ALLAHABAD HIGH COURT

Mool Chand Moti Lal

Vs.

Ram Kishan

(Mukerji, Ag. C.J)

05.01.1933

JUDGMENT

Mukerji, Ag. C.J.

1. This appeal has been referred to a Full Bench because it raises several difficult points of law. The facts of the case briefly are these: The appellants before us obtained a simple money decree against one Lalman. In execution of the decree the appellants caused the attachment of certain immovable properties. Respondents 1 and 2 preferred an objection to the attachment on the ground that one-half of one of the properties and a whole shop belonged to themselves and not being the property of the judgment-debtor, had been improperly attached. Their objection failed in the execution department and thereupon they instituted the suit out of which this appeal has arisen, to obtain a declaration that the property the attachment of which had been objected to was their own property and could not be attached and sold in execution of the decree obtained against Lalman. To this suit, not only were the decree-holders made party but also Lalman was impleaded. Lalman did not enter appearance. The decree-holders defended the suit. The suit was heard on the merits by the learned Munsif, it having been valued at ₹ 1,342 which was the amount then due on the decree in execution against Lalman. The plaintiffs who lost their suit went to the Court of the District Judge and there they urged that the property involved in the suit was really worth ₹ 20,000 and the Munsif had no jurisdiction to hear the suit. The learned Subordinate Judge who beard the appeal was of opinion that the fact that a suit of large valuation had been heard by a Munsif was in itself a ground for holding that the plaintiffs had been prejudiced by the trial. The learned Subordinate Judge accordingly reversed the decree of the first Court and directed that the plaint be returned to the plaintiffs for presentation to the proper Court. Against this order this first appeal from order has been filed.

2. The questions that were raised during the hearing of the appeal before a Division Bench may be framed as follows: (1) What, in the circumstances of the case, would be the true valuation of the suit? (2) If the valuation be larger than the pecuniary jurisdiction of the Munsif, whether Section 11, Suits Valuation Act (7 of 1887), precluded the lower appellate Court from interfering with the decree except on the ground of the disposal of the suit on the merits being prejudicially affected? (3) Whether the plaintiffs were estopped from pleading that the true valuation of the suit was more than the value put by them in the plaint? We take the several points raised one after

another.

3. On the first point, namely, the true valuation, the cases decided in this Court have almost uniformly taken the view that it is the amount of the decree that determines the value of the suit, where the property involved is of larger value than the amount due under the decree. These cases further lay down that where the decretal amount is large, but the market value of the property involved is smaller, it is the market value of the property that determines the value of the suit. One of these cases is *Khetra v. Mumtaz Begam* [1]which followed the opinion expressed by their Lordships of the Privy Council in *Radha Kunwar v. Reoti Singh*[2] and another Privy Council case in *Phul Kumari v. Ghanshyam Misra*[3] A still later case is *Anandi Kunwar v. Ram Niranjan Das*[4] These cases lay down the propositions of law in the manner stated above. There is an earlier case in *Dwarka Das v. Rameshar Prasad*[5] where it was mentioned that in a similar suit, if the judgment-debtor be made a party, the value of the property claimed would determine the value of the suit. This view however has not been maintained in the two later cases quoted above, on the ground that in most of the cases, the judgment-debtor would be a party pro forma and not as a person disputing the claim of the plaintiffs. At p. 74 of the report *Khetra v. Mumtaz Begam* [6]their Lordships say:

> No doubt she (the plaintiff) made her husband a party to the suit, but she asked for no relief against him and did not allege any cause of action which would entitle her to sue him. Apparently her husband was only made a formal defendant to the suit.

4. A further reason is given at the same page as follows:

> The whole of the property is not in dispute, and under the attachment and the sale which might take place in pursuance of it, the whole property cannot be sold, but only so much of it as will be sufficient for the realization of the amount of the decree. Therefore the value of the subject-matter of the suit is the amount of the decree and not the amount of the actual value of the property or the value for which the plaintiff alleges that she purchased it.

5. We entirely agree with the view taken in the cases cited above and are of opinion that the valuation would depend on the circumstances stated above and not on the actual value of the property where the decretal amount to be realized is less than the market value of the property claimed. In this view, the proper valuation is ₹ 1,342 as stated in the plaint. On the second question again, the decisions in this Court have been uniform. The earliest case that was placed before us on this point is in *Kishan Lal v. Rup Chand* [7]The other cases are: *Dalip Singh v. Kundan Singh*[8] *Khudaijatul v. Amina Khatun*[9], and *Musa Imran v. Bhagwan Das*[10], The view taken in this Court has been followed by the Madras High Court in *Kelu Achan v. Cheriya Parvathi*[11], In Lahore the opinion seems to be in conflict. While Abdul Qadir, J., has taken the same view as this Court in *Sardarni Hamir Kaur v. The Court of Wards*[12] Broadway, J., has taken a contrary view in *Cheloo v. Kali Das*[13] The Patna view is contrary to the view taken by us vide *Rukmin Das v. Deva Singh*[14], and Oudh has followed the Patna view in *Sheoraj*

[1](1916) 38 All 72 [3](1908) 35 Cal 202 [5](1895) 17 All 69 [7](1889) AWN 169
[2] AIR 1916 PC 18 [4] AIR 1918 All 324 [6](1916) 38 All 72 [8] AIR 1914 All 128
[9] AIR 1924 All 388 : (1924) ILR 46 All 250 [10] AIR 1927 All 359 [11] AIR 1924 Mad 6
[12] AIR 1932 Lah 538 [14] AIR 1926 Patna 351 : 96 Ind. Cas. 242

[13](1918) 21 PR 1918

Singh v. Mt. Phulbasa Kuar[15], In view of the opinion expressed by other High Courts, we have reconsidered the question on the merits and have arrived at the conclusion that the view taken in this Court is the correct view. Section 11, Suits Valuation Act, starts by quoting Section 578, Civil Procedure Code 1882, which has now been replaced by Section 99, Civil Procedure Code 1908. These sections lay down:

> that no decree shall be reversed or substantially varied in appeal on account of any defect or irregularity not affecting the merits of the case or the jurisdiction of the Court.

6. As jurisdiction of the Court is specifically exempted from the operation of the rule contained in these two sections, Section 11 lays down that, notwithstanding the provision contained in these sections, the overvaluation or under valuation of a suit or appeal shall not affect a decree of the Court of first instance or of a lower appellate Court unless certain conditions stated in the section are fulfilled. The important point is that the decree passed shall not be interfered with unless the overvaluation or under valuation "has prejudicially affected the disposal of the suit or appeal on its merits." The question is whether the mere fact that a Court of inferior jurisdiction had taken cognizance of the suit on account of under valuation is in itself a ground for saying that the disposal of the suit on the merits has been prejudicially affected. We are of opinion that any such argument would not be good in view of the fact that Section 11 aims directly at nullifying any such argument. The legislature thought it fit to create two grades of Courts of original jurisdiction and two grades of Courts of appellate jurisdiction. The jurisdiction of these Courts depends on the suit or appeal. Disputes as to the proper Court to choose for the suit or the appeal are likely to arise and the legislature which created these various Courts thought that it was proper for it to settle the disputes in certain cases. It accordingly enacted as we read Section 11, that the mere fact that there has been an under valuation or over valuation and therefore the case has been heard by a Court which should not ordinarily have heard it, shall not be allowed to affect the decree if there has been no prejudice in the proper trial of the case. If we put the object for which Section 11 was enacted before us, we come at once to the conclusion that the fact that a Court of inferior jurisdiction has heard a suit of larger value, should not be allowed to be an exception to the rule enacted in Section 11.

7. The over valuation and under valuation have been put in the same category and in the same sentence. The prejudice contemplated must be or may be of the same nature. If it is argued that the hearing of a suit by a Court of inferior jurisdiction itself operates as a prejudice, then it cannot be said that the hearing of a suit of smaller value by a Court of higher jurisdiction can, in itself, operate as a prejudice on the merits. Some difficulty has been experienced in finding an illustration where an under valuation of a suit or appeal is likely to prejudice the disposal of a case and difficulty has also been experienced in finding an illustration where the over valuation of a suit or appeal may affect prejudicially the disposal of a case on the merits. We have been able to hit upon two instances, one of each case, and they are these. In the case of overvaluation, if a property which should have been valued at say ₹ 2,000 is valued at ₹ 11,000 and the suit is brought before a Subordinate Judge, a first appeal would lie to the High Court against the decision. The maintenance of an appeal in the High Court is a matter of cost. The record has to be

[15] AIR 1925 Oudh 561 : 85 Ind. Cas. 445

translated and printed and it is possible that a party with small resources may not be able to prosecute properly an appeal in the High Court. In the case of an appeal to the Privy Council from the decision of a High Court, a party may point out that from poverty he could not print the proper documents for the benefit of the High Court and therefore the disposal has suffered prejudicially on the merits.

8. In the case of under valuation this illustration may do. Suppose the market value of a piece of jewellery is really ₹ 1,500. A party claims it and valuing it at ₹ 500, brings the suit in the Court of Small Causes. If the right valuation had been given the suit would have been cognizable by a Munsif and the party who lost would be entitled to file an appeal. When the suit is decided, it would be open to the High Court in revision to find out whether the disposal of the suit on the merits has been prejudicially affected. A party may show that his evidence was taken piecemeal, that the whole of the evidence was not recorded in extenso and the result was that the Judge, not remembering fully what the witnesses had stated at an earlier stage, arrived at a conclusion which was not the right one. It is really immaterial whether we are able or not to give proper illustrations of the disposal of a suit or appeal being prejudicially affected by under valuation or over valuation. Suffice it to say that the language of the law is clear and the necessary consequence of that language has to be followed if there be 10 ambiguity. The law lays down that the mere fact that a suit has been overvalued or under valued, shall not be allowed to effect the decree unless the disposal of the suit on the merits has been prejudicially affected owing to the over valuation or under valuation. The learned Subordinate Judge who heard the appeal has not come to the conclusion that owing to under valuation the disposal of the suit has been prejudicially affected on the merits. In the circumstances, we are of opinion that it was not open to him to interfere with the decree of the Court of first instance.

9. The third point is one of estoppel. In this case no question of estoppel can arise. The value of the property was known to the parties. The plaintiffs did not say in the plaint that the property claimed was worth ₹ 1,342. They distinctly stated that they valued their suit according to the amount due to the decree-holders from Lalman. It was a pure question of law whether the valuation of the suit should be the market value of the property or the amount due from Lalman. There can be no estoppel on a question of law. We accordingly hold that the plaintiffs were not estopped from pleading before the Subordinate Judge that the true valuation of the suit was the market value of the property in dispute. We have however held that the plaintiffs properly valued their suit. The result is that the appeal succeeds. We set aside the order returning the plaint for presentation to the proper Court and direct the learned Subordinate Judge to hear the appeal on the merits. The appellants will have their costs of both the hearings in this Court, at all events. The order staying the hearing of the suit now pending before the Subordinate Judge is discharged. The suit will disappear from the file of the learned Subordinate Judge and the plaint will be placed at its proper place in the record of the Original Suit No. 55 of 1931 instituted in the Court of the Munsif at Phaphund.

.