

(1937) 10 AHC CK 0027
In the Allahabad High Court

L. Brij Behari Lal and Others

APPELLANT

Vs

Sahu Gopi Nath

RESPONDENT

Date of Decision : 29-10-1937

Acts Referred:

Citation : (1937) 10 AHC CK 0027

Final Decision : Dismissed

Judgement

Collister, J.—On 5th October 1936 the plaintiff appellants instituted a suit u/s 13, Agriculturists' Belief Act (Local Act No. 27 of 1934) in the Court of the Civil Judge of Pilibhit. On the 27th of that month the Judge directed that the plaint be returned for presentation to the proper Court, i.e. to the Court of the Munsif. Against that order this appeal has been preferred. A preliminary objection is taken that no appeal lies. The point is debatable and is by no means without difficulty, but it is unnecessary for us to record a finding upon it for the reason that, assuming an appeal to be competent, it must fail, and in any case this appeal might be treated as a revision. Under Notification No. 7067/30-3 (4) of 17th December 1935, this Court with the previous sanction of the Local Government framed certain rules under the powers conferred upon it by Section 9, Suits Valuation Act. Rule 28(3) reads as follows:

Suits in which the plaintiff in the plaint asks for accounts only, not being suits to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant, or suits of either of the kinds described in Order 20, Rule 13, Civil P.C.

Value - (a) For the purposes of the Court-fees Act, 1870 as determined by that Act;

(b) For the purposes of the Suits Valuation Act, 1887-

Such amount exceeding Rs. 100, and not exceeding Rs. 500 as the plaintiff may state in the plaint.

2. It was upon this Rule that the Court below based its order. As we have already said, the suit was u/s 33, Agriculturists' Belief Act. That section provides that:

33.(1) An agriculturist debtor may sue for an account of money lent or advanced to, or paid for, him by any person, or due by him to any person as the price of goods or on a written or unwritten acknowledgment for the payment of money, and of money paid by him to such person, (2) In such suit the Court shall follow the provisions of Ch. 4 of this Act and the provisions of the Usurious Loans Act, 1918. It shall, after taking necessary accounts, declare the amount which is still payable by the plaintiff to the defendant, and shall on the application of the defendant, and if the money is payable, pass a decree in favour of the defendant. (3) Subject to Section 30(2) or Section 31(2), as the case may be, if the defendant is found to have been overpaid, the Court shall pass a decree for refund of the amount of such over-payment in favour of the plaintiff.

3. The relief prayed for in this suit was that the amount due from the plaintiffs to the defendant be declared by the Court to be the sum stated in the plaint (between Rs. 27,000 and Rs. 28,000), "or such other sum as the Court may, after rendition of accounts from the defendant, adjudicate as payable". It is clear that the plaintiffs were not suing "to recover the amount which may be found due to them on taking unsettled accounts between them and the defendant". It was a suit for accounting pure and simple and no decree for recovery of any sum of money was sought by the plaintiffs. On the contrary it was admitted in the plaint that the plaintiffs were indebted to the defendant in a large sum and no set-off was claimed. This being so, it is clear that the suit should have been valued as provided by Rule 28(3) of the Notification to which reference has been made above. We are fortified in our view by a reported judgment of a Bench of this Court in *Mt. Anis Begam and Another Vs. Lala Shyam Sunder Lal*, It was there held that suits u/s 33, Agriculturists' Belief Act, are suits for an account of money and that the valuation should be according to Rule 28 (3). This means that the valuation of such a suit should be between Rs. 100 and Rs. 500, which is within the pecuniary jurisdiction of the Munsif. A similar view was taken by the Oudh Chief Court in AIR 1937 12 (Oudh) The relevant observations are to be found on p. 14, Col. 2 where the Court has discussed the Explanation to Rule 268 of the Oudh Civil Rules. The learned Judges have observed that the effect of that Explanation is that:

Suits u/s 38, U.P. Agriculturists' Belief Act, have to be valued for the purposes of the Suits Valuation Act at such amount exceeding Rs. 100 and not exceeding Rs. 500 as the plaintiff may state in the plaint.

4. In our opinion the Court below was right in holding that the suit ought to have been instituted in the Court of the Munsif. It is however argued by learned Counsel for the respondent that, since the suit had in fact been instituted in a Court of superior jurisdiction and had proceeded up to the stage of arguments, that Court, being not incompetent to try a suit within the pecuniary jurisdiction of the Munsif, ought in its discretion to have continued the trial of this suit. We are

referred to certain observations in *Nidhi Lal v. Mazhar Husain* (1885) 7 All. 230. In that case a suit within the pecuniary jurisdiction of a Munsif had been entertained and actually tried by a Subordinate Judge. In the present case the suit was instituted on 5th October 1936. Thereafter a written statement was filed and the parties appeared in Court on 20th October 1936. On that date an objection was taken that the plaintiffs were not agriculturists. The Court thereupon examined one of the plaintiffs on this point and the defendant stated that he had no evidence in rebuttal. At the direction of the Court, account-books were produced on behalf of the plaintiff. Thereafter the Court adjourned the suit to 27th October for arguments and on that date, or so it would appear, the question of jurisdiction was raised for the first time and was decided in favour of the defendant. It is not quite clear from the record what arguments were originally to have been heard on that date, but presumably it was intended that the parties or their counsel should address the Court merely on the question whether the plaintiffs were or were not agriculturists. We presume this because it does not appear that the accounts had been investigated by the Court or that the question of reduction of interest had been considered, both of which things would have had to be done before a decree could be passed u/s 33. It would thus appear that the suit had not proceeded very far; and it had only been pending for three weeks. In the circumstance the Court below acted properly in returning the plaint for presentation to the proper Court. For the reasons given above we dismiss this appeal; but having regard to the fact that the plea of jurisdiction was not taken as early as it might have been and some evidence had already been taken in the suit, we make no order as to costs.