

MANU/BH/0095/1933

Equivalent Citation: AIR1934Pat184

IN THE HIGH COURT OF PATNA

Decided On: 21.12.1933

Appellants:**Narayan Jha Narone and Ors.**
Vs.
Respondent:**Jogni Prasad Jha and Ors.**

Hon'ble Judges/Coram:

Courtney Terrell, C.J., James and Kulwant Sahay, JJ.

JUDGMENT

Courtney Terrell, C.J.

1. This is an appeal from a decision of the District Judge of the Santal Parganas allowing an appeal from the Subordinate Judge on the preliminary point that the suit was by reason of its valuation outside the jurisdiction of the Subordinate Judge and was only triable by the Court of the Deputy Collector under the Santal Parganas Act (No. 37 of 1855). The District Judge rejected the plaint with the intimation that it should be presented in that Court, The plaint alleged that the defendants were tenants under a lease of a house belonging to the plaintiffs; that the lease had expired; that the defendants refused to leave the demised premises; that a sum of Rs. 72 was owing to the plaintiffs in respect of the last two years of the tenancy as rent and a further sum of Rs. 22 as damages.

2. The plaintiffs claimed ejectment decree for Rs. 94 and further damages at the rata of Rs. 2 per diem from the date of the suit till ejectment. A court-fee of Rs. 10-8-0 was paid (on the sum of Rs. 94), but the plaint stated that as the suit related to property worth Rs. 2,000 it was valued at Rs. 2,094 for the purposes of jurisdiction.

The written statement denied the relationship of landlord and tenant and claimed title to the house in question. There was no plea that the Court of the Subordinate Judge had no jurisdiction; but the defendants alleged that the court fee paid was insufficient. Four issues were settled, viz: (1) Is the suit maintainable? (2) Is the suit bad for misjoinder of issues? (3) Is the court-fee sufficient? (4) Is there any relationship of landlord and tenant? The Judge heard evidence and decided every issue in favour of the plaintiffs. He said that the question of valuation was not framed before the framing of the issues and that Section 11, Suits Valuation Act, prevented the defendant from raising it at a later stage and refused to go into this matter.

3. The defendants appealed to the District Judge. It was argued by the defendants that the Subordinate Judge had tried the suit without jurisdiction having reference to the terms of Section 9, Regn. 5,1893, read with Act 37 of 1855, inasmuch as the subject matter of the dispute was not Rs. 2,094, but Rs. 94 only. The plaintiffs argued that their suit was one for recovery of possession and that the value of the property in dispute was the value of the house. The Judge felt himself in some difficulty. The proviso to Section 2, Santal Parganas Act, is as follows:

Provided that all civil suits in which the matter in dispute shall exceed the value of one thousand rupees shall be tried and determined according to the

general laws and regulations in the same manner as if this Act had not been passed.

4. He said that it was doubtful whether the Suits Valuation Act, had any application to the Santal Parganas in the sense that he doubted if it applied to suits in which the matter in dispute did not exceed one thousand rupees, but decided that the spirit of the Suits Valuation Act, should nevertheless be applied and that the jurisdiction should follow the valuation on which the court-fees were paid. He held further that the value of the property concerned was no guide to the valuation of the suit having regard to the nature of the plaint. In these conclusions he was, in my opinion, right. For the purposes of jurisdiction and in order to find out whether the matter in dispute exceeded the value of one thousand rupees, the criterion is an examination of the plaint and not an examination of the issues which have been framed after the written statement has been filed.

5. In the plaint the plaintiffs sued on the express allegation that there was a relationship of landlord and tenant and they sought to enforce the contract on the part of the tenant that after the period of tenancy the tenant would deliver up the premises. The plaint disclosed no dispute in the matter of title. The principle was well illustrated by the case of Gobinda kumar Sur v. Mohinimohan Sen MANU/WB/0011/1929 : AIR1930Cal42 , which was a suit of this nature and it was held by the Court that it was essential to such a suit that the plaintiff should prove the relationship of landlord and tenant since the suit was essentially based upon contract.

6. On the other hand if the question of title were raised by the defendant and if it were found as a fact that there was no contract of tenancy the proper course would be to dismiss the suit and not to convert it into a declaratory and possessory suit which was of another nature entirely. In my opinion, the suit was wrongly valued by the plaintiffs for the purpose of jurisdiction. On this basis the learned Judge allowed the appeal, set aside the decree passed by the Subordinate Judge and stated that it was open to the respondents to present their plaint in the proper Court, that is to say, the Court of an officer appointed under Act 37 of 1855.

7. The learned Judge however while rightly holding that the spirit of the Suits Valuation Act must be followed, neglected to apply the provisions of Section 11 of that Act which is based upon the most ordinary principles of justice. It enacts that a question of valuation in relation to jurisdiction shall not be entertained unless the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded unless the appellate Court is satisfied for reasons to be recorded by it in writing that the error in valuation has prejudicially affected the disposal of the suit or appeal on its merits. Now in this case the defendant did not plead to the jurisdiction nor did he raise the matter before the issues were framed.

8. The trial Court was allowed to enter into matters of fact whereas if the defendant wished to raise the question of jurisdiction he should have raised it at the earliest moment. In my opinion the Subordinate Judge was right in these circumstances in refusing to enter into the matter of jurisdiction. There is no written record of any opinion by the District Judge that the trial of the suit had been affected on its merits and indeed the attitude of the defendant is merely that of one who in the first place accepted the jurisdiction of the Court, but seeks to evade it when disappointed with the decision.

9. In my opinion the proper course is to allow this appeal and to send this case back to the Court of the District Judge for argument upon the merits and the defendant should pay the costs of the plaintiffs incurred up to now throughout.

Kulwant Sahay, J.

I agree.

James, J.

10. I agree.

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