplating an appellant preferring an appeal for a less, but not for a greater amount, than he had claimed in the Court of first instance. In the course of the argument addressed to us, it seemed to be more than once suggested that the claim might be increased for the purposes of applying this section in appeal. But this part of the section must be read as a whole, and it clearly prohibits an appeal where the subject-matter of the suit in the Court of first instance was less in amount or value than Rs. 10,000. It is also important to keep in mind the words "the subject-matter of the suit". These are the same words which are used in Section 24 of Act XIV of 1869. This is an Imperial Act. Its provisions have to be read *pari vigore* with those of the Civil Procedure Code.

4. This suit was brought in the Court of the Second Class Sub-ordinate Judge of Ankleshwar. In form the suit was for taking accounts. The plaintiff was not in a position to state what the result of the accounts might be. He therefore valued his claim for the purposes of Court-fees and jurisdiction at Rs. 101. Upon the question now under consideration his argument briefly is, that the amount or value of the subject-matter of the suit is, for the purposes of Sections 109 and no, to be ascertained independently of such formal valuation. He contends that in fact, although he valued his claim in the Court of first instance at Rs. 101, its real amount or value is considerably in excess of Rs, 10,000 and in support of that contention he invites our attention to certain alleged admissions of the defendants. We are not much concerned here to dispute the correctness of that proposition of law, or to deal in detail for its purpose with the authorities which have been cited in support of it; although the proposition is difficult to reconcile with the words of Section 8 of the Suits Valuation Act, 1887, and with *Khushalchand Mulchand v. Nagindas Motichand* I.L.R. (1888) Bom. 675, whereas in this case none of the Courts had ascertained and decreed any larger definite sum, nor do we admit, although we will not now discuss the applicant's allegation of fact. We are ready to assume that the amount or value of the subject-matter of the suit, within the meaning and intention of Section no is not determined by the valuation for purposes of Court fees and jurisdiction. The ground upon which we rest our answer to the question is different, and in our opinion the answer is conclusive. Reading Section 24 of Act XIV of 1869 with Section 6 of the CPC we are unable to understand how it can be seriously contended that the amount or value of the subject-matter of a suit can exceed the pecuniary jurisdiction of the Court in which it is instituted. Within the limits of that jurisdiction it may greatly exceed the plaintiff's own valuation for Court-fees and jurisdiction, but not

beyond it. To take the present case as an illustration, the Court of a Second Class Subordinate Judge has jurisdiction up to Rs. 5,000. The plaintiff brought his suit in such a Court, but valued it at Rs. 101 only. In our opinion it was quite open to him to show that, in fact, the value of the subject-matter of his suit was in excess of Rs. 101 up to but not beyond Rs. 5,000. The value of the subject-matter of a suit cannot be larger than what the Court in which that suit is brought has jurisdiction to try and decree. We are supported in this opinion by the cases of *Isaacs v. Wyld* (1851) 21 L.J. 46; *In re Hill v. Swift* (1855) 24 L.J. 187; *Gorachund Chunder Base v. Charroo Chunder Ghose* (1864) Bourke 3, The first two were cases under the English County Courts Acts, 9 Vic. and to Vic. and their effect is this. The jurisdiction of the County Court Judge is not ousted merely because the amount claimed is in excess of the pecuniary jurisdiction of that Court provided that, although not so stated in the summons, the plaintiff abandons the surplus. But where the plaintiff does not abandon the surplus, and the Judge himself strikes it out, the superior Court will issue a prohibition. The Calcutta decision rests upon the same principle. A plaintiff may not split up one cause of action so as to bring two suits in a Court of limited pecuniary jurisdiction, but he may abandon any surplus, and have his suit for the balance, within the pecuniary jurisdiction of such Court, tried and decided by it. And the bearing of the principle underlying these cases upon the present point is clearly this, that in no case can a Court of restricted pecuniary jurisdiction try or decree a suit of which the subject-matter exceeds in value its pecuniary jurisdiction so restricted. To meet this difficulty the learned Counsel for the appellant has relied upon certain cases decided in the Indian High Courts, and indirectly, on certain Privy Council decisions. None of the latter are, we think, in point. Thus in *Baboo Lekraj Roy v. Kanhya Singh* (1874) I.A. 817 it was held that a party, who in observance of the rule of valuation prescribed by the stamp law of the country in which he sues, has paid stamp duty upon a sum lower than the appealable amount, is not thereby precluded from obtaining leave from the Courts of that country to appeal to His Majesty in Council if he can show that the value of the property in dispute does reach the appealable amount. It nowhere appears that the Court of first instance was incompetent to try a suit of the value of Rs. 10,000 and upwards, and were that so in fact, it is clear that the point was not considered by their Lordships, whose decision is based upon another and totally different ground. In *Vahalabhai Naranbhai v. Kahubhai Jethabhai* (1896) P.J. 224, the facts were briefly that the plaintiff filed a suit in the Court of the Subordinate Judge, Second Class, valuing his claim at Rs. 510. The Judge, being of opinion that the subject-matter of the suit exceeded in value Rs. 5,000, returned the plaint for presentation in a Court of competent jurisdiction. It does not appear at what stage of the trial this order was made. The First Class Subordinate Judge refused to accept the plaint and on appeal to the High Court it was held that the Court of the Second Class Subordinate Judge had jurisdiction and must proceed with the trial. This and all similar decisions leave the point we are now discussing untouched. An earlier case referred to by the learned Judges who decided the case last mentioned is that of *Ibrahimji Issaji v. Bejanji Jamsetji* (1895) P. J. 1..

There the plaintiff sued for an account u/s 7(iv), Clause (f), of Act VII of 1870, valuing his claim at Rs. 600. A decree was made for Rs. 30,830 and the question was whether the subject-matter of the suit was the former or the latter sum for the purpose of appeal. It was held that the value of the claim as found, determined the Court of appeal. But the suit had been filed in the Court of the First Class Subordinate Judge. Had it been instituted in the Court of a Subordinate Judge of the Second Class, it is plain that he could not have decreed a sum in excess of Rs. 5,000, and either that must have been then held to have been the amount of the subject-matter of the suit or the plaintiff must have been allowed to withdraw his suit and institute it afresh in a Court of competent jurisdiction. The case of *Shamrav Pandoji v. Niloji Ramaji* ILR (1885) Bom. 200 does not help the appellant, for there the decree made by the Subordinate Judge, Second Class, was for an amount within his pecuniary jurisdiction, and the only question was whether he could execute it after the amount had been increased by interest after decree to a figure beyond his jurisdiction. It does not appear from the report of the Full Bench case of *Pichayee v. Sivagami* ILR (1891) Mad. 287, that any other point was considered than whether a plaintiff was tied down to the formal valuation for purposes of Court-fee and jurisdiction only, which he had given in his suit in the Court of first instance. We do not follow the learned Judges in holding that the language of the Madras Civil Courts Act III of 1873 does not control the construction of the Civil Procedure Code, Section 596. Nor for use in our present argument are we prepared to accept the dictum that the real market value of the matter in dispute is the test as to whether or not an appeal lies to the Privy Council. We prefer to keep to the governing words of the Statute, which are the amount or value of the subject-matter of the suit. For, we think that although the words "subject-matter in dispute" occur in the later part of the para. (Section 110), they must be read subject to, and must be controlled, as we have already stated, by the words preceding.

5. There can be no case in which the amount of the matter in dispute in appeal can be greater than the amount of the subject-matter of the suit out of which the appeal arises. Were the intention of the Legislature otherwise it is plain that, as a mere matter of English, the word "or" would have been used and not the word "and." The changed language in the second part of the para, is necessary and apt to meet the numerous common cases in which the matter in dispute in appeal is less than the whole amount of the subject-matter of the suit. The para, imposes two conditions, first that the subject-matter of the suit in the Court of first instance should have been of not less pecuniary value than Rs. 10,000 and that; the matter remaining in dispute in appeal should similarly be of not less value than Rs. 10,000.

6. Nor are we able to accede to the reasoning of the learned Judges in *Arogya Udayan v. Appachi Rowthan* ILR (1901) Mad. 548. It is only the first sentence of the judgment which might at first appear serviceable to the appellant here. But it is clearly not inconsistent with the Court of first instance having been competent to make a good decree up to the full extent of its pecuniary jurisdiction; while

the rest of the argument ab inconvenienti much resembling the reasoning of the learned Judges in the case of *Madho Das v. Ramji Patak* ILR (1894) All. 286, to be presently dealt with, is unconvincing. What is overlookad in this reasoning, speaking generally, is the distinction to be drawn between a claim of unascertained and a claim of ascertained value. In the latter case if the ascertainment has preceded the making of a decree it is difficult to follow the suggestion that the plaintiff's consequent request to be allowed to withdraw his suit, pay additional Court-fees and institute it in a Court of competent jurisdiction, could possibly cover any dishonest intention to oust the jurisdiction of an inferior, and substitute for it the jurisdiction of a superior Court. The converse case might indeed often give rise to such a suspicion, The point now under examination first seems to have been raised though not decided in some obiter dicta of Parsons J. in *Shet Kavasji v. Dinshaji* ILR (1897) Bom. 963. West J. observed in *Lakshman Bhatkar v. Babaji Bhatkar* ILR (1885) Bom. 81 "What prima facie determines the jurisdiction is the claim, or subject-matter of the claim, as estimated by the plaintiff, and this determination having given the jurisdiction, the jurisdiction itself continues whatever the event of the suit, unless a different principle comes into operation to prevent such a result or to make the proceedings from the first abortive." The facts there were such as to present the converse of the case we are considering, but the dictum is used in support of the contention that once by reason of the valuation, a Subordinate Judge, Second Class, has jurisdiction to try a cause, that jurisdiction continues no matter what the result of the trial may be. Thus applied we doubt the correctness of the proposition, expressed in the most general terms By West J. So in another case, *Balvantrav Oze v. Sadru. din I. L R. (1887) Bom. 485*, the facts were that a plaintiff obtained a decree for an amount within the pecuniary limits of the jurisdiction of the Court of the Second Class Subordinate Judge, and in the execution sold timber belonging to the defendant to an amount much in excess of that Court's jurisdiction. In appeal the defendant got the decree of the Court below reversed, and it was held that the Court of the Subordinate Judge, Second Class, was competent in execution to reimburse the defendant the amount for which his timber had been sold. It was contended that the underlying principle of both these cases was virtually the same, and was that a Court of limited pecuniary jurisdiction, once seized of a cause by reason of the plaintiff's valuation for Court-fees and jurisdiction, was competent to carry it to its conclusion whatever the pecuniary amount requiring to be finally decreed might be. If that is the true effect of those two decisions, we are unable to agree with them. But both are plainly distinguishable from the case we are dealing with. The first was a case in which the learned Judges were considering a plaintiff's power, by overvaluing his suit, to bring it for trial in a Court of superior jurisdiction; the latter turns upon a totally different principle. A short answer to the argument was have heard on these and similar cases, is that it is hard to find a ground in reason for the proposition, that a plaintiffs by deliberately undervaluing his claim may over-ride the express provisions of the Legislature, and by his own arbitrary act confer upon a Court of limited, an unlimited pecuniary jurisdiction.

7. It would not have been necessary to examine these cases in so much detail, but for the numerous incidental dicta to be found in the judgments, the use of which in the elaborate argument addressed to us, appears to reveal some confusion of thought. Two entirely distinct propositions referable to different principles, and depending upon two separate lines of reasoning become thus entangled. One proposition is that the mere valuation of a suit for the purposes of Court-fees and jurisdiction, need not necessarily determine, for later purposes of appeal etc. against the plaintiff, the real value of the subject-matter of that suit. We are not concerned with that proposition. Another proposition is that in no circumstances can the subject-matter of a suit exceed in value the pecuniary limits of the jurisdiction of the Court in which it is instituted. We think that the proposition is sound in principle, and that it remains unshaken, indeed untouched, by most if not all the authorities yet noticed.

8. This cannot however be confidently said of the decision of the Allahabad High Court, in *Madho Das v. Ramji Patak* I.L.R. (1894) All. 286 followed and approved (dissenting from *Golap Singh v. Indra Coomar Hazra* 13 C.W.N. 493 in *Sudarshan v. Ram Prasad* (1910) 7 A. L.J. 963.

9. In *Madho Das v. Ramji Patak*, Edge C. J. did very distinctly hold that if a case was properly instituted, so far as Court-fee and valuation alone went, in a Court of limited pecuniary jurisdiction, that Court was not precluded from decreeing an amount exceeding to any extent the limits of its pecuniary jurisdiction. The case came before their Lordships in this way. The suit was instituted in the Subordinate Judge's Court for an amount within the pecuniary jurisdiction of that Court. The first Court (seemingly a Court of unlimited pecuniary jurisdiction) dismissed the suit. It was valued at Rs. 500. The plaintiff appealed to the District Judge who decreed him Rs. 7082. It appears that the pecuniary limits of the District Judge's appellate powers were Rs. 5000. If the subject-matter of the appeal exceeded Rs. 5,000 an appeal lay direct to the High Court. On these facts Edge C. J. held that the District Judge had rightly entertained the appeal and that he had not exceeded his jurisdiction in decreeing a sum in excess of his appellate pecuniary jurisdiction. It may be presumed that in other respects the District Court was competent in its ordinary jurisdiction to deal with suits, the subject-matter of which exceeded Rs. 5,000, and this might be thought to distinguish, to some extent at least, that case from such as we desire to bring within the principle we have stated : see Section 6 of the Civil Procedure Code. But it cannot be denied that the reasoning of the learned Chief Justice for the most part *ab inconvenienti* does go the whole length contended for by the appellant here. The judgment, however, overlooks what we think is an important distinction. A Court pecuniarily competent may always decree an amount less than its pecuniary limit, but a Court of limited pecuniary jurisdiction has no power to decree an amount in excess of that limit. Suppose a plaintiff asks for Rs. 3,000 damages, and as the result of the trial is found to be entitled to Rs. 300 only, has it ever been seriously argued that the trying Judge must refuse to decree the amount found and send the plaintiff to the Small Cause Court ?

Another point which has been over-looked in judgments such as this and many already noticed, is the difference between unascertained and expected, and definitely ascertained sums. A plaintiff may reasonably expect, for example, in a suit for accounts that he will not be found entitled to more than Rs. 5,000 and so bring his suit in the Court of a Second Class Subordinate Judge. Before decree it may become clear that he will be entitled to, say, Rs. 10,000. There is now no uncertainty as to the amount or value of the subject-matter of the suit, and if the plaintiff may not withdraw and bring his suit in a Court competent to try claims to the extent of Rs. 10,000 and upwards, one of two things must happen. He must abandon the surplus amount of his claim, or the Court will be without jurisdiction. Suppose, however, for the purposes of appeal only, a Court of unlimited pecuniary jurisdiction tries a suit the amount of which, being uncertain, is valued formally, at Rs. 1,500, and the trial results in a decree made for the plaintiff for Rs. 8,000, there is still no uncertainty. If the jurisdiction of an appellate Court is pecuniarily limited to Rs. 5,000, it is clear that it cannot hear an appeal against a decree for a sum in excess of that amount, no matter upon what formal valuation the litigation started. This is very different of course from the case before the Allahabad High Court. For there the uncertainty remained until the Court of first appeal had found to what sum the plaintiff appellant was entitled. If it were competent as a Court of original jurisdiction to award that sum it is difficult to find any reason why it should not do so after having properly taken up the appeal.

10. In *Golap Sing v. Indra Kumar* 13 C.W.N. 493, the point has for the first time, as far as we have been able to ascertain, been exhaustively and effectively dealt with by a division bench of the Calcutta High Court consisting of Mookerjee and Carnduff JJ. with the reasoning of Mookerjee J. we find ourselves in complete agreement, and we are unable to see that its validity has been in any way impaired by the dissent expressed by the Allahabad High Court in *Sudarshan v. Ram Prasad* (1910) 7 A.L.J. 967. Indeed the judgment of Stanley C.J. adds nothing to what was contained in the previous judgment of Edge C.J. While in vouching as further authority the case of *Arogya Udayan v. Appachi Rowthan* ILR 1901 Mad. 543, we may be permitted to doubt whether the learned Chief Justice did not overlook what was well pointed out by Mookerjee J., that there is nothing in the passage quoted which necessarily contemplates the making of a decree in excess of the pecuniary jurisdiction of the Munsiff.

11. We are therefore, very clearly of opinion that the proposition we began by stating is correct, and has been supported by good reasoning in the case of *Golap Sing v. Indra Kumar* 13 C.W.N. 498. That proposition is that the amount or value of the subject matter of a suit can in no case exceed the limits of the pecuniary jurisdiction of the Court in which it is instituted. It follows that the amount or value of the subject-matter of a suit for the purposes of Section 109, Clause (a) and (A) and Section 110 of the Civil Procedure Code, if that suit is instituted in a Court the pecuniary limit of whose jurisdiction is Rs. 5,000, can never be greater than Rs. 5,000.

12. And thus we think the first question must be answered against the appellant.

13. The next question is whether the appellant is entitled to come in under the second para, of Section 110 Civil PROCEDURE Code, "or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value." The words here used are probably designedly large and vague, but we do not think that they can possibly have any applicability to a case like this. They were considered by Jenkins C.J. in *De Silva v. De Silva* (1904) 6 Bom.L.R. 403. There the alleged subject matter of the suit, viz., the entire property was different from the plaintiff's interest in it which was only one-third. It was contended that the decree or order indirectly involved a question respecting property of the value of more than Rs. 10,000. The learned Chief Justice refused to accede to this contention, and disallowed the appeal. There may be many cases to which the words of Section no just quoted might aptly apply, but where the suit is for money, and the plaintiff seeks in appeal precisely the same relief, both in kind and quantity as in the Court of first instance, we do not think that they ever could have, or were intended to have, any operation.

14. It is next contended under the third clause of Section 110 "and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law," that this appeal involves more than one substantial question of law. So do a great many appeals in cases in which the subject-matter of the suit in the Court of first instance was less in value than Rs. 10,000. That pecuniary condition not being satisfied it is clear that no leave to appeal could properly be granted merely on the ground that the case involved substantial questions of law.

15. Last it is contended that under Clause (c) of Section 109, "from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council" that this appeal ought to be so certified. We are of opinion that what is contemplated in Clause (c) is a class of cases, in which there may be involved questions of public importance, or which may be important precedents governing numerous other cases or in which while the right in dispute is not exactly measurable in money it is of great public or private importance. See *Banarsi Parshad v. Kashi Krishna Narain* (1900) L.R. 28 IndAp 11. Such was the case of the Udwada Fire Temple, in which leave to appeal was given by Jenkins C.J. But we are unable to see how any considerations of that kind can possibly weigh with us here. The case is of the most ordinary character. The plaintiff wishes to recover money ; the result of the suit can be of no importance to any one but the parties. We do not consider it a case which we ought to certify u/s 109, Clause (c) of the Civil Procedure Code, 1908.