

(1938) 11 BOM CK 0014
In the Bombay High Court
Case No : First Appeal No. 214 of 1936

Narhari Gangadharji

APPELLANT

Vs

Baburao Ranchhodlal Vaidya

RESPONDENT

Date of Decision : 11-11-1938

Acts Referred:

Citation : AIR 1939 Bom 299 : (1939) 41 BOMLR 413

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

Bench : Division Bench

Judgement

Macklin, J.—In the matter which has given rise to this appeal the plaintiff claimed to be the heir to the property in suit and disputed a will, under which the moveable property (valued at Rs. 94,000) had gone to defendants Nos. 1 and 2, and also an award decree, under which the Immovable property (valued at Rs. 30,000) had gone to defendant No. 3. But he put his claim in the form of a suit for administration (not for possession), valued it notionally at Rs. 800, and filed it in the Second Class Court. The Second Class Subordinate Judge framed; preliminary issues as to jurisdiction, valuation, and multifariousness, and dismissed the suit on all three points. If the Judge had no jurisdiction, he was clearly in error in dismissing the suit; and on the plaintiff appealing to the District Judge the dismissal was set aside and it was ordered that the suit should be transferred to; the First Class Court for trial.

2. The First Class Subordinate Judge tried the issues of valuation and multifariousness and held that the proper frame of the suit would be for possession with a valuation based on the value of the property, and he ordered that the plaintiff should amend his plaint accordingly. He also held against the plaintiff on the question of multifariousness, and ordered him to elect between defendants Nos. 1 and 2 on the one hand and defendant No. 3 on the other. This order was the subject of a revision application which was rejected by the High Court, and on the plaintiff declining to obey the order his plaint was rejected.

3. But when the costs were taxed the plaintiff was ordered to pay full pleadings"

fees (in two sets) on a valuation of Rs. 1,24,000. He protested to the Court on the ground that at most he should have been ordered to pay only one-fourth of the full pleaders' fees, the suit not having been decided on the merits, and upon the further ground that the basis of the valuation should have been Rs. 800, the valuation which he himself had put upon the suit. We are told that he has settled his differences with defendants Nos. 1 and 2 and has filed a separate suit against defendant No. 3. His present appeal is against defendant No. 3 alone, and is concerned not with the rejection of his plaint but with the order for the payment of pleaders' fees.

4. For his first contention that only one-fourth of the full pleaders' fee is payable? Mr. Choksi for the appellant relies on Rules 1(a) and 2(c) at p. 51 of the Appellate Side Rules, which are as follows :

1(a) In suits which decide on the merits the real dispute between the parties. the amount of the Advocate's fee shall be computed on the amount or value of the subject-matter in dispute in the suit.

2(c) In all other cases not otherwise provided for, the amount of the Advocate's fee to be allowed shall be one-fourth of that payable according to the rates specified in Rule 1.

5. He argues that the, rejection of a plaint is never a decision on the merits and that in this case the real contest between the parties was not decided at all. Pleders' fees depend upon the amount or value of the subject-matter in the suit, and the subject-matter up to this point, according to the argument, is only a question of procedure whether the plaintiff is entitled to the relief claimed by way of an administrative suit or whether he is bound to sue in terms for possession of the property and the value of the property being ascertained to pay Court-fees on the value of the property. It is true that so far all that has been decided is a question of procedure. There is no decision that the plaintiff is not entitled to possession of the land only that he cannot be given possession in a suit framed as this suit has been framed.

6. Mr. Desai for the respondent contends that there has been a decision the issue of multifariousness, in which the rights of defendant No. 3 came into question, and that there has accordingly been at any rate a partial decision on the merits as between the plaintiff and defendant No. 3. But even accepting this contention for the sake of argument, it is clear that the real question between the parties went further than this, and that there has been, no decision on the merits of the real contest between the parties within the meaning of the rule, even though (as the learned Judge says) there was a "hot contest" on the point that was actually decided. It follows that the plaintiff ought not to be required to pay more than one-fourth of the full fees payable under the rules.

7. The next question is the basis that ought to be adopted for the valuation of pleaders' fees in this suit. To decide this point it is necessary to determine what in substance is the real nature of the dispute between the parties, since upon the

authorities that would be the subject-matter of the suit and the basis for the calculation of pleaders' fees. In *Bai Meherbai v. Maganchand* ILR (1904) 29Bom. 229 : 7 Bmo. L.R. 131, dealing with a suit in which the plaintiff had given a notional valuation and asked the Court to set aside a deed which had the effect of keeping the plaintiff out of certain property and for possession of that property, it was held that the basis for the calculation of pleaders' fees was not the value of the claim as estimated for the purposes of Court-fees but the actual value of the property ; and similar decisions were given in *Nur Mahomed v. Secretary of State* (1925) 28 Bom. L.R. 582 and *Kasanji Kuverji Vs. The Surat Municipality*, which in form were suits for declarations and injunctions with respect to property. In view of these decisions it is impossible not to hold that in the present case, where the real question at issue is the plaintiff's claim to the property in his own right as against defendants Nos. 1 and 2 on the one hand and defendant No. 3 on the other, the valuation for the purposes of pleaders' fees is not the notional value which the plaintiff himself put upon the suit but the actual value of the property itself.

8. Taking the basis of the valuation to be the value of the property, a further question arises as to the effect of the lower Court's order to the plaintiff to select between defendant No. 3 and the other defendants. Mr. Choksi contends that in view of the order to elect and the illegality of combining in one suit the plaintiff's claims against all the defendants, and in view of the further fact that the plaintiff has settled with defendants Nos. 1 and 2 and is appealing only with regard to defendant No. 3, the basis should be the value only of that property with which the plaintiff's claim against defendant No. 3 is concerned. But these considerations do not seem to be material. On the authorities cited, the subject-matter of the suit is the actual value of the property to which the plaintiff would be entitled if the suit had succeeded, and that clearly is the value of the property in the hands of all the defendants, namely, Rs. 94,000 plus Rs. 30,000, or Rs. 1,24,000 in all. The position would be the same if he had obeyed the order to elect and had brought separate suits; on each suit he would have had to pay on the value of the property, and the combined value would be Rs. 1,24,000. He chose to combine two suits in one suit, and he must pay accordingly. In this connection reference may be made to *Laxman Waman Gadre Vs. Saraswati Ganesh Gadre*, where it was stated as follows (p. 694) :

However many the defendants may be claiming In separate interests, they are entitled to appear and defend the suit, and each defendant's pleader would be entitled under the Bombay Pleadings Act to charge a fee based on the suit valuation for the purpose of pleaders fees. So that as the defendants were successful and their costs were ordered to be paid by the losing party, each defendant was entitled to costs taxed on the basis of the suit valuation and not on the basis of what each defendant's interest might be in the suit itself.

9. We modify the decree of the lower Court by directing that the plaintiff should; pay one-fourth of the pleaders' fees calculated on a valuation of Rs. 1,24,000.

The appellant will get three-fourths of his costs in this appeal. That part of the order directing pleaders fees to be paid in two sets in the Court below is confirmed.