

MANU/BH/0138/1958

Equivalent Citation: AIR1958Pat430, 1958(6)BLJR246

**IN THE HIGH COURT OF PATNA
FULL BENCH**

A.F.O.D. No. 104 of 1955

Decided On: 29.07.1957

Appellants:**Deonath Missir and Ors.**
Vs.

Respondent:**Chandraman Missir and Ors.**

Hon'ble Judges/Coram:

C.P. Sinha , Kamla Sahai and Kanhaiya Singh , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Madan Mohan Prasad and Shambhu Saran, Adv.

For Respondents/Defendant: D.L. Nandkeolyar, Adv.

JUDGMENT

C.P. Sinha, J.

1. This appeal has been filed in this Court by some of the defendants against the final decree in a partition suit. The partition suit was valued at Rs. 5000. A preliminary decree was passed, but no appeal was preferred against that decree. In usual course, the final decree has been passed, and this appeal has been preferred in this Court on the ground that the real value of the subject-matter of the suit was more than Rs. 5000, and, therefore the appeal lay to this Court. The appeal was filed beyond thirty days, but within ninety days of the date of the decree without mentioning either the value of the suit or the value of the appeal. The Stamp Reporter found from the decree, a copy of which was filed with the memorandum of appeal, that the suit was valued at Rs. 5000 only. The matter was placed before the learned Registrar of this Court who, by his order dated the 4th May 1955, directed the memorandum of appeal, along with the copies of decree and judgment, to be returned to the appellants for presentation to the proper Court; but this order was held in abeyance at the request of the appellants. Thereafter, on the 27th July 1955, a petition was filed on behalf of the appellants challenging the valuation of the suit as given by the plaintiffs to be Rs. 5,000 and suggesting the value of the subject-matter of the suit to be about Rs. 10,000, and praying that an enquiry should be made by this Court about the valuation. There was a counter-affidavit to the petition by the plaintiffs-respondents and affidavit in reply to the counter-affidavit by the appellants. The matter was placed before a Bench of this Court, which, by its order dated the 16th April 1956, has referred the following question to the Full Bench for consideration and decision :

"Whether an appeal from a decree of a Subordinate Judge may lie straight to the High Court where the value of the original suit in which the decree was made did not exceed Rs. 5,000 on the allegation made by the appellant that the original suit should have been valued at more than Rs. 5,000 and whether in such a case the High Court may thereupon direct an independent

enquiry to verify that allegation and thereafter to admit the appeal on the verification of the same ?"

2. We have heard the parties at length, and I must state at the outset that the learned counsel on both sides have rendered able assistance to the Court.

3. The right of appeal is not as a matter of course, but it is always the creation of statute. Section 96(1), Civil P. C., the relevant part of it, runs as follows :

"Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court."

This section merely refers to the Court authorised to hear appeals, and we must look elsewhere for such an authorisation. Reference in this connection must be made to Sections 20 and 21, Bengal, Agra and Assam Civil Courts Act (XII of 1887) which will hereafter be referred to as the Civil Courts Act. The relevant provisions contained in Sections 20 and 21 of this Act are as follows :

"20 (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court-

21 (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees,

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) * * * * *

(4) * * * * *

Section 20, Civil Courts Act is not relevant for our present purpose, but as reference was made to that section in Section 21, Section 20 has been quoted here Now, reading Section 21 with Section 96(1), Civil P. C. there is no doubt that, in the present case the suit having been valued at Rs. 5,000 and instituted in the Court of the Subordinate Judge, the appeal against the decree lay to the District Judge, and not to the High Court. In this connection, Mr. Madan Mohan Prasad, for the appellants, contended that, when Section 21, Civil Courts Act referred to "the value of the original suit," that meant the real value of the suit, and not the value put by the plaintiff ; and he argued further that as in the present case, according to the appellants, the value was about 10,000, the appeal would lie to this Court, and not to the Court of the District Judge. In my judgment, the submission of Mr. Prasad is misconceived. Order VII, Civil P. C. is headed as "Plaint," and Rule 1 of the Order

states :

"The plaint shall contain the following particulars ;

* * * * *

(f) the facts showing that the Court has jurisdiction ;

* * * * *

(i) a statement of the value of the subject-matter Of the suit for the purposes of jurisdiction and of court-fees, so as the case admits."

Rule 10 of that Order provides for return of a plaint at any stage of the suit for presentation to the Court in which the suit should have been instituted ; and Rule 11 provides for rejection of a plaint. One of the grounds for rejection of the plaint (11(b)] is where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so." Order VIII, Civil P. C., which relates to written statement and set off, provides in R. 5 for specific denial of allegations of fact in the plaint, and it reads as follows :

"Every allegation of fact in the plaint, it not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission."

4. Now, in the present case, it appears that summonses of the suit were served on the defendants, and most of the defendants appeared and filed written statements. After the written statements were filed, the case was adjourned, and, after several adjournments, as the defendants did not appear, the suit was heard and decreed ex parte, and a preliminary decree was passed. Even after the passing of the preliminary decree, no appeal was filed against that decree, la these circumstances, it cannot but be held that the allegation made in the plaint about the valuation of the suit would be deemed to be admitted by the defendants, and they should not be allowed to rake up that question thereafter. This is one aspect of the matter. The other aspect is that, the suit having been valued at Rs. 5000, the forum of appeal must be determined according to the provision's of law contained in Section 96 of the Code of Civil Procedure, read with Section 21 of the Civil Courts Act. If, however, the valuation of the suit is intended to be revised, the only course is to go to the proper appellate Court, namely, the Court of the District Judge in this case, and that Court is the only Court where such a question of revision of valuation of the suit can be canvassed, subject, of course, to the provisions of Section 97 of the Code of Civil Procedure. For the purpose of determining the forum of the appeal, therefore, under Section 21 of the Civil Courts Act, the value of the suit as given in the plaint, not challenged by the defendants and accepted by the trial Court, must be deemed to be the only value of the suit, and the present appeal against the final decree in the suit would lie to the District Judge. Mr. Prasad, however, places very great reliance on the case of Amir Nawab v. Mt. Wajeda Begum MANU/BH/0246/1927 : I L RPat 420 : A I R 1927 Pat 289 (A), and that, no doubt, supports his contention. But, in my judgment, and I say with great respect to the learned Judges who decided that case, that decision is wrong. The facts of that case, shortly put, were that a decree had been obtained by a lady for dower debt against her husband, and, in execution of that decree, certain

properties, alleged to belong to the judgment debtor, had been attached at the instance of the decree-holder. Objection was made on behalf of the judgment-debtor that the properties attached were not his personal properties, but were waqf properties of which he was in possession as Mutwalli, The objection was disallowed, and, thereupon, the plaintiff instituted the suit in the court of the Subordinate Judge for a declaration that the properties were waqf properties and not his personal properties. The suit had been dismissed. In her application for execution, the lady had valued the properties attached at Rs. 3,200, and the plaintiff also had valued the suit at the same figure. No objection was taken to the valuation, and no issue was raised, and the suit was disposed of on the valuation as given in the plaint before the Subordinate Judge. The plaintiff, however, preferred an appeal to this Court, and valued the appeal at Rs. 21,620-4-0. The reason given for this enhanced valuation was that, of the two properties which formed the subject-matter of the suit, one was acquired by the Government under Land Acquisition Act for a sum of Rs. 20,420-4-0, and the other had been valued at Rs. 1,200, the total being Rs. 21,620-4-0. These figures were not challenged by the defendant-respondent. The value of the property in suit, therefore, was said to be above Rs. 5,000. The matter came up before their Lordships for a decision as to whether the appeal to this court was competent, and their Lordships held that the appeal lay to this Court. It was observed in the judgment that, "The real question is, what is the value of the subject matter of the suit", and they held that the value of the subject-matter of the suit was unquestionably more than Rs. 5000. In my opinion, the answer should have been that the value of the suit for purposes of appeal, in the circumstances of the case, was as mentioned in the plaint. When a plaint is filed, it is open to the defendant to challenge the facts mentioned in the plaint, and one of the facts mentioned in the plaint is the value of the suit. If that fact is not challenged, the value of the suit is not altered by the fortuitous circumstance that the real value of the subject-matter of the suit was in fact more or less than what was mentioned in the plaint, and there is no provision for instituting an enquiry for ascertaining the real value of the suit if the valuation given in the plaint is not challenged by the defendant to the suit, or the Court does not alter the valuation on the ground that the valuation was unreasonable or arbitrary. Their Lordships further observed in the above case that there was no law preventing the appellant from showing what the real value of the subject-matter of the suit was Here, again, I respectfully 'beg to differ. I have already quoted the relevant provisions of Orders 7 and 8 of the Code of Civil Procedure, and, if no objection is made to the valuation given in the plaint, that matter must be deemed to be final between the parties, and the parties cannot be allowed to rake up that question or any other question of fact not disputed between the parties so far as the suit is concerned. That matter may be taken up in appeal before the proper appellate Court, subject to the limitations provided for by law--one such limitation is provided by Section 97 of the Code of Civil Procedure to the effect that the party aggrieved by the preliminary decree not having appealed from that decree is precluded from disputing its correctness in any appeal which may be pre-erred from the final decree; another limitation is to be found in Section 11 of the Suits Valuation Act, which provides a procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes. It is interesting to notice that, even in cases where the question of valuation of the suit goes to the very root of the jurisdiction of the Court, the matter of valuation cannot be re-opened as a matter of right even in the appellate Court, but it can be done only under limitations provided for in Section 11 of the Suits Valuation Act.

5. It has been observed by their Lordships in the above Patna case ILR 6 Pat 420 at p. 426:(MANU/BH/0246/1927 : AIR 1927 Pat 289 at p. 291) (A) that cases have

frequently come up to this Court where objection has been taken that the valuation given in the plaint did not represent the true value of the subject-matter of the suit, and this Court has made enquiries in such cases about valuation. This is no doubt true, but the matter in regard to valuation was raised in appeal to this Court which lay to the High Court within the meaning of Section 96 of the Code of Civil Procedure read with Section 21 of the Civil Courts Act. Their Lordships themselves referred to three cases, namely, (1) Mohini Mohan v. Gour Chandra : (MANU/BH/0092/1920 : AIR 1921 Pat 32 : 5 P L J 397) (B), (2) Rukmin Das v. Deva Singh: (MANU/BH/0027/1926 : AIR 1926 Pat 351 : 7 F L T 407) (C) and (3) Sah Radha Krishna v. Babu Mahadeo Lal Goenka, Second Appeal No. 1204 of 1922, D/-22-6.1925 (Pat) (D). In these appeals, which were properly before this Court, the question of valuation was allowed to be raised. These cases, however, do not establish that this Court will entertain first appeals arising out of suits in which the valuation did not exceed Rs. 5,000 Their Lordships, on these grounds, repelled the contention put forward by the respondent in the case to the effect that the appeal should be filed before the District Judge in cases where the value of the suit did not exceed Rs. 5,000 and if it was contended before him that the value was more than Rs. 5,000 and the Court found it to be so, it was for the District Judge to return the memorandum of appeal to be presented to this Court. While repelling the respondent's contention, it was merely pointed out that that was not the proper procedure inasmuch as if the District Judge had no jurisdiction to entertain the appeal, the plaintiff-appellant should not be compelled to present his memorandum of appeal before the District Judge with the object of its being returned, In my opinion, the correct view should have been that the law of procedure as prescribed by Section 96 of the Code of Civil Procedure, read with Section 21 of the Civil Courts Act, should have been followed, and, if followed, the appeal lay to the District Judge, who was within his jurisdiction to enquire into the valuation if it was capable of being re-opened, and if it was found that the valuation of the suit was more than Rs. 5000 the memorandum of appeal was to be returned for presentation to the proper Court, viz., the High Court.

6. Their Lordships have given still another reason, which found favour with them, on the analogy of the power of the High Court under Section 110 of the Code of Civil Procedure, 'under which the High Court allowed a litigant to show that, although the value put by him in the plaint was below Rs. 10,000, the real value was above Rs. 10,000. That is, however, done under a specific provision of law. The High Court has to certify about the fitness of the case in regard to valuation as well, and under the law the High Court has to determine the real value of the subject-matter in appeal before the Privy Council (now before the Supreme Court). The relevant provisions in this, regard, as they stand at present, are Section 110 of the Code of Civil Procedure and Article 133 of the Constitution of India. Section 110 of the Code of Civil Procedure, I am quoting only the relevant provision, is as follows :

"In each of the cases mentioned in Clauses (a) and (b) of Section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be twenty thousand rupees (formerly, it was ten thousand rupees) or upwards, and the amount or value of the subject-matter in dispute on appeal to the Supreme Court must be the same sum or upwards. . . ."

Articles 133(1)(a) of the Constitution is as follows : "An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies :

(a) that the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law ; or. . . ."

It will thus be seen that it is under the law laid down by the Code of Civil Procedure and the Constitution that this Court is enabled to allow the parties to litigate before it afresh the amount or value of the subject-matter of the dispute on appeal. In my opinion, therefore, according to the procedure prescribed by S, 21 of the Civil Courts Act appeals from suits valued at Rs. 5,000 or less must be presented to the District Judge and not to the High Court. Rules of procedure are valuable aids to the administration of justice and their proper observance only facilitates dispensation of justice. There is bound to be utter confusion if such rules are disregarded.

7. I would now consider the cases cited at the Bar. The case of Boidya Nath v. Makhan Lal ILR Cal 680 (E) does not appear to be at all relevant for the points under consideration. The case of Ramdeo Singh v. Raj Narairi Singh, MANU/BH/0163/1948 : AIR 1949 Pat 278 (FB) (F) is a case where the provisions of Section 11 of the Suits Valuation Act came in for consideration. In the present case, however, we are not concerned with the provisions of that section. Mr. Prasad, however, drew our particular attention to the observation made by Meredith, J. (as he then was), one of the judges of the Full Bench, at page 287 of the report while considering the question regarding refund or credit for a court-fee paid by the appellant before the District Judge on his memorandum of appeal. His Lordship said as follows :

"He has invited that Judge's decision in his case. If he is the plaintiff, he is entirely responsible for the fact that the appeal has gone to the District Judge. Even if he be the defendant, his submission to the District Judge is still a matter of his choice. If he has not contested the plaintiff's valuation, his position is similar to that of a plaintiff-appellant. If he has unsuccessfully contested it before the trial Court, then it is open to him instead of going to the District judge to come straight to the High Court and assert that the trial Court's decision on valuation was wrong, and actually upon a proper valuation the appeal lies to the High Court as a first appeal."

It should be noted that his Lordship also was of the opinion that even the position of that defendant who has not contested the valuation put by the plaintiff in the trial Court was similar to that of the plaintiff, that is to say, the defendant was as much responsible for the valuation of the suit as the plaintiff. The observation in regard to the appeal being filed straight to the High Court must be deemed to be an observation merely following the law as laid down in MANU/BH/0246/1927 : ILR Pat 420: A I R 1927 Pat 289 preferred to above, and at the most an obiter dictum.

8. Reference has been made by Mr. Prasad to the case of Dukhi Singh v. Harihar Shah 5 P L J 540 : A I R 1921 Pat 78 (G). I am afraid, that case is of no help to him, rather it supports the view which I have taken. The suit giving rise to that appeal was a suit for declaration of title and for partition, and the plaintiff valued his share in the property for the purpose of jurisdiction at Rs. 1,915-6-2. After filing the plaint, the plaintiff filed an application for injunction, which was allowed. Against the order allowing the injunction, defendant No. 1 came up to this Court. A preliminary objection was taken by the plaintiff-respondent to the effect that the appeal was not competent inasmuch as the value of the suit was below Rs. 5,000, and hence the appeal lay to the District Judge, and not to this Court. Their Lordships, dealing with

this contention, observed as follows :

"The plaintiffs themselves valued the suit at much below Rs. 5,000 according to their own shares in the properties in Schs. I and II. and the valuation of the relief made by the plaintiff should be the criterion in such cases for the purpose of determining jurisdiction unless the said valuation is wrong of arbitrary.

The lower Court had already determined in clear terms by its previous order that the valuation of the suit was Rs. 1,750, i.e., 1-13th of the entire value of the properties mentioned in Schedules I and II. The valuation of the suit determined by the Court was for the purpose of court-fee payable by the plaintiff as well as for the purpose of jurisdiction. That order has become final between the parties and we must, therefore, hold that for the purpose of jurisdiction the value of the suit was Rs. 1,750, that is below Rs. 5,000."

On these observations, the appeal to this Court was held to be incompetent. Mr. Prasad also referred to two unreported cases of this Court, namely, Jungal Singh v. Damodar Singh, First Appeal No. 123 of 1952 (H) and Ishwar Mahton v. Tirpit Mahton, First Appeal No. 385 of 1952 (I). I was a party to the orders passed in both these appeals. In these cases, this Court purported to follow the decision in I L R Pat 420 ; MANU/BH/0246/1927 : A I R 1927 Pat 289 (A), and the matter was not argued as to whether that decision correctly laid down the law. Reference was also made to the case of Kiran Singh v. Chaman Paswan MANU/SC/0116/1954 : A I R 1954 S C 340 (J). Though this case considered the provisions of Section 11 of the Suits Valuation Act, some of the observations made appear, in my judgment, to be very pertinent, if I can say so with great respect. Considering the question of prejudice under Section 11 of the Suits Valuation Act, their Lordships observed as follows ;

"They were the plaintiffs in the action. They valued the suit at Rs. 2,950. The defendants raised no objection to the jurisdiction of the Court at any time. When the plaintiffs lost the suit after an elaborate trial, it is they who appealed to the District Court as they were bound to on their valuation. Even there, the defendants took no objection to the jurisdiction of the District Court to hear the appeal.

.... It would be an unfortunate State of the law, if the plaintiffs who initiated proceedings in a Court of their own choice could subsequently turn round and question its jurisdiction on the ground of an error in valuation which was their own".

It may be, therefore, said that, the defendants not having raised the question of valuation in the trial Court, they are not entitled to file a first appeal to this Court when the valuation of the suit remained as it was originally mentioned by the plaintiffs.

9. Mr. Nandkeolyar, on behalf of the respondents, has placed before this Court the case of Ugra Narain Choudhary v. Haribans Choudhary : (MANU/BH/0208/1928 : AIR 1930 Pat 557 : 11 P L T 456) (K). That case had to consider the provisions contained in Section 97 of the Code of Civil Procedure, and it was held as follows:

"Although a Court ought not to delegate his judicial function to the Commissioner, the finding of the Commissioner could not be ignored in the absence of any appeal against the preliminary decree and when each party

submitted to his jurisdiction and took the chance of a finding in his own favour".

In another case reported in the same volume at p. 625, Raja Babu v. Gauri Lal, MANU/BH/0076/1928 : AIR 1928 Pat 535 (L), an observation to the following effect was made

"There is no authority for the proposition that the defendant can at his pleasure put any valuation upon the memorandum of appeal in order to alter the forum of appeal. Under Section 21 of the Civil Courts Act the appeal would lie to the District Judge's Court and it was not open to the defendant to prefer an appeal to this Court by merely enhancing the value of the appeal and putting a valuation which would make it appealable to the High Court".

Mr. Nandkeolyar also cited the cases reported in Narayan Jha v. Jogni Prasad, MANU/BH/0095/1933 : AIR 1934 Pat 184 (SB) (M), Mt. Jagtaran Kuer v. Mt. Munde Kuer. MANU/BH/0179/1933 : AIR 1934 Pat 240 (N). These cases, however, relate to consideration of Section 11 of the Suits Valuation Act, which, I have already indicated, is not called in question in the present case.

10. For the reasons given above, I would answer the reference in the negative.

11. In the circumstances of this case, I do not propose to pass any orders in regard to the costs of the hearing before the Full Bench. The case will now be placed before the Bench for necessary orders in the appeal.

Kamla Sahai, J.

12. I entirely agree.

Kanhaiya Singh, J.

13. I agree entirely.

© Manupatra Information Solutions Pvt. Ltd.