

(1923) 08 CAL CK 0031
In the Calcutta High Court

Raj Rajeswari Jiu

APPELLANT

Vs

Gati Krishna Chakrabarti and Others

RESPONDENT

Date of Decision : 02-08-1923

Acts Referred:

Court Fees Act, 1870 — Section 12(2)

Citation : 82 Ind. Cas. 292

Hon'ble Judges : Chotzner, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This appeal raises a question of some novelty and of considerable importance.
2. The plaintiff, who is the appellant in this Court, instituted a suit for recovery of possession of land and mesne profits in the Court of the Second Munsif at Midnapur. The subject-matter of the litigation was valued at Rs. 600 and Court-fee was paid accordingly. The defendants objected that the suit had been undervalued and that if properly valued it would be found to be beyond the pecuniary jurisdiction of the Court Where it had been instituted. This point was investigated and on the 1st December, 1921, the Munsif came to the conclusion that the value of the subject-matter of the litigation was Rs. 6,000. The result was that the plaint was returned to the plaintiff for presentation to the proper Court. On the 21st December, 1921, the plaint was presented in the Court of the Subordinate Judge at Midnapore; but notwithstanding the finding of the Munsif, the suit was valued at Rs. 1,125 and Court-fee was paid accordingly. The defendants objected that the suit had been undervalued. The objection was manifestly of vital importance from a two-fold standpoint. In the first place if the value of the suit was Rs. 6,000 instead of Rs. 1,125, the forum of a possible appeal would be the High Court and not the Court of the District Judge. In the second place, if the value was Rs. 6,000 instead of Rs. 1,125, a considerable amount of additional Court-fee would be leviable from the plaintiff. The suit was taken up for trial on the 14th September, 1922. The hearing lasted for three days and on the 16th September, 1922, the suit was dismissed on the merits. The

judgment of the Subordinate Judge embodied a direction upon the plaintiff to pay the deficit Court-fee. The parties are not agreed as to what happened at the trial and how this order came to be made. This much is clear that the Court-fee demanded by the Subordinate Judge was not paid. The decree dated the 23rd October, 1922, recited, first, that although the suit had been valued at Rs. 1,125 by the plaintiff, its value had been determined by the Subordinate Judge to be Rs. 6,000, and, secondly, that the deficit Court-fee had not been paid up to that date by the plaintiff. On the 3rd February 1923, the decree was amended in respect of costs. In the decree as originally drawn up, the costs had been calculated on the basis of a valuation of Rs. 1,125. The decree was amended and costs were calculated on the basis of a valuation of Rs. 6,000. The decree further directed that separate costs would be paid to the different sets of defendants. The plaintiff who was apparently satisfied with the decree as originally drawn up, now found himself in a position of embarrassment and on the 20th April, 1923, lodged the present appeal in this Court against the amended decree. The grounds were directed not to the merits but to the question of costs. The memorandum of appeal was valued at the difference between the original and amended costs and the Court-fee was paid accordingly. The Stamp Reporter did not fail to notice the note made in the decree that the deficit Court-fee had not been paid by the plaintiff; but the question could not be considered at that stage, because till the records were received, it could not be ascertained whether the amount due from the plaintiff had or had not been deposited in the lower Court. On the receipt of the records, the matter has now been placed before us for orders.

3. The appellant has urged that there is no provision of the law which entitles this Court to compel him to pay the deficit Court-fee. The respondent has relied upon the provisions of Section 12 of the Court Fees Act, 1870. The first-clause of the section provides that the decision of the Trial Court upon the question of valuation is final as between the parties to the suit. The second clause provides for the correction of error, if any, committed in this respect by the Trial Court. The second clause is in these terms:

But whenever any such suit comes before a Court of Appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided and the provision of Section 10, paragraph ii, shall apply.

4. Paragraph ii of Section 10 provides that where, in the opinion of the Court, the valuation of the suit has been wrongly estimated and the plaintiff has consequently been required to pay an additional fee, the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

5. The appellant contends that Section 12 is by its terms inapplicable. The

question of valuation has not been wrongly decided by the Trial Court, and though there has been a detriment of the revenue, it is attributable, not to an erroneous decision of the Court upon the question of valuation, but to the failure of the plaintiff to carry out the direction of the Court. In these circumstances, it is argued that Clause (2) of Section 12 is of no assistance. It may be conceded that a provision of this character should be strictly construed and that additional fee should be levied from a party litigant only in exact conformity with the precise words of the Statute; although provisions in fiscal Statutes should not be so construed as to furnish a chance of escape and a means of evasion: *Inland Revenue Commissioners v. Oliver* (1909) A.C. 427 : 78 L.J.P.C. 146 : 101 L.T. 140 : 53 S.J. 649 : 25 T.L.R. 707, *Partington v. Attorney-General* (1869) 4 H.L. 100 at p. 122 : 38 L.J. Ex. 205 : 21 L.T. 370, *Cox v. Rabbits* (1878) 3 A.C. 473 at p. 478 : 47 L.J.Q.B. 385 : 38 L.T. 430 : 26 W.R. 483, *Pryce v. Monmouthshire Ry. and Canal Co.* (1879) 4 A.C. 197 at p. 202 : 49 L.J. Ex. 130 : 40 L.T. 630 : 27 W.R. 666, *Oriental Bank Corporation v. Wright* (1880) 5 A.C. 842 at p. 856 : 50 L.J.P.C. 1:43 L.T. 177, *Tennant v. Smith* (1892) A.C. 150 at p. 154 : 61 L.J.P.C. 11 : 66 L.T. 327 : 56 J.P. 596, *Secretary of State for India v. Scoble* (1903) A.C. 299 : 72 L.J.K.B. 617 : 80 L.T. 1 : 51 W.R. 675, *United States v. Thirty-six Barrels of Wine* (1870) 7 Blatchford 459 and *Attorney-General v. Furness Railway Co.* (1899) 2 Q.B. 267 : 68 L.J.Q.B. 623 : 63 J.P. 326 : 80 L.T. 710 : 15 T.L.R. 289. But this manifestly raises the question, what is the position of a litigant who takes up such an attitude. That must be determined with reference to the facts of the particular case before the Court.

6. It is not disputed that in the normal course of events the question of valuation should have been decided in the first instance and an order made by the Subordinate Judge upon the plaintiff to pay the deficit Court-fee before he proceeded to try the suit on the merits. There has been a divergence of statement between the parties as to how there was a departure from the provisions of the law on the subject. The defendants maintain that the suit was tried on the merits because the plaintiff gave an undertaking that the deficit Court-fee would be paid before the decree was drawn up. The plaintiff maintains, on the other hand, that no such undertaking was given. We have examined the affidavits placed before us and we have come to the conclusion that the story narrated by the defendants should be accepted as true. It is inconceivable that an experienced Subordinate Judge would have proceeded to the trial of the suit on the merits unless an undertaking had been given that the deficit Court-fee would be paid. What the plaintiff has done in substance is that he has obtained a trial of the matters in controversy on the merits and he has gone back on his undertaking because the result has proved unfavourable. In these circumstances, the question arises, what action should be taken by the Court.

7. It is unquestionable that the breach of an undertaking given to the Court by a litigant, pending proceedings, on the faith of which the Court sanctions a particular course of action or inaction is misconduct amounting to contempt. It is further well-settled that when a person is guilty of such contempt he places

himself in a perilous situation so as not to be heard by the Court till he has purged his contempt. Lord Chief Baron Gilbert laid it down as a general rule that the contemner who is in contempt is never to be heard by motion or otherwise till he has cleared his contempt and paid the costs; as for example, if he comes to move for anything or desires any favour of the Court (Gilbert on Forum Romanum 102). The limitations of this rule were examined and explained in the case of *Dharmapal v. Krista Dayal* 4 Ind. Cas. 716 : 10 C.L.J. 631, where the decisions in *Clark v. Dew* (1829) 1 Russ. & My 103 : 39 E.R. 40, *Herring v. Clobery* (1841) 12 Sim. 410 : 59 E.R. 1189, *Curtis v. Curtis* (1845) 5 Moo. P.C. 252 at p. 256 : 13 E.R. 487, *Chuck v. Cremer* (1846) 1 Coop. T. Cott. 205 : 47 E.R. 820 : 76 R.R. 4, *Russell v. East Anglian Railway Company* (1850) 3 Mac. & G. 104 : 6 Railw. Cas. 501 : 20 L.J. (N. s.) Ch. 257 : 15 Jur. 933 : 42 E.R. 201 : 17 L.T. (O.S.) 298 : 87 R.R. 39, *Garstin v. Garstin* (1865) 4 Sw. & Tr. 73 : 34 L.J. Mat. 45 : 13 W.R. 508 : 164 E.R. 1443, *Cavendish v. Cavendish* (1866) 15 W.R. (Eng.) 182, *Gordon v. Gordon* (1904) P. 163 : 73 L.J.P. 41 : 90 L.T. 597 : 52 W.R. 389 : 20 T.L.R. 272, were analysed and reviewed. Reference may further be made to the cases of *Wenman v. Osbaldiston* (1719) 2 Bro. P.C. 276 : 1 E.R. 941, *Hill v. Bissel* (1730) Mos. 258 : 25 E.R. 383, *Vowles v. Young* (1803) 9 Ves. 172 : 32 E.R. 567, *Anon* (1808) 15 Ves. 174 : 33 E.R. 720, *Bellchamber v. Giani* (1819) 3 Madd. 550 : 53 R.R. 35 : 56 E.R. 607, *Killing v. Killing* (1821) 6 Madd. 68 : 56 E.R. 1016, *Odell v. Hart* (1828) 1 Molloy 402, *Bryan v. Twigg* (1834) 3 L.J. Ch. 114, *Lord Cranstown v. Goldshede* (1836) 2 Y. & C. Ex. 70 : 5 L.J. Ex. Eq. 23 : 160 E.R. 315, *Wilson v. Bates* (1838) 3 My. & Cr. 197 : 45 R.R. 254 : 7 L.J. (N.S.) Ch. 131 : 40 E.R. 900, *Crawforth v. Holder* (1840) 3 Y. & C. Ex. 718 : 9 L.J. Ex. Eq. 33 : 160 E.R. 891, *Harrison v. Harrison* (1842) 4 Moo. P.C. 96 : 6 Jur. 899 : 13 E.R. 238 *Oldfield v. Cobbett* (1849) 12 Beav. 91 : 85 R.R. 28 : 50 E.R. 995 : 85 R.R. 28, *Taylor v. Taylor* (1849) 1 Mac. & G. (sic) 97 : 1 H. & Tw. 437 : 41 E.R. 1318, *Futvoye v. Kenward* (1859) 2 Giff. 110 : 128 R.R. 49 : 66 E.R. 48, *Burdell v. Hay* (1863) 36 Beav. 189 : 140 R.R. 80 : 55 E.R. 339, *Gould v. Twine* (1874) 63 L.J. Ch. 381 : 30 L.T. 243 : 22 W.R. 398. (36) : (1878) 26 W.R. (Eng.) 312, *White v. Bromige* (36), where the applicability of this doctrine came under consideration in diverse circumstances. It is in fact an elementary rule that one in contempt may be denied certain favours of the Court and privileges, until he has purged himself of contempt, and a useful collection of cases was brought to the notice of the Court in the course of the arguments in *Gordon v. Gordon* (1904) P. 163 : 73 L.J.P. 41 : 90 L.T. 597 : 52 W.R. 389 : 20 T.L.R. 272. The rule denying privileges is limited to proceedings in which the contempt occurs. A litigant in contempt has no standing in the Court. In the case before us, the attitude of the plaintiff has placed him entirely out of Court. He is competent to appeal to this Court, only on the assumption that a decree has been made against him in a litigation valued at Rs. 6,000. If the value of the suit is Rs. 1,125, as he pretended in the Court below, the appeal lay to the Court of the District Judge. He has adopted the view of the Subordinate Judge that the value of the subject-matter of this litigation is Rs. 6,000 in order to enable him to seek the assistance of this Court. He has, however, most inconsistently refused

to pay the Court-fee leviable on the plaint in a suit valued at Rs. 6,000. We are consequently of opinion that the appeal should not be entertained.

8. The result is that this appeal is dismissed with costs. We assess the hearing fee at five gold mohurs.