courtkutchehry.com

**Company:** Sol Infotech Pvt. Ltd.

**Website:** www.courtkutchehry.com

**Printed For:**

**Date:** 25/10/2025

# Paras Ram Vs Janki Bai

## F.A.F.O. No. 300 of 1958

**Court:** Allahabad High Court

**Date of Decision:** Feb. 9, 1961

**Acts Referred:**
Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 â€" Section 21#Civil Procedure Code, 1908 (CPC) â€" Order 1 Rule 1#Hindu Marriage Act, 1955 â€" Section 10, 19, 21, 24, 28

**Citation:** AIR 1961 All 395 : (1961) 31 AWR 227

**Hon'ble Judges:** M.C. Desai, Acting C.J.; S.N. Dwivedi, J; B. Mukerji, J

**Bench:** Full Bench

**Advocate:** Satyendra Nath Verma, for the Appellant;

**Final Decision:** Disposed Of

## Judgement

Desai, Ag. C.J.

1. The question referred to us in this appeal is whether the appeal lies to this Court or to the Court of the District Judge, Kanpur.

2. The material facts arc as follows : A petition u/s 10 of the Hindu Marriage Act, 1955, was filed by the appellant, the husband, against the

respondent his wife, in the Court of the District Judge, Kanpur, who transferred it for disposal to the First Civil Judge, Kanpur. No valuation was

given on the petition at all. An application for relief u/s 24 of the Act was made before the learned Civil Judge by the wife and ho passed the order

under appeal to the effect that further proceeding on the appellant''s petition would remain stayed so long as he did not pay to the wife the sum of

Rs. 250/- for her cost of defending the proceeding as ordered on the 7th April, 1958.

The appellant, being aggrieved by the order, preferred this appeal to this Court. The appeal was valued in the memorandum of appeal at Rs. 250/-

, The memorandum of appeal was presented before S.N. Sahai, J. who admitted the appeal, ordered a notice of it to be issued to the respondent,

and referred the appeal to a larger Bench for decision of ""the question raised"". What was the question raised is nowhere mentioned in the order of

the learned Judge; nor does he refer to any question raised in the memorandum of appeal.

When we asked Shri. Satyendra Nath Verma what was the question meant by the learned Judge, he informed us that it was whether the appeal lay

to this Court or to the Court of the District Judge, Kanpur. The question seems to have been raised by the learned Judge himself. We, therefore,

proceed to deal with, the following question :

Does an appeal valued at Rs. 250/- from an order passed u/s 24 of the Hindu Marriage Act, 1955, by a Civil Judge, who is a District Court

within the meaning of the Act in a proceeding commenced on a petition u/s 10 of the Act, which does not mention any value on the face of it, lie to

this Court or to the Court of the District Judge?

3. A notice of this appeal was sent to the respondent but she has not appeared before us and we are determining the question ex-parte against her.

4. A petition u/s 10 of the Act is to be presented to the district court which is defined in Section 3(b) to mean, in an area where there is no city civil

court, ""the principal civil court of original jurisdiction, and include any other civil court which may be specified by the State Government, by

notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act"", vide Section 19. There is no city civil court

in Kanpur and the principal civil court of original jurisdiction there is the Court of the District Judge.

The State Government has issued a notification in the Official Gazette specifying the Court of the First Civil Judge, Kanpur as having jurisdiction in

respect of the matters dealt with in this Act. Consequently the Courts of the District Judge and the First Civil Judge have both come within the

meaning of the words "District Court". We pass by the question why the appellant presented the petition u/s 10 in the Court of the District Judge

instead of in the Court of the First Civil Judge and why the learned District Judge accepted it, because the forum of appeal does not depend upon

in which court it was presented.

Section 28 lays down that an order made by the court in any proceeding under the Act ""may be appealed from under any law for the time being in

force."" The court of a civil judge in the State is created under the Bengal, Agra and Assam Civil Courts Act, 1887. Section 21 of the Act lays

down that an appeal from an order of a Civil Judge shall lie to ""(a) the District Judge where the value of the original suit in which ..... the order was

made does not exceed ten thousand rupees, and (b) the High Court in any other case"".

A proceeding u/s 10 of the Hindu Marriage Act is to be treated as an original suit Consequently an appeal from an order of a civil judge passed in

such a proceeding lies to the District Judge if a certain condition is fulfilled and to the High Court if it is not. The residuary power is thus vested in

the High Court and an appeal lies to the District Judge only if the condition is fulfilled. The value placed on the memorandum of appeal is of no

consequence. Every plaint must bear the value of the subject matter of the suit for the purposes of jurisdiction and of court-fees (vide Order 7,

Rule 1(i) C. P. C.)

A proceeding under the Hindu Marriage Act is governed by the C. P. C. (vide Section 21) and Rule 5 of the Rules made by this Court in exercise

of the powers conferred under Sections 14 and 21 of the Act. Section 8 of the Suits Valuation Act lays down that the value for jurisdiction will be

the same as that for the court-fees in suits (other than those referred to in the Court Fees Act Section 7(v), (vi) and (ix), in which ad valorem court-

fee is payable. Under Article 21-A of the Court-fees Act a fixed court-fee of Rs. 37.50 is payable on a petition u/s 10 of the Hindu Marriage Act;

in other words the court-fee on such a petition is not ad valorem court-fee and consequently Section 8 of the Suits Valuation Act is not applicable

to the present case.

When Section 8 does not apply, Section 9 applies and the value of the subject matter of the suit is to be fixed in accordance with the Rules made

by the High Court. No rules made by this Court in exercise of the power conferred by Section 9 have been brought to our notice. Consequently

there is no law directing how the value of the subject matter of a petition u/s 10 for the purpose of jurisdiction is to be fixed. The appellant, though

bound by Section 21 of the Act read with Order 7 Rule 1 (i) Civil P. C. to state the value of the subject matter, did not state it, presumably

because he did not know how it was to be fixed.

5. When no value was fixed on the petition and when there was no law also under which a certain value or a value not below or not exceeding a

certain sum ought to have been fixed, it cannot be said that the value of the petition did not exceed Rs. 10,000/-. The subject matter of the petition

was not capable of pecuniary valuation and it could not be said that it exceeded any sum of money. Consequently, the appeal from an order

passed in a proceeding started on the petition lay to this Court.

It would lie to the Court of the District Judge only if it could be predicated that the valuation of the petition did not exceed Rs. 10,000/-. In the

case of a subject matter not capable of pecuniary valuation it could not be said that it does not exceed any sum of money. The residuary power to

entertain an appeal vests in the High Court not only when the value of the suit exceeds Rs. 10,000/- but also when the subject matter of the suit is

incapable of pecuniary valuation.

In this interpretation I am supported by Balthazar v. Drouin 1945 SCR 517, Fiset v. Morin, 1945 SCR 520, Barry v. Mercein (1847) 5 How.

103: 12 Law Ed. 102, Kalyan Singh v. Tejkaur (F. A. F. O. No. 11-M of 1959 decided by Khosla. C. J. and Gurdev Singh J. of the Punjab High

Court on 22-8-1960), and Valliammal Ammal Vs. Periaswami Udayar, Under the Supreme Court Act an appeal from the judgment of a State

Court in Canada lies to the Supreme Court of Canada if the amount or value of the matter in controversy exceeds a certain sum.

In the case of Balthazar 1945 SCR (517 an appeal to the Supreme Court was sought from a judgment of a State Court dismissing the appellant''s

suit because he had not fulfilled a certain condition. The matter in controversy in the proposed appeal was whether it was correct that the suit could

not proceed unless the condition had been fulfilled. The Supreme Court oÃ¯Â¿Â½ Canada held that the right of the appellant to proceed without

fulfilling the condition was not appreciable in money and that consequently no appeal lay to it.

In the other case of Fiset 1945 SCR 520 the Supreme Court held that no appeal lay to it from a judgment dismissing the appellant''s suit because

he had not given sufficient security, on the same reasoning that there was mo amount or value in controversy in the appeal. In the case of Barry

(1847) 5 How 103 : 12 LEd. 102 the Supreme Court of the United States had to consider the law laying down that a decree, when the matter in

dispute exceeded a certain sum, might be appealed from and Teney, C. J., observed at page 120 that

The matter in dispute must be money or some right, the value of which, in money, can be calculated and ascertained.

The controversy in that case was between the father and the mother regarding the custody of a child. Since it was a matter utterly incapable of

being reduced to any pecuniary standard of value, the Supreme Court held that no appeal lay to it. The Punjab and the Madras cases both dealt

with the forum of appeal from an order passed under the Hindu Marriage Act. In both the cases the order was passed by the court of a Civil

Judge, which was a ""district court"" within the meaning of the Act. The two States, however, had differently worded provisions governing the forum

of appeal from a judgment of a civil court.

The provision in the Punjab Act was similar to the provision in the Bengal, Agra and Assam Act inasmuch as it vested the residuary power in the

High Court, while the Madras Act vested the residuary power in the District Judge by providing that an, appeal would lie to the district judge,

except when the amount or value of the subject matter exceeds a certain sum. It was this difference in the language employed in the two Acts that

was responsible for the different results arrived at in the two cases. In the Punjab case it was held that the appeal lay to the High Court whereas in

the Madras case it was held that it lay to the District Judge.

The principle applied in both the decisions was the same, -- it being an appeal will not lie to the court the jurisdiction of which to entertain it

depends upon a certain value of the subject matter in controversy. In the case before us, as also in the Punjab case, the jurisdiction of the district

judge to entertain an appeal depends upon the value of the subject matter in appeal not exceeding a certain sum. According to the principle applied

in all the cases discussed above, when the subject matter in appeal is not capable of pecuniary valuation, the appeal will not lie to the district judge.

6. In the result I hold that an appeal from an order passed u/s 24 of the Hindu Marriage Act, 1955, by a civil judge, who is a district court within

the meaning of the Act, in a proceeding commenced on a petition u/s 10 of the Act which (petition) does not mention any value on the face of it,

lies to the High Court.

7. List the appeal in the usual course for final hearing when it is ready.

8. Mukerji, J: I agree.

9. Dwivedi, J.: I agree.