
(1911) 02 BOM CK 0028
In the Bombay High Court
Case No : First Appeal No. 132 of 1907

Pherozshaw Jamsetji Comissariatvalla	APPELLANT
Vs	
Waghji Kuverji Raje Shirke	RESPONDENT

Date of Decision : 01-02-1911

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 8
Court Fees Act, 1870 — Section 7

Citation : (1911) 13 BOMLR 158

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

Bench : Division Bench

Judgement

Basil Scott, C.J.—In this case the suit has been valued for the purposes of Court-fees at Rs. 540, It is a suit which falls within s. 7, paragraph (4), Sub-sections (c) and (d) of the Court fees Act and therefore according to the Suits Valuation Act of 1877, the value as determinate for the computation of Court-fees and the value for the purposes of jurisdiction is the same.

2. The suit has been disposed of by the First Class Subordinate Judge of Thana. Section 8 of the Bombay Civil Courts" Act provides that ""Except as provided in Sections sixteen, seventeen and twenty-six, the District Judge shall be the Court of appeal from all decrees and orders passed by the Subordinate Courts from which an appeal lies under any law for the time being in force", and Section 26 provides that "In all suits decided by a Subordinate Judge of the First Class in the exercise of his ordinary and special original jurisdiction of which the amount or value of the subject-matter exceeds five thousand rupees the appeal from his decision shall be direct to the High Court.

3. We think it clear that the value of the subject-matter according to the provisions of the Suits Valuation Act is less than Rs. 5,000, therefore the appeal as provided by the legislature lies to the District Court and not to the High Court.

4. It is, however, said that on two occasions the pleaders on behalf of the respondents have consented to treat the case as appealable to the High Court

and that therefore they are estopped from taking the preliminary objection that such an appeal does not lie.

5. It is pointed out that shortly before the judgment was delivered by the First Class Subordinate Judge, a purshis of the 21st March was put in by the pleaders of the parties in which it is stated " By consent of both parties in suit, the value of the property in suit is settled for Rs. 10, 500. This we give in writing."

6. The statement in the decree drawn up by the Subordinate Judge and dated the 27th March 1907 is that for assessing pleaders' fees and determining the jurisdiction of the Court the value of the property in suit has been, by consent of both the parties, determined at Rs. 10,000.

7. Now that is not a correct statement of the purshis, but even if it were a correct statement of the purshis, we do not think it could be taken to determine the jurisdiction of the Court.

8. The legislature has laid down how the jurisdiction of the Court should be determined, and if according to the statutory method of valuation the value of the suit is less than Rs. 5000, consent of the parties cannot make it more than Rs. 5,000, for the purposes of jurisdiction.

9. It seems probable that the purshis was put in order that the pleaders might be able to have their fees assessed upon a correct basis under Regulation II of 1827 according to the judgment of the Court in *Bai Meherbai v. Maganchand Motiji* (1904) 7 Bom. L.R. 181.

10. It is also contended that on a subsequent occasion the pleader for the respondents consented to an application to this Court which estopped him from now taking the point of jurisdiction. That was an application made to two Judges of this Court, which was consented to by the pleaders on both sides, for the transfer of two other appeals. It was stated in the application that an appeal in this suit lay to the High Court and therefore the appeals in the two subsidiary suits which were the subject of that application should be transferred also for hearing to this Court. Upon that statement, that the appeal in the principal case lay to this Court, the Court passed an order by consent that the two subsidiary cases should be transferred.

11. But now we have to determine whether the appeal in the principal case does lie to this Court and if it does not lie to this Court there will be no difficulty in retransferring the appeals in the succeeding cases.

12. We think it is quite clear that the appeal does not lie to this Court. And there is no reason why this Court should transfer it for trial to itself rather than have it tried by the Judge provided by the legislature, namely, the District Judge of Thana.

13. We therefore direct that the appeal be presented to the District Judge of Thana and that the appeals in the subsidiary cases be retransferred, for trial to

that Court. No order as to costs.