

# LAHORE HIGH COURT

Karam Ilahi

Vs

Muhammad Bashir

(Munir, Ag. C.J.)

19.01.1949

## JUDGMENT

### **Munir, Ag. C.J.**

1. The question to which an answer has to be returned by this Full Bench is whether in a suit properly falling under Section 7(iv)(e), Court-fees Act, where the plaintiff has stated in the plaint a particular value for purposes of court-fee and a different value for purposes of jurisdiction, it is the former that determines the latter under Section 8, Suits Valuation Act or vice versa. The reference to the Full Bench was necessitated by the considered obiter dictum in *Mst. Zeb-ul-Nisa v. Chaudhri Din Muhammad*<sup>1</sup> and the decision in several other cases of this Court that where a relief framed in a declaratory form is held by the Court to be a relief for declaration with consequential relief falling under Section 7(iv)(c), Court-fees Act and a particular value for purposes 'of jurisdiction is mentioned in the plaint, the plaintiff by reason of Section 8, Suits Valuation Act, is bound to adopt that value for purposes of court-fee. Section 8, Suits Valuation Act, on the construction of which the answer to the question depends, is as follows:

Where in suits other than those referred to in the Court-fees "Act, 1870, Section 7, paragraphs v, vi, and ix and paragraph x, Clause (d), court-fees are payable ad valorem under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value of jurisdiction shall be the same.

2. It is quite obvious from the terms of this section that in suits to which the section is applicable it is the value as determinable for the computation of court-fees that determines the value for purposes of jurisdiction. Suits falling under Section 7(iv)(c), Court-fees Act not being included in the exceptions mentioned in Section 8, Suits Valuation Act, they are governed by the general rule enacted by the section to the effect that in the case of suits not specifically mentioned in the section the value for purposes of court-fee determines the value for purposes of jurisdiction. The Court-fees Act was passed in 1870 while the Suits Valuation Act was enacted 17 years later, and it must be remembered that the object of Section 8, Suits Valuation Act, is to fix the value of suits for purposes of jurisdiction and not for purposes of court-fee. In fact the section assumes that the value for purposes of court-fee has been determined or is

<sup>1</sup> A.I.R. (28) 1941 Lah. 97

determinable and it is the value so determined or determinable that determines the value for

purposes of jurisdiction. The section has received this construction in a large number of cases including the Privy Council decision in *Sunderabai v. The Collector of Belgaum*<sup>2</sup> where the question was whether the forum of appeal in suits falling under Section 7(iv)(c), Court-fees Act, is determined by the value of the subject-matter or by the value put by the plaintiff on the relief under Section 7(iv)(c), Court-fees Act. The appeal in that case had originally been filed in the High Court under the mistaken belief that it is the value of the subject-matter for purposes of jurisdiction that determines the course of appeal in such cases but the High Court held that the forum of appeal is determined in this class of cases by the value for purposes of court-fee under Section 7(iv)(c), Court-fees Act. Referring to the view taken by the High Court the Privy Council observed:

On objection taken on behalf of the defendants, the High Court on 11th March 1912, rightly decided that the appeal lay to the Court of the District Judge of Belgaum and not to the High Court, and affirmed a principle, which had been previously applied by the High Court at Bombay, that

Where a plaintiff sues for a declaratory decree and asks for consequential relief, and puts his own valuation upon that consequential relief, then for the purposes of court-fee, and also for the purposes of jurisdiction, it is the value that the plaintiff puts upon the plaint that determines both.

The same view of Section 8, Suits Valuation Act, has been taken in *Baru Mal v. Tulsiram*<sup>3</sup>, *Ghulam Nabi v. Umar Bakhsh*<sup>4</sup>, *Ghulam Haider v. Bishambar Das*<sup>5</sup>, *Bansilal Lalchand Firodia v. Bhikubai*<sup>6</sup>, *Jamnadas Vrijlal v. Chandulal Jamnadas*<sup>7</sup>, *Biraja Charan v. Szalaja Charan*<sup>8</sup>, *Maung Nyi Maung v. Municipal Committee Mandalay*<sup>9</sup>, *Mt. Chhatarpati v. Mt Kalap Devi*<sup>10</sup>, *Mian Allah Yar v. Anjuman Imdad Qarza Basti Chah Kotwala Dakhli Jalalpur*<sup>11</sup> and *Ghulam Qadir Bulaqi Mal* pak. A.I.R. 1949 Lah. 1 (F.B.). In fact learned Counsel for the respondents admitted that on the facts assumed in the question the value for purposes of jurisdiction is determined by the value for purposes of court-fee. He, however, contended that where no value for purposes of court-fee, as required" by Section 7(iv)(c), is mentioned in the plaint though the value for purposes of jurisdiction is stated, the value for purposes of court-fee must be held to be the same as the value that is mentioned in the plaint for purposes of jurisdiction. This aspect of the case is not included in the question referred but since the point has been fully argued by the parties and may possibly arise in the hearing of the appeal by the Division Bench, it may be dealt with here. To appreciate the exact significance of this point, it is necessary to state briefly the undisputed facts on which learned Counsel for the respondent seeks to base his contention.

2A. In the original plaint, among other reliefs which are not material for the purposes of the present reference, the plaintiff had asked for a declaration to the effect that a document executed by one Khuda Bakhsh on 11th September 1935 was binding on

<sup>2</sup> A.I.R. 1918 P.C. 135

<sup>4</sup> A.I.R. 41 Lah. 307

<sup>6</sup> A.I.R. 1948 Bom. 8

<sup>3</sup> A.I.R. 1927 Lah. 890

<sup>5</sup> 140 I.C. 73

<sup>7</sup> A.I.R. 1937 Bom. 167

<sup>8</sup> AIR 1939 Cal 155

<sup>10</sup> AIR 1932 All 114 : (1932) ILR 54 All 232

<sup>9</sup> A.I.R. 1934 Rang. 268

<sup>11</sup> A.I.R. 1941 Lah. 284

the parties and that a certain document subsequently executed by him on 18th May 1940 in derogation of the document of 11th September 1935 was invalid, null and void and ineffectual against the plaintiff. This relief had been valued by the plaintiff both for purposes of court-fee and jurisdiction at ₹ 110 but on objection being taken by the defendants to this valuation, the lower Court required the plaintiff to amend the plaint in the following manner:

The Belief Alif as stated in the heading of the plaint contains in fact two distinct reliefs, one with regard to the document dated 11th September 1935 and the other with regard to the document dated 18th May 1940. Each of these reliefs should be distinctly stated in the plaint and separately valued for purposes of court-fee and jurisdiction It will be for the plaintiff to decide whether the relief claimed by him in respect of these documents is a mere declaratory one or that it is for cancellation thereof.

In the amended plaint the plaintiff asked for a declaration to the effect that

- (a)(i) the civil Court should hold that the plaintiff and defendants 1 to 6 are bound by the document, dated 11th September 1935, registered on 20th September 19&5', and cannot interfere in the family settlement made under the said document and the partition of the property effected according to the said settlement, and that they are bound by it in every way;
- (ii) the document, executed by Mian Khuda Bakhsh on 18th May 1940, contrary to the settlement and division of the property embodied in the document, dated 11th September 193&, is invalid and null and void as against the rights of the plaintiff, and can have no effect so far as the property obtained by the plaintiff under the document, dated 11th September 1935, is concerned:

Valuing this relief (or purposes of court-fee the plaint stated:

Value of the suit for purposes of court-fee as regards the prayer mentioned in Clause (a) having Parts (i) and (ii) is ₹ 10 in respect of the prayer made in each part, i.e. ₹ 20 in respect of both the prayers.

As regards the value of these reliefs for purposes of jurisdiction, the plaint averred that for each relief such value was ₹ 17,500. There was another relief claimed in the plaint for declaration pure and simple and the value of that relief for purposes of court-fee was stated as follows:

As regards the prayer mentioned in Clause (b) in respect of the town residential houses, the value is ₹ 10 fixed, as the plaintiff is in feet in possession of house at No. 2.

It will be clear from these recitals in the plaint that for the reliefs claimed under a (i) and (ii) the value of the suit for purposes of court-fee was mentioned to be ₹ 20 and in respect

of another relief it was purely declaratory the value for purposes of court-fee was mentioned as ₹ 10 fixed. When the Division Bench, of which I was a member, heard the appeal I was of the view that so far as relief (a) was concerned, the value for purposes of court-fee had been mentioned by the plaintiff as ₹ 20 under Section 7(iv)(c) and Order 7 Rule 1, Civil Procedure Code, and the reference to the Full Bench was made on this assumption. It will, therefore, be more convenient if the question whether the value for purposes of court-fee, as required by Rule 7(iv)(c), Court-fees Act, was in fact stated in the plaint or not is left to be determined by the Division Bench hearing the appeal and an answer to the question is returned also on the assumption that the value" for purposes of court-fee, as required by Section 7(iv)(c), was not mentioned in the plaint by the plaintiff.

3. Learned Counsel for the respondent contends that the true construction of Section 8, Suits Valuation Act, is that if either of the two values mentioned therein is known, the other, irrespective of whether the plaintiff has or has not stated it, is automatically determined by reason of the provision that both the values must correspond. In this connection he relies on *Mt. Zeb-ul-nisa v. Chaudhri Din Muhammad*<sup>12</sup> *Hakim Rai v. Ishar Das Gorakh Rai*<sup>13</sup> *Muhammad Hayat Khan v. Firm Jasnath Rai-Babu Ram*<sup>14</sup> *Jam v. Bishen Singh*<sup>15</sup> *Sri Kishen Das v. Sat Narain*<sup>16</sup> *Gurdwara Mahant Jawala Singh v. Kala Singh A.I.R. 1931 Lah. 307(SUPRA)* *Kandhaiya Ojha v. Mt. Jagrani Kuar*<sup>17</sup> and *Mt. Jageshra v. Durga Parshad Singh*<sup>18</sup>, These were either cases in which the plaintiff had ostensibly asked for a mere declaration but on a construction of the plaint the High Court held that the claim was not for a declaration simpliciter but involved consequential relief, e.g., the setting aside or cancellation of a decree or other document or they were cases in which the claim being for a declaration and injunction it was held that the suit was for a declaration and consequential relief. In both classes of cases, the plaint having been held to fall under Section 7(iv)(c), Court-fees Act, the plaintiff was required by the Court under Section 8, Suits Valuation Act, to adopt the jurisdictional value stated in the plaint as the value for purposes of court-fee and to pay ad valorem court-fee on it. In my humble judgment the view taken in these cases is erroneous as not only does it omit to give full effect to the intention of Section 8, Suits Valuation Act, but it also deprives the plaintiff of the discretion given to him by Section 7(iv)(c), Court-fees Act, which is as follows: The amount of fee payable 'under this Act in the suits next hereinafter mentioned shall be computed as follows:

(c) in suits to obtain a declaratory decree or order, where consequential relief is prayed.

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.

It is plain from this provision that if the suit is to obtain a declaratory decree or order where consequential relief is prayed, the plaintiff has to state the amount

<sup>12</sup> A.I.R. 1941 Lah 97

<sup>14</sup> A.I.R. 1936 Lah. 703

<sup>16</sup> A.I.R. 1932 Lah. 1824

<sup>13</sup> A.I.R. 1927 Lab. 499

<sup>15</sup> A.I.R. 1935 Lah. 698

<sup>17</sup> A.I.R. 1924 All. 597

<sup>18</sup> AIR 1914 All 72 : (1914) ILR 36 All 500

at which he values the relief sought and has to pay court-fee on the amount at which the relief sought is valued in the plaint or memorandum of appeal. So far as this Court is

concerned, it seems to be settled that under this provision the plaintiff has an absolute "discretion to put his own valuation, on the relief that he claims and that, assuming the case falls under Section 7(iv)(c), the Court has no jurisdiction to question this valuation however arbitrary it may be. The leading authority on this point is the Full Bench decision in *Barru v. Lachman*<sup>18</sup> which has been consistently followed in this Province, vide *Barii Mal v. Tulsi Ram*<sup>19</sup> *Nandan Mal v. Salig Ram*<sup>20</sup> *Gurdwara Mahant Jawala Singh v. Kala Singh A.I.R. 1931 Lah. 307(Supra)*, *Jhanda Singh v. Gulab Mal Bhag wan Das*<sup>21</sup> *Ghulam Haidar v. Bishamber Das*<sup>22</sup> *Seth Dongarsi Das v. Municipal Committee Fazlka*<sup>23</sup> and *Mr. R.H. Skinner v. Mr. Thomas Skinner*<sup>24</sup>

4. Now Section 8, Suits Valuation Act, provides that where in certain kinds of suits, including suits referred to in Section 7(iv)(c), court-fees are payable ad valorem under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same. This section at first sight gives the impression that in suits to which this section applies, the value for purposes of court-fee and the value for purposes of jurisdiction must be the same and that if one is known the other must follow it.

5. This, however, is a superficial and wholly erroneous view as the section is not susceptible of any interpretation other than that in order to determine the value for purposes of jurisdiction in such suits the value for purposes of court-fee must first be ascertained, and that the value so ascertained shall be the value for purposes of jurisdiction. The first step, therefore, in all such cases is to ascertain the value for purposes of court-fee. But such value can only be ascertained under Section 7(iv)(e), Court-fees Act, according to which the plaintiff has to state the amount at which he values the relief sought.

6. Unless, therefore, the plaintiff states the amount, the value for purposes of court-fee cannot be fixed, and if that is not done the value for purposes of jurisdiction cannot be determined because it is made bylaw to depend upon the former. Therefore, the argument that because the value for purposes of jurisdiction is stated by the plaintiff the value for purposes of court-fee must follow it, is based on an obvious fallacy. The direct result of accepting this reasoning is that what in law is the cause becomes in practice the effect and Section 7(iv)(c), Court-fees Act, becomes dependent upon Section 8, Suits Valuation Act, whereas the true position is that the application of Section 8, Suits Valuation Act itself depends upon the previous application of Section 7(iv)(c), Court-fees Act. The only reason that can be discovered from the authorities for the view that where the value for purposes of jurisdiction is stated by the plaintiff in a suit which originally was never intended to be a suit under Section 7(iv)(c), Court-fees Act, the value for purposes of court-fee can be ascertained by treating the value for purposes of jurisdiction as the value for purposes of court-fee by reason of Section 8, Suits Valuation Act is that the plaintiff in such a case must be deemed to

<sup>18</sup>111 P.R. 1913

<sup>20</sup>A.I.R. 1922 Lah. 236

<sup>22</sup>38 P.L.R. 458,

<sup>19</sup>A.I.R. 1927 Lab. 890

<sup>21</sup>A.I.R. 1933 Lah. 246

<sup>23</sup>A.I.R. 1929 Lah. 666

<sup>24</sup>40 P.L.R. 204

have stated his valuation for the purposes of court-fee as required by Section 7(iv)(c) or because having obtained a hearing from a particular Court on the basis of the jurisdictional value stated by him in the plaint he is estopped from varying such value and, therefore, by reason of Section 8, Suits Valuation Act, he must adopt the same value for purposes of court-fee. Neither of these reasons can stand a moment's scrutiny. So far as the first argument is concerned, it reduces itself

to a construction of the plaint and can work only if, as a matter of construction of the plaint, the Court arrives at the result that the plaintiff has in such a case stated the amount at which he values the relief for purposes of Section 7(iv)(c), Court-fees Act. Now if the plaintiff, while drafting the plaint, professes to ask merely for a declaratory decree without any consequential relief and expressly states in the plaint, that for the kind of suit he is framing a fixed court-fee of ₹ 10 is required by the law, it cannot possibly be held that while stating the value for purposes of jurisdiction he is also stating the value for purposes of court-fee under Section 7(iv)(c). Ex hypothesi the provision which requires the plaintiff to state the value for purposes of court-fee is not present to his mind and in fact he does not state any value for any such purpose. If, therefore, the question is purely one of construction of the plaint, it is impossible to hold that in such a case the plaintiff has stated the value of the relief for purposes of court-fee, and unless the Court arrives at this result, the value for purposes of jurisdiction itself remains undetermined. Nor does the argument founded on estoppel work in such cases. If the value for purposes of jurisdiction is determined by the value for purposes of court-fee, and the latter is not stated, the former cannot be ascertained. The true objection, therefore, in such cases is not to the valuation for court-fee because that would depend upon the value that the plaintiff states in the plaint, and ex hypothesi this has not been done, but to the value for purposes of jurisdiction which depends on the value for purposes of court-fee and cannot be determined unless the latter is first fixed. Under Section 11, Suits Valuation Act:

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 not 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.

It seems to me to be perfectly clear from this section that the defendant is under a clear obligation to raise all questions relating to the improper valuation of a suit before the settlement of issues. An objection that a suit has not been properly valued for purposes of jurisdiction is necessarily an objection to the over-valuation or under-valuation of the suit and must, therefore, be taken by the defendant before the settlement of the issues. If he omits to raise any such objection, he will not subsequently be permitted to do so. Now when a suit is ostensibly in the form of a declaration pure and simple but the defendant contends that the suit is in substance not a suit for declaration simpliciter but for a declaration and consequential relief, and the Court decides that the defendant's contention is well founded, it must require the plaintiff to put his own valuation on the relief under Section 7(iv)(c), Court-fees Act, and the value of the suit for purposes of jurisdiction will then be automatically fixed. If the plaintiff does not comply with the order and fails to put his own valuation on the relief for purposes of court-fee, the plaint must be rejected leaving the plaintiff to file a fresh suit under Order 7, Rule 13, Civil Procedure Code

7. If, however, the plaintiff is willing to amend his plaint by stating his own value for purposes of court-fee, the Court cannot require him to put the value that he originally fixed for purposes of jurisdiction of the declaratory suit because any such order would be tantamount to taking away from the plaintiff the right given to him by Section 7(iv)(c) Court-fees Act to put his own valuation on the consequential relief. The virtual effect of the decisions which lay down that when a plaintiff has paid a fixed court-fee on the plaint on the mistaken assumption that the suit is one for declaration pure and simple he should not be permitted to fix a fresh value when the Court holds that the suit is under Section 7(iv)(c), Court-fees Act and that he must adopt the value fixed by him for purposes of jurisdiction as the value for purposes of court-fee is to make Section 7(iv)(c), Court-fees Act dependent upon Section 8, Suits Valuation Act. It amounts, to use a colloquial phrase, to putting the cart before the horse. It seems to be quite clear to me that the Courts in holding fast the plaintiff to the value that he originally states for purposes of jurisdiction of a declaratory suit in effect deprive him of the statutory right which is given to him by Section 7(iv)(c), Court-fees Act and relieve the defendant of the statutory obligation to object to the valuation of the suit. The true construction of Section 7(iv)(c), Court-fees Act and Sections 8 and 11, Suits Valuation Act is that in such cases the estoppel, if any, operates against the defendant and not against the plaintiff. I would, therefore, hold that where a suit purports to be in the form of a declaration without any consequential relief but on a construction of the plaint, the Court holds that the suit is not only for a declaration but also for consequential relief and is governed by Section 7(iv)(c), Court-fees Act, it is the right of the plaintiff to demand that he should be permitted' to fix his own valuation for purposes of court-fee and the clear duty of the Court to permit him to do so and the practice in such cases of not permitting the plaintiff to fix a fresh valuation for court-fee and compelling him to adopt the value mentioned by him for purposes of jurisdiction as the value for purposes of court-fee is a misreading of Section 8, Suits Valuation Act and Section 7(iv)(c), Court-fees Act. The same is the position where in a suit for declaration and injunction the plaintiff treating both the reliefs as independent and substantive reliefs pays a fixed court-fee for declaration under Article 17, sob. 2 to the Court-fees Act and an ad valorem court-fees on the relief for injunction and for both the reliefs states different values for purposes of jurisdiction but the Court holds that the suit being one for declaration and consequential relief falls under Section 7(iv)(c), Court-fees Act. In all such cases it is wrong for the Court to compel the plaintiff to adopt the value stated by him in the plaint for purposes of jurisdiction as the value for purposes of court-fees and the correct course is to require him to amend the plaint by fixing a fresh value for purposes of court-fee under Section 7(iv)(c), Court-fees Act and to state the same value for purposes of jurisdiction under Section 11, Suits Valuation Act.

8. My answer to the question, therefore, is that in the circumstances postulated in the question it is the value for purposes of court-fee that determines the value for purposes of jurisdiction and that even where the relief is originally stamped under Article 17, Schedule 2, to the Court-fees Act without any value for purposes of court-fees having been stated under Section 7(iv)(c), of that Act but the Court holds that the suit falls under the latter provision, the Court is bound to permit the plaintiff to put for purposes of court-fees his own value on the relief and cannot compel him to adopt for such purposes the value stated by him in the plaint for purposes of jurisdiction.

**Mohd. Sharif, J.**

9. I agree.

**Cornelius, J.**

10. I agree.

**Mohd. Jan, J.**

11. I also agree.

**Khurshid Zaman, J.**

12. I agree.