

CIVIL APPELLATE

Before Khosla and Falshaw, JJ.

LAKSHMI NARAIN,—Appellant,

versus

BHARAT SINGH,—Defendant.

Regular First Appeal No. 163 of 1949

Court-fees Act (VII of 1870), section 7 (iv) (f)—Suits Valuation Act (VII of 1887), sections 8, 9 and 11 as amended by Punjab Act XIII of 1942—Rules framed by the Lahore High Court under section 9 of the Suits Valuation Act, Rule 4—Suit for dissolution of partnership and

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rendition of accounts—Value for purposes of court-fee and jurisdiction—Powers of Court to determine—Whether plaintiff can fix his own value for purposes of court-fee—Whether value fixed for purposes of jurisdiction by Court is automatically to be the value for purposes of court-fee—Whether different values can be fixed for purposes of court-fee and jurisdiction—Appeal against an order under Order VII, rule 11 of the Code of Civil Procedure valued in the same manner as the plaint—Power of the Appellate Court to reject the appeal summarily as insufficiently stamped—Practice—High Court—Revision filed after 90 days—when to be entertained—Indian Limitation Act (IX of 1908), section 5—Appeal filed in wrong Court through a bona fide mistake of law—Delay when condoned.

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Held, that different values can be fixed for purposes of court-fee and jurisdiction in a suit for dissolution of partnership and rendition of accounts. That according to rule 4 of the Lahore High Court Rules framed under section 9 of the Suits Valuation Act, the Court has the power to fix the value of the suit for purposes of jurisdiction, nevertheless the plaintiff could value his relief for court-fee as provided in section 7 (iv) (f) of the Court-fees Act, that is at his own valuation and that it has not automatically to be raised to the valuation which the court is entitled to fix for purposes of jurisdiction.

Held, that where the trial Court rejected the plaint under Order VII, rule 11, Civil Procedure Code, and the plaintiff valued his appeal against that order in the same manner as the plaint, the Appellate Court could not summarily reject it as insufficiently stamped, but was bound to go into the question as to the true value of the properties, and to give finding thereon.

Held, that though there is no statutory period of limitation fixed for the filing of Revision Petitions and the practice of the High Court is not to admit the Revision Petitions filed after the ordinary period of limitation fixed for Appeals, the High Court will in a proper case entertain a Revision Petition where there are good reasons for its being filed very late.

Held, that the long delay in filing the Appeal in the proper Court is condoned as the Proviso added to section 11 of the Suits Valuation Act by the Punjab Act XIII of 1942, had not come even to the notice of the leading members of the bar who argued the case and was discovered in the course of research after the arguments had concluded, and also that it was not reproduced in some of the leading textbooks on the subject.

Lakshmi Narain v. Bharat Singh *Regular First Appeal from the order of Shri D. R. Pahwa, Commercial Sub-Judge, Delhi, dated the 28th June 1948, rejecting the plaint, under Order VII, Rule 11, Civil Procedure Code.*

BISHAN NARAIN, for Appellant.

TEK CHAND, for Respondent.

JUDGMENT

Falshaw J. FALSHAW, J. A revision petition and a first appeal have been filed by Lakshmi Narain as alternatives in the following circumstances. Lakshmi Narain instituted a suit in the Court of the Commercial Sub-Judge at Delhi in February 1948, against Bharat Singh respondent, for dissolution of partnership and rendition of accounts. In the plaint both for purposes of jurisdiction and court-fee the plaintiff valued the relief sought by him at Rs 130 and paid court-fee accordingly. As required, however, by the provisions of Order VII, rule 2, Civil Procedure Code, to state approximately the amount sued for, the plaintiff having said in the plaint that he expected that a sum exceeding Rs 1,25,000 would be found due to him on going into the accounts, and in the preliminary stages of the suit the objection was raised by the defendant that as the plaintiff had disclosed this large figure as the amount he had in mind when he brought the suit, he could not be allowed arbitrarily to value the relief sought by him at the nominal figure of Rs 130 for purposes of jurisdiction and court-fee, but must be made to value the suit at Rs 1,25,000 for both these purposes and pay court-fee accordingly. This contention was accepted by the learned Sub-Judge who passed an order on the 11th of June 1948, that the plaintiff must value the suit for purposes of jurisdiction at Rs 1,25,000 and also pay *ad valorem* court-fee on this amount. He was accordingly ordered by the 28th of June 1948, to make good the deficiency in court-fee. As he failed to do so an order was passed on that date rejecting the plaint under Order VII, rule 11, Civil Procedure Code. The plaintiff filed an

appeal in the Court of Senior Sub-Judge in which he again fixed the value for both purposes at Rs 130. The objection was raised by the defendant-respondent that the jurisdictional value of the appeal was Rs 1,25,000 and that, therefore, the learned Senior Sub-Judge had no jurisdiction to entertain the appeal. Without dealing with the question of court-fee at all the learned Senior Sub-Judge held that the jurisdictional value of the suit had rightly been fixed by the trial Court at Rs 1,25,000 and that, therefore, he had no jurisdiction to entertain the appeal, the memorandum of appeal being accordingly returned for presentation to the proper Court. There was apparently a long delay in the disposal of the appeal and this order was passed on the 2nd of June 1949. The appeal was presented in this court as a regular first appeal on the 16th of June 1949 and later on the 14th of July 1949, an application was filed under section 5 of the Indian Limitation Act. Also, on the 11th of July 1949, a revision petition was filed against the order of the Senior Sub-Judge holding that he had no jurisdiction to entertain the appeal filed in his Court and returning the memorandum of appeal.

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Two preliminary objections have been raised to the hearing of the appeal—firstly, that it is barred by time, and secondly that it has not been properly valued. There is no doubt that the period of 90 days, even allowing for the time taken in obtaining copies, had elapsed after the decree of the trial Court long before the filing of the appeal in this Court, but the delay is mainly due to the fact that the appeal filed in the Court of the Senior Subordinate Judge remained pending there for nearly a year before he passed his order returning the memorandum of appeal and the appeal was then filed in this Court 14 days later. The question whether the time should be extended in these circumstances under section 5 of the Limitation Act, appears to me to depend to a very great extent on whether or not the plaintiff was right in his original contention that he was entitled to value his suit for all purposes at Rs 130. If in fact his valuation

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was correct then his appeal was properly filed in the Court of the Senior Subordinate Judge, and the latter's order returning the memorandum of appeal was wrong. The preliminary objection regarding court-fee on the appeal also seems to me to be one on which it is not possible to give any proper decision without deciding the main question in issue. There are undoubtedly a number of authorities of other High Courts regarding the amount of court-fee which is payable on an appeal against an order rejecting the plaint under Order VII, rule 11, Civil Procedure Code, one view that of the Nagpur and Madras High Courts being that the court-fee payable is *ad valorem* on the difference between the court-fee originally paid by the plaintiff and the amount of court-fee demanded from him by the trial Court. Another view is that on such an appeal the full court-fee demanded by the trial Court is payable. It seems to me, however, that on this point a more reasonable and sounder view has been taken by a Division Bench in *Amarta Lal Kumar v. Sisir Kumar Basu, etc.* (1), which relates to a suit in which the plaintiff had valued his suit for purposes of court-fee at Rs 60 and the trial Court had held that he must pay court-fee on a sum exceeding Rs 9,000. His plaint was rejected when he failed to make good the deficiency and he had filed an appeal in the Court of the District Judge valued in the same manner as his plaint. His appeal had been summarily rejected by the District Judge as the memorandum of appeal was insufficiently stamped, and it was held by the High Court that the appellate Court was bound to go into the question as to the true value of the properties, and that without coming to a finding on this question it could not hold that the appeal was insufficiently stamped. It seems to me that in any case the objections regarding the court-fee and jurisdiction do not apply in the case of the revision petition, for which there is no statutory period of limitation, and although the practice of the Court is not to admit revision petitions filed after the ordinary period of limitation for

(1) A. I. R. 1976 Cal 427

appeals, this is obviously a case in which there were good reasons for filing the revision petition at a very late stage, and, therefore, its merits should be adjudicated upon.

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A suit for rendition of accounts falls under section 7 (iv) (f) of the Court-fees Act which reads :—

“ (f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal :—

In all such suits the plaintiff shall state the amount at which he values the relief sought.”

The plaintiff assessed the value of the relief claimed by him at Rs 130 and paid *ad valorem* court-fee on that amount, and according to section 8 of the Suits Valuation Act, if it applied, the jurisdictional value of the suit was bound to be the same. As regards its value for court-fee the question which arises is whether the plaintiff, having once mentioned the figure of Rs 1,25,000 in the body of the plaint as the minimum amount which he expected to be found due to him on going through the accounts, was bound by this figure and could not value his suit arbitrarily at Rs 130 or indeed at any less figure than Rs 1,25,000. On this point the learned counsel for the respondent has been unable to cite any authority in support of the contention that the figure mentioned by the plaintiff in the body of the plaint as the amount likely to be found due to him obliges him to fix the amount at which he assessed the value of the relief claimed by him under section 7 (iv) (f) of the Court-fees Act, and also necessarily for purposes of jurisdiction at the same figure. On the other hand, there are cases in which a contrary view has been taken. One such

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case is *Baihiragavri v. Gulabdas-Jamnadas* (1), decided by a Division Bench of the Bombay High Court. In that case the plaintiff had brought a similar suit for dissolution of partnership and rendition of accounts which he had valued under section 7 (iv) (f) at Rs 130 and he had not merely mentioned a sum of Rs 10,000 in the plaint as the sum which he expected to recover, but had actually stated that he valued his suit for purposes of jurisdiction at Rs 10,000. It was held that this valuation for purposes of jurisdiction by the plaintiff was wholly unnecessary, since the value for jurisdiction was determined under section 8 of the Suits Valuation Act by his valuation of the relief sought for purposes of court-fee and that the plaintiff could not be prejudiced or damnified merely because he added to the plaint a computation which it was unnecessary for him to give. It was further held that the plaintiff was entitled to fix any valuation he liked under section 7 (iv) (c) and that his plaint had been wrongly rejected by the Court. This decision was followed by Agha Haidar, J., in *Atma Ram-Charan Das v. Bisheshar Nath-Dina Nath* (2), where the plaintiff had valued his suit for purposes of court-fee and jurisdiction at Rs 500 although he had stated in the plaint that a sum of Rs 8,000 was due to him from the defendant. He had been ordered to pay court-fee at Rs 8,000 and his plaint was rejected when he did not do so and this order was upheld in first appeal. In second appeal Agha Haidar, J., held that it was for the plaintiff to place his own valuation and he cited with approval the Bombay decision mentioned above. A similar view has also been expressed recently by Kapur, J., in *N. V. Vakharia v. Behari Lal Batra etc.* (3), this being a case in which the plaintiff had valued his suit for accounts at Rs 5,100 for court-fee and jurisdiction, perhaps with the object of coming to this Court in first appeal, though he had mentioned in the plaint that a sum of Rs 10,000 was

(1) 22 I. C. 71

(2) A. I. R. 1935 Lah. 630

(3) A. I. R. 1949 E. P. 372

due to him from the defendants. Admittedly the variation in these cases between the plaintiff's valuation of his suit and the amount he thought was due to him was much less than in the present case, but once the principle is established that the two figures need not be identical, it does not seem to me to make any difference from a legal stand-point how great the difference is, and it is to be borne in mind in these cases that the court-fee paid by the plaintiff at the outset does not settle the matter once and for all, since at the end of the suit the plaintiff has to make up any deficiency between the court-fee paid by him and the court-fee payable on the amount ultimately found due to him. In some parts of the Union the law is that the decree shall not be executed until the deficiency in court-fee has been made up, but in the Punjab the law goes even further and provides that a decree sheet shall not even be prepared until the necessary court-fee has been paid and so the fixing by the plaintiff of an arbitrarily low value at the outset does not entail any ultimate loss of revenue. It would seem, however, from certain rules framed by the Lahore High Court in 1942, that this High Court has not regarded suits of this nature as covered by section 8 of the Suits Valuation Act, but has treated them as falling under section 9 which reads :—

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“When the subject-matter of suits of any class, other than suits mentioned in the Court-fees Act, 1870, S. 7, paragraphs v and vi, and paragraph x, clause (d) is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Provincial Government, direct that suits of that class shall, for the purposes of the Court-fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.”

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 Falshaw J. A set of rules framed under section 9 of the Suits Valuation Act was framed by the Lahore High Court and issued in a notification, dated the 2nd of December 1941. Suits of the present kind are covered by rule 4, which reads—

- (i) "Suits in which the plaintiff in the plaint seeks to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant.
- (ii) Suits of either of the kinds described in Order XX, rule 13 of the Code of Civil Procedure.

Value for the purposes of Court-fee.

- (a) As determined by the Court-fee Act, 1870.

Value for the purpose of jurisdiction.

- (b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918, as valued by the plaintiff in the plaint, subject to determination by the Court at any stage of the trial."

It was from the last part of this rule that the trial Court came to the conclusion that it had the power to determine the jurisdictional value of the suit and accepting the figure mentioned by the plaintiff himself in the plaint, fixed the jurisdictional value of the suit at Rs 1,25,000. It seems in fact quite clear from the wording of this part of the rule that the Court had the power to do this, but it is also equally clear from the other part of the rule that nevertheless the plaintiff could value his relief for court-fee as provided in section 7 (iv) (f), that is at his own valuation, and I do not think that the learned Senior Subordinate Judge was correct in his conclusion that the value of the suit for purposes of court-fee had automatically to be

raised to the valuation which the Court was entitled to fix for purposes of jurisdiction. He has observed that it has been authoritatively ruled in A.I.R. 1935 Lah. 40 that the value for the purposes of jurisdiction in a suit for dissolution of partnership and its accounts must be the same as the value for the purposes of court-fee. I cannot, however, agree in regarding this case as an authoritative decision on the point in question. It was a decision by a learned Single Judge, Jai Lal, J., and the appeal arose out of a suit for dissolution of partnership and rendition of accounts which the plaintiff had valued at Rs 100 and in which the dispute between the parties had been referred to arbitration and an award was given whereby the plaintiff was to receive as his share of the partnership property some property valued in all at Rs 39,000. The only question involved in the appeal was whether the plaintiff should be made to pay the difference in court-fee between the fee of Rs 100 and the fee on the amount of property given to him by the award, and it was merely observed incidentally in the course of the judgment that it was conceded that under the provisions of the Suits Valuation Act, the value for the purposes of jurisdiction in a suit for dissolution of partnership and its accounts must be the same as the value for the purposes of court-fee. In other words it seems to have been assumed by all concerned that suits of this kind were governed by section 8 of the Suits Valuation Act, whereas, at any rate since the rules came into force in the end of 1942, the position adopted finally by the Lahore High Court was that such suits were governed by section 9 and the rule framed to deal with them appears clearly to indicate that there can be one valuation for court-fee made by the plaintiff and that there may be another value for jurisdiction fixed during the course of the trial by the Court. Once the valuation for jurisdiction has been fixed by the Court it would seem that under no circumstances can it be changed. Section 11 of the Suits Valuation Act has been made the subject of a local amendment in the Punjab by Act XIII of 1942 which came into force on the 22nd of November 1942, and

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was probably drafted in conjunction with the rules issued about the same period. Section 11 deals with the procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes and the Punjab Act XIII of 1942, added the following proviso to subsection (1) :—

“ 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.”

Such being the case, it is clear that the decision of the learned Senior Subordinate Judge returning the memorandum of appeal for presentation to the proper Court on account of lack of jurisdiction was correct, and therefore, the revision petition fails. The only other question is whether we should condone the delay in filing the appeal in this Court and extend limitation, the appeal, as I have already said, having been filed here nearly a year after the order of the trial Court rejecting the plaint under Order 7, rule 11 was passed. The appeal was promptly filed in the Court of the Senior Subordinate Judge, where it remained pending for several months, and it was filed in the Court with reasonable promptitude after the order of the learned Senior Subordinate Judge was passed. The appeal was undoubtedly justified on the question of court-fee and the only question appears to be whether the appeal was filed in the Court of the Senior Subordinate Judge through a *bona fide* mistake of law. On this point the case of the appellant would not appear to be very strong in view of the statutory provisions of the proviso added to section 11 of the Suits Valuation Act by the Punjab Act of 1942, to which I have referred, but it does not appear that this Act had come to the notice of even the leading members of the Bar who argued the case before us, and I myself have discovered it in the course of research since the arguments in the appeal and revision

concluded. In fact this amendment of section 11 is not printed at all in Mr B. V. Biswanatha Iyer's Edition of the Law of Court-fee in India although it was published in 1949 and the only book in which it appears to be mentioned is Chitale's Commentary on the Court-fees and Suits Valuation Act also published in 1949. In the circumstances I consider that we should condone the delay and accept the appeal and set aside the order of the trial Court rejecting the plaint under Order 7, rule 11, Civil Procedure Code. The revision should be dismissed and the parties left to bear their own costs in both the appeal and the revision. The parties are directed to appear in the trial Court on the 21st of January 1952.

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KHOSLA. J. I agree..