
(1931) 07 BOM CK 0007
In the Bombay High Court
Case No : Appeal No. 61 of 1929

Shivsangappa Irsangappa Kuppasad APPELLANT
Vs
Muchkhandeppa Irsangappa Kuppasad RESPONDENT

Date of Decision : 08-07-1931

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 25

Citation : AIR 1932 Bom 160 : (1931) 33 BOMLR 1437 : (1932) ILR (Bom) 8

Hon'ble Judges : S.S. Pathar, Acting C.J.; Barlee, J

Bench : Division Bench

Judgement

S.S. Patkar, Ag. C.J.

1. This was a suit brought by the plaintiff for a declaration that the defendant was not the natural born son of Irsangappa bin Muchkhandeppa Kuppasad.
2. The plaintiff is the son of Irsangappa by his first wife and the defendant is the son of Nilgangava, the second wife of Irsangappa. Irsangappa died on February 6, 1926, and the defendant was born to Nilgangava on January 4, 1927, that is 332 days after the death of her husband. The defendant in the written statement contended that the property in respect of which the declaration was sought was worth more than Rs. 5,000, and, therefore, the suit would not lie in the Court of the Second Class Subordinate Judge at Bagalkot.
3. The learned Subordinate Judge held, that the Court had jurisdiction to try the suit, but on the merits decided in favour of the plaintiff, and gave a declaration that the defendant was not the natural born son of Irsangappa bin Muchkhandeppa Kuppasad.
4. On appeal, the learned District Judge held, with respect to the objection to jurisdiction on the ground of the pecuniary value of the subject-matter of the suit, that though the decision of the Bombay High Court in Bai Machhbai v. Bai Hirbai ILR (1911) Bom. 264 13 Bom. L.R. 251 might require to be reviewed in the light of the observations of the Privy Council in the case of Rachappa Subrao

v. Shidappa Venkatrao ILR (1918) Bom. 507 21 Bom. L.R. 489 he was bound by the decision in Bai Machhbai's case, and held that the suit was maintainable in the Court of the Second Class Subordinate Judge provided that it could be validly instituted in that Court under the provisions of Section 20 of the Civil Procedure Code. In dealing with Section 20 of the Civil Procedure Code, the learned Judge came to the conclusion that the defendant was an infant born in Athni outside the Bagalkot Court's jurisdiction and was residing there at the time of the institution of the suit, and held that the objection as to jurisdiction based on the place of suing could be entertained in appeal u/s 21 of the CPC on the ground that the objection to the jurisdiction generally was taken in the written statement, and also on the ground that there had been failure of justice by reason of the trial at the Bagalkot Court, and, therefore, set aside the decree of the Bagalkot Court and ordered the plaint to be returned to the plaintiff to be filed in the proper Court which, according to the learned District Judge, was the Court of the Second Class Subordinate Judge at Athni.

5. The plaintiff has appealed, and it is urged on his behalf that the objection as to the place of suing could not be entertained u/s 21 of the CPC as it was not taken in the written statement. u/s 21 of the Civil Procedure Code, no objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection, i.e., the objection as to the place of suing, was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. The point taken in the written statement related only to the want of jurisdiction based on the pecuniary value of the subject-matter of the suit, as it was contended that the Bagalkot Court had no jurisdiction to decide the suit as the property was worth more than Rs. 5,000. It would, therefore, follow that the contention of the defendant was that the Bagalkot Court had no jurisdiction but the First Class Subordinate Judge's Court at Bijapur had jurisdiction to try the suit. There was no contention that the Athni Court had jurisdiction on the ground that the defendant resided within the jurisdiction of the Athni Court. We think, therefore, that the objection as to the place of suing not being taken in the written statement at the earliest possible opportunity could not be entertained in appeal. It is not necessary, however, in this view of the case, to consider whether there was a consequent failure of justice within the meaning of Section 21 of the Civil Procedure Code.

6. It is, however, contended on behalf of the respondent that the view of the learned District Judge deciding the question of jurisdiction depending on the pecuniary value of the subject-matter of the suit is erroneous. It is contended that the case of Bai Machhbai v. Bai Hirbai turned on the peculiar facts of that case, and that in any event the view of the Privy Council in Eachappa Subrao v. Shidappa Venkatrao ought to prevail, and that where the plaintiff brings a declaratory suit relating to property worth more than Rs. 5,000, the First Class Subordinate Judge at Bijapur would have jurisdiction to try the suit and not the Second Class Subordinate Judge at Bagalkot.

7. u/s 25 of the Bombay Civil Courts Act, a Subordinate Judge of the First Class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature, wherein the subject-matter exceeds five thousand rupees in amount or value, as may arise within the local jurisdiction of the Courts in the district presided over by Subordinate Judges of the Second Class. The question for determination in the case is whether the value of the subject-matter in the present suit exceeds five thousand rupees, A suit where the relief prayed for is a declaration and a consequential relief would fall u/s 7(iv)(c) of the Court fees Act, and the valuation for the purposes of Court-fees and for the purposes of jurisdiction would be the same u/s 8 of the Suits Valuation Act (VII of 1887). The valuation for the purpose of Court-fees in a simple declaratory suit is governed by Schedule II, Article 17, Clause (iii), which prescribes a fixed fee of Rs. 10 subsequently raised to Rs. 15. u/s 8 of the Suits Valuation Act, where in suits other than those referred to in the Court-fees Act, 1870, Section 7, paras, v, vi and ix, and para, x, Clause (d), Court fees are payable ad valorem under the Court-fees Act, 1870, the value as determinate for the computation of Court-fees and the value for purposes of jurisdiction shall be the same. It would, therefore, follow that in a declaratory suit in which no consequential relief is asked, Section 8 of the Suits Valuation Act would have no application as the Court-fees are not paid ad valorem. u/s 4 of the Suits Valuation Act, where a suit mentioned in the Court-fees Act, 1870, Schedule II, Article 17, relates to land or an interest in land of which the value has been determined by rules under the preceding section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules. It appears that no rules have been framed by the Local Government u/s 3 of the Suits Valuation Act, and in the absence of such determination the value will have to be determined judicially by the Court according to the decision in *Dayaram v. Gordhandas* ILR (1906) Bom. 73 8 Bom. L.R. 855 It was observed (p. 79):--

There is no express provision in the Suits Valuation Act making the valuation for the purposes of jurisdiction prima facie determinable by the plaintiff in any suit which can be valued lower for the computation of court-fees.

On the other hand section 8 of the Suits Valuation Act seems...to indicate that the principle adopted by the legislature for valuing a suit mentioned in Schedule II, Article 17, which relates to land or an interest in land is that the value of such a suit for purposes of jurisdiction shall be governed by the value of the land or interest in land.

8. In the present case it is contended on behalf of the appellant that the declaration sought by the plaintiff does not relate to any property worth more than five thousand rupees within the meaning of Section 25 of the Bombay Civil Courts Act. In the plaint the plaintiff states that this suit for a declaration is instituted in the Bagalkot Court because the plaintiff lives at Bagalkot and because the legitimacy of the defendant would affect the right to the property

which is now in the plaintiff's possession and situate in Bagalkot. The declaration, therefore, sought by the plaintiff was in reference to the property which was in the plaintiff's possession, and it is common ground that the land in the possession of the plaintiff is worth more than Rs. 5,000, and that even the share to which the defendant would be entitled in case he is held to be a legitimate son would exceed in value Rs. 5,000.

9. In *Rachappa Subrao v. Shidappa Venkatrao* ILR (1918) Bom. 507 21 Bom. L.R. 499 it was held by their Lordships of the Privy Council that the practice in the Bombay Presidency of valuing a prayer for a declaratory decree at Rs. 130 as being the value on which the fee nearest to Rs. 10 would be leviable was illegal and misconceived, and that it was contrary to the scheme of the Court-fees Act that there should be any valuation of such a suit. It was observed (p. 516):--

This practice has no warrant in law, but has been followed from a misconceived notion of what caution requires. But never was caution more misplaced, and their Lordships feel strongly that they ought not to allow the true facts to be distorted out of deference to an erroneous practice. And here it may be noted that the Rs. 130 cannot have been treated as the measure of the fee, for on such a value Rs. 912-0 and not Rs. 10 would have been paid.

10. Though the plaint in that case prayed for a declaration together with consequential relief, it was held that no consequential relief could have been prayed, and that the injunction which was prayed was demurrable in the sense that no cause of action was disclosed which could have supported this relief. The suit, therefore, was treated simply as for a declaration with regard to the property involved in the suit, and it was observed as follows (p. 516):-

If regard be had to the real as distinct from the imputed value of the property, the suit was properly instituted in the Court of the First Class Subordinate Judge, and if any part of the fee payable and paid was a fixed fee under Schedule H of the Act, then the notional value of the property or any part of it could not displace its real value for the purposes of jurisdiction.

11. It would, therefore, follow from the remarks of the Privy Council that in a simple declaratory suit it is the real value of the property and not the notional value that would determine the valuation for jurisdiction apart from the valuation for purposes of the Court-fees. In the present case the notional value of Rs. 200 which was put as being the value on which the increased fixed Court-fee of Rs. 15 would be leviable would not determine the valuation for purposes of jurisdiction, but the real value of the property, the subject-matter of the suit, likely to be affected by the declaration must be taken to be the value for the purposes of jurisdiction.

12. The same view was taken in the case of *Vasireddi Veeramma v. Butchayya* ILR (1926) Mad. 646 which turned upon the valuation for the purposes of jurisdiction on the terms of Section 12 of the Madras Civil Courts Act, and it was held that a suit for a mere declaration of the factum and validity of an adoption,

without any consequential relief regarding lands or houses likely to be affected by the declaration, has, for purposes of jurisdiction, to be valued on the basis of the market value of the lands or houses likely to be affected by such declaration and not either according to plaintiff's pleasure, or according to the valuation under the Court-fees Act as if it were a suit for possession of such lands or houses.

13. It would also appear from Section 4 of the Suits Valuation Act that in a suit mentioned in Schedule II, Article 17, which does not ask for a consequential relief and relates to land or interest in land the value for purposes of jurisdiction shall be governed by the value of the land or interest in land. According to the allegations made in the plaint to which I have referred, the declaration was sought in respect of the lands in the plaintiff's possession. The case of *Bai Machhbai v. Bai Hirbai* ILR (1911) Bom. 264 13 Bom. L.R. 251 can be distinguished on the ground that there was no dispute in that case with respect to land or interest in land, as it was a suit brought by one Mahomedan widow against another widow for a declaration that the adoption made by one of them was invalid, and that the adopted son was not a party to the suit and no question relating to land or interest in land arose in that case. If, however, the decision in *Bai Machhbai v. Bai Hirbai* be considered to have decided that in a declaratory suit the valuation for purposes of jurisdiction is to be determined by the valuation based on the Court-fees Act, the remarks of the Privy Council to which I have referred are inconsistent with that decision. We must, therefore, follow the decision of the Privy Council in *Bachappa Subrao v. Shidappa Venkatrao*, and hold that in the present case the Bagalkot Court had no jurisdiction to try the suit, and that the First Class Subordinate Judge at Bijapur had jurisdiction to entertain the suit u/s 25 of the Bombay Civil Courts Act, XIV of 1869.

13. We think, therefore, that the order passed by the lower appellate Court in form is correct, and though we confirm the order of the lower appellate Court returning the plaint to be filed in the proper Court, we think that the proper Court is not the Second Class Subordinate Judge's Court at Athni but the First Class Subordinate Judge's Court at Bijapur. Costs of this appeal will be costs in the suit.

Barlee, J.

14. I agree and I have nothing to add.