

Mangal Dass v. Naunihal Singh, etc., (Tuli, J.)

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the said order was dismissed as withdrawn. Hence, for the reasons stated, the possession of the land in question shall be treated to be that of the accused party. In that case, they would be well within their right to defend their possession against the appellants and short of causing the death, they could inflict any injury on the intruders on the said land.

(11) In the above view of the matter, the appellants who inflicted injuries on the complainant party while defending their (appellant's) possession committed no offence. Hence appeal is allowed and their sentence and convictions are quashed.

GUJRAL, J.—I agree.

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K.S.K.

REVISIONAL CIVIL

Before Bal Raj Tuli, J.

MANGAL DASS,—Petitioner.

versus

NAUNIHAL SINGH, ETC.,—Respondents.

Civil Revn. No. 321 of 1969.

February 5, 1974.

*Suit Valuation Act (VII of 1887)—Sections 3, 8, 9 and 11—Punjab High Court Rules & Orders Volume I, Chapter 3-C, rule 8—Suit for partition—Jurisdiction value of—Whether the value of the whole property—Valuation of suit not challenged in the trial Court—Appellate Court—Whether can entertain objections regarding such valuation.*

*Held* that according to rule 8 of Chapter 3-C of Punjab High Court Rules and Orders, Volume I, the jurisdictional value of a suit for partition of property has to be determined on the value of the whole of the property in accordance with the provisions of Sections 3, 8 and 9 of the Suits Valuation Act, 1887. The plaintiff has to value the suit for purposes of jurisdiction on the value of the property and not of his own share and it is the duty of the Court to find out whether the proper value has been complied with or not.

*Held*, that even if the valuation of a suit for purposes of jurisdiction is not challenged in the trial Court, the appellate Court can, under Section 11 of the Suits Valuation Act, 1887, entertain an objection to the over-valuation and under-valuation of the suit or appeal if it finds that the over-valuation or under-valuation has pre-judicially affected the disposal of the suit or appeal on its merits. The value of the property as disclosed in the plaint at the time of the filing of the suit has to be seen and not the value which the Court finds after inquiry. Where the appellate Court finds the value beyond its jurisdictional power, it can rightly return the memorandum of appeal for presentation to the proper Court because its decision would be without jurisdiction and would cause prejudice to the parties.

*Petition under Section 115 of the Civil Procedure Code for revision of the order of Shri S. R. Seth, II Additional District Judge, Karnal, dated 15th March, 1969, returning the memorandum appeal along with copies of judgments and decree sheets for presentation to the proper court as the jurisdictional value regarding the shares of the plaintiffs comes to Rs. 19,862 and his court has no jurisdiction to entertain both the appeals against the judgment-decree of the Court of Shri A. K. Jain, Senior Sub Judge, Karnal, dated 30th November, 1966, whereby he passed a final decree to the effect that the plaintiff is entitled to the portion marked as No. 4 and he is entitled to get a compensation of Rs. 1,880. Defendant No. 1 is allotted portion No. 2 and is entitled to recover Rs. 8,840. Portion No. 3 is allotted to defendants 2 and 3 and they are liable to pay Rs. 3,900. Portion No. 5 is allotted to defendant No. 4 and he is to pay Rs. 1,900. Portion No. 1 is allotted to Vasheshar Nath and he is to pay Rs. 4,920. The amount of compensation allowed to the plaintiff and defendant No. 1 would be a charge on the properties of defendants 2 to 9, which can be got recovered by execution. The staircase allotted to Vasheshar Nath can be used by the remaining parties for one year after which each party must make their own arrangement and the owner of property No. 1 is not bound to permit user of the staircase after that period. A final decree is passed accordingly. The plaintiff would be entitled to the costs of the suit from the remaining defendants proportionately from all of them.*

Ch. Rup Chand, Advocate, for the petitioner.

H. L. Sarin, Senior Advocate, with M. L. Sarin, Advocate, for respondent 10.

Y. P. Gandhi, Advocate, for respondent 2.

## JUDGMENT

TULI, J.—One Naunihal Singh filed a suit for actual possession by partition of his share in a building situate at Karnal. It was stated in the plaint that the building was evacuee property and had been purchased by Mangal Dass (petitioner herein) for Rs. 40,000. The plaintiff claimed that he was entitled to 9931/40000th share in that building. The rest of the facts need not be stated as we are only concerned with the value of the suit for purposes of jurisdiction. In para 8 of the plaint, the plaintiff stated that the value of the suit for purposes of jurisdiction was Rs. 9,931 that is, the value of his share in the building. The High Court with the sanction of the State Government framed rules under the powers conferred by section 9 of the Suits Valuation Act, 1887, and the relevant rule is rule 8 in Chapter 3-C of the High Court Rules and Orders, Volume I. According to this rule, the jurisdictional value of the suits for partition of property has to be determined on the value of the whole of the property in accordance with the provisions of sections 3, 8 and 9 of the Suits Valuation Act, 1887. According to this rule, the value for purposes of jurisdiction had to be Rs. 40,000 which was clearly mentioned as the value of the property at the time of the filing of the suit in the plaint. Instead thereof, the plaintiff stated that the value for purposes of jurisdiction was Rs. 9,931, that is, the value of his share in the building. The defendants did not object to that value being stated in the plaint nor did the trial Court detect the mistake. A preliminary decree was passed by consent and after the mode of partition was decided upon, a final decree was passed. Against that final decree, an appeal was filed in the Court of the District Judge, Karnal, in the belief that the value of the suit for purposes of jurisdiction was Rs. 9,931. Before that Court it was stated that the Commissioner appointed by the trial Court had determined the value of the property as Rs. 80,000 and that constituted the value of the suit for purposes of jurisdiction. The learned lower appellate Court accepted that plea and ordered that the memorandum of appeal should be returned to the appellant for presentation to the proper Court. Thereafter, the petitioner presented that appeal in this Court which is pending. He also filed the present petition challenging the order of the learned lower appellate Court returning the memorandum of appeal for presentation to this Court.

(2) In support of his plea, the learned counsel for the petitioner has relied on the principle that the value of the suit as fixed by the plaintiff and not challenged by the defendant becomes conclusive for all the subsequent stages of the suit including appeals and,

therefore, the District Judge, on the valuation of the suit as stated in the plaint, had undoubtedly the jurisdiction to hear and decide the appeal. The learned counsel goes on to submit that he had no jurisdiction to return the memorandum of appeal for presentation to this Court. In fact, the counsel goes to the length of saying that he had no right to determine the jurisdictional value of the appeal before him. I regret my inability to agree to that submission of the learned counsel. Section 11 of the Suits Valuation Act which admittedly applies to the facts of this case reads as under:—

“11(1). Notwithstanding anything in section 578 of the Code of Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower Appellate Court which had no jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an Appellate Court unless—

- (a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower Appellate Court in the memorandum of appeal to that Court, or
- (b) the Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

Provided that in a suit for accounts the value for purposes of jurisdiction as determined by the Court at any stage of the trial shall be final and conclusive and shall not be liable to be contested in appeal or revision.

- (2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower Appellate Court.
- (3) If the objection was taken in that manner and the Appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal

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with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

- (4) The provisions of this section with respect to an Appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure or other enactment for the time being in force.
- (5) This section shall come into force on the first day of July, 1887."

According to this section, the appellate Court can entertain an objection to the over-valuation and under-valuation of the suit or appeal if it finds that the over-valuation or under-valuation has prejudicially affected the disposal of the suit or appeal on its merits. In this case, the learned lower appellate Court came to the conclusion that the value of the property was Rs. 80,000 according to the valuation put by the Commissioner and accepted by the trial Court and, therefore, the appeal should have been filed in the High Court. In my opinion, that was not the proper way of looking at the matter. The proper way was to see what was the value of the property disclosed in the plaint at the time of the filing of the suit in accordance with rule 8 framed by the High Court under section 9 of the Suits Valuation Act, referred to above. According to that rule, the jurisdictional value had to be Rs. 40,000 and on that valuation the appeal lay to the High Court and not to the District Judge. The lower appellate Court, therefore, rightly returned the memorandum of appeal for presentation to the High Court because its decision by that Court would have been without jurisdiction and would certainly have caused prejudice to the parties because in that case second appeal would have laid to this Court which is of a very limited nature. If the value of the suit is to be deemed as Rs. 40,000 according to rule 8 *ibid*, the first appeal lies to this Court and in that appeal the parties can ask the Court to go into questions of fact as well as of law whereas in second appeal only questions of law are to be gone into. The decision of the appeal by the District Judge would, therefore, have prejudiced the parties. I am, therefore, of the view that the learned lower appellate Court rightly refused to hear the appeal on merits and passed an order returning the memorandum of appeal to the petitioner for presentation to the proper Court.

(3) The learned counsel for the petitioner has relied upon a judgment of their Lordships of the Supreme Court in *Kiran Singh and others v. Chaman Paswan and others* (1). The ratio of that decision would have applied if the District Judge had decided the appeal on merits without noticing the defect in his jurisdiction, and an objection to his jurisdiction had been raised in the High Court in second appeal. That principle does not apply where the matter is brought to the notice of the appellate Court and the appellate Court comes to the conclusion that because of the over-valuation or under-valuation of the suit it has no jurisdiction to hear the appeal. Similar observations apply to the other judgments relied upon by the learned counsel for the petitioner, namely, *In re Bhujan Sriramulu Chetty and others* (2), *Avisa Bi Bi v. Muhammad Sadakatulla Marcair and others* (3), *Sardarni Hamir Kaur v. Court of Wards of the Estate of Sardar Balwant Singh, Amritsar* (4), *Mt. Khudaijatul Kubra and another v. Mt. Amina Khatun and another* (5), *Priya Nath Roy v. Sridhar Chandra Roy and others* (6) and *Deonath Missir and others v. Chandraman Missir and others* (7). The Full Bench of the Patna High Court in *Deonath Missir's case* (supra) held that "the matter of valuation cannot be reopened as a matter of right even in the appellate Court but it can be done only under limitation provided for in section 11 of the Suits Valuation Act". I have said above that under section 11 of the Suits Valuation Act, it was open to the appellate Court to examine the objection with regard to the valuation of the suit if it was not in accordance with the statutory rule which governed the suits. I may emphasise that the plaintiff had to value the suit for purposes of jurisdiction on the valuation of the property and not of his own share and it was the duty of the Court to find out whether the proper rule had been complied with or not. The value of the property was available in the plaint itself and had not to be determined by the Court so that it cannot be said that the defendants not having objected to the value for purposes of jurisdiction, the Court had no power to go into the matter. For these reasons, I find no merit in this petition which is dismissed but the parties are left to bear their own costs.

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- (1) A.I.R. 1954 S.C. 340.
- (2) A.I.R. 1945 Mad. 194.
- (3) A.I.R. 1947 Mad. 407.
- (4) A.I.R. 1932 Lah. 538.
- (5) A.I.R. 1924 All. 388.
- (6) A.I.R. 1942 Cal. 60.
- (7) A.I.R. 1958 Patna 430.