(1948) 09 AHC CK 0021

Allahabad High Court

Case No: None

Jumman Khan		APPELLANT
	Vs	
Bhoorey Khan		RESPONDENT

Date of Decision: Sept. 13, 1948

Acts Referred:

- Court Fees Act, 1870 - Section 7(iv)(f)
- Partnership Act, 1932 - Section 48
- Suits Valuation Act, 1887 - Section 8

Citation: AIR 1949 All 161

Hon'ble Judges: Agarwalla, J; Agarwala, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Agarwalla, J.
This is a defendant''s application in revision.

2. Bhoorey Khan, opposite party No. 1, instituted the suit which has given rise to this revision for dissolution of partnership and ac-counts on the allegations that he and defendants I to 4 entered into a partnership for the purposes of manufacturing bangles at Firozabad and to carry on the business in the name and style of "Forward Glass Works"; that the partnership was at will and that later on defendant 4 retired from the partnership so that on the date of the suit the plaintiff and defendants l to 3 were the only partners of the partnership; that the plain-tiff''s share in the partnership was 0-5-0 in the rupee; and that defendant 3 kept the cash and the accounts. The reliefs prayed for in the plaint were that the partnership be dissolved and the accounts of the partnership business be taken, and a decree for the amount found due to the plaintiff be passed in his favour. In para. 12 of the plaint, the plaintiff stated, "that the suit is valued at Rs. 2000 both for the purposes of jurisdiction and payment of court-fees." Defendants 2 and 3 denied that they were

partners in the partnersbip. Jumman Khan, defendant 1, stated that 1949 he was the sole proprietor of the firm, Forward Glass Works, Firozabad and the plaintiff not a partner therein. He further pleaded the suit had been undervalued and the court paid was insufficient, and that it was beyond pecuniary jurisdiction of the Court.

3. After the institution of the suit a receiver was appointed to take charge of all the pro] ties belonging to the firm. One item of the fir; property consisting of bangles was made over the defendant Jumman Khan on a valuation Rs. 9000. The rest of the properties were valued by the plaintiff at Rs. 27,127, and by the defendant at Rs. 40,250. Thus, the partnership property Was admittedly worth more than Rs. 37,000 The learned Munsif held that the plaintiff''s share being about one-fifth, the value of the assets his share would be Rs. 7514. He further held that in a suit for dissolution of partnership a for accounts the value for purposes of court-fee and jurisdiction should be fixed at the value the plaintiff''s share in the assets without taking into account the liabilities of the firm. In the result he ordered that the plaint be returned presentation to the proper Court.

4. The plaintiff went up in appeal again this order. The learned Judge, Small Cause Court: Agra, who heard the appeal held that the liabili ties could not be disregarded in arriving at true valuation of the suit. He entered into rough enquiry about the assets and liabilities the firm and came to the conclusion that the value of the plaintiff''s share was roughly about Rs. 4300. But considering that the difference between Rs. 4000, which was the limit of the Munsif''s pecuniary jurisdiction, and Rs. 4300, the value of the plaintiff''s share on a rough calculation, was very small, he thought that the case needed further enquiry as to the approximate amount due to the plaintiff. He, therefore, allowed the appeal, set aside the decree of the lower Court and remanded the case to the Munsif directing him to decide the question of valuation after holding further enquiry.

5. Against this decision the defendant ha come up in revision to this Court and it is urged on his behalf that once the lower Court has come to the conclusion that on a rough calculation, the valuation of the share of the plaintiff was Rs. 4,300 he should have dismissed the appeal and not remanded the case for further enquiry. It is further urged that the Munsif was right in holding that the valuation of the suit should be ascertained on a calculation of the value of the plaintiff''s share in the assets of the partnership without taking into consideration the liabilities. In support of this contention reliance is placed upon a ruling of this Court in Inayat Husain Vs. Bashir Ahmad and Another .

6. Before 1939, the court-fee payable in suits for accounts was to be calculated in accordance with the provisions of Section 7 (iv) (f), Court-fees Act, which provided that the valuation was to be "according to the amount at which the relief sought as valued in the plaint." By the U.P. Act of 1938'' the following proviso has been added:

Provided further...that such amount shall be the approximate sum due to the plaintiff and the said sum shall form the basis for calculating (or determining) the valuation of an appeal from a preliminary decree passed in the suit.

7. The section has been re-numbered as 7(iv) (b).

8. It is clear that under the amended provisions, in a suit for accounts the plaintiff must state the amount that he considers is approximately due to him. It will not do for him to merely value his suit for purposes of payment of court-fee at a certain figure. In the present case the plaintiff has not given this information in the plaint. As we have pointed out above, he has merely stated in para. 12 of the plaint that the valuation for purposes of payment of court-fee and jurisdiction is Rs. 2000. This is not enough under the present law and the Court below should have required the plaintiff to state the approximate amount that he considers is due to him.

9. The next point to be considered is how the approximate amount due to the plaintiff is to be calculated. In a suit for dissolution of partnership and for accounts the Court has to find out the amount due to the plaintiff in accordance with the provisions of Section 48, Partnership Act. Section 48 runs as follows:

48. In settling the accounts of a firm after dissolution, the following rule shall, subject to agreement by of the partners, be observed:

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:

(i) in paying the debts of the firms to third parties;

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

10. It is obvious that the amount due to the plaintiff cannot be found out unless both the assets and liabilities are taken into account. In Inayat Husain Vs. Bashir Ahmad and Another the Court did not any where lay down that the valuation of the plaintiff''s share was to be calculated with reference to the assets only and that the liabilities were to be disregarded. It is true that in that case the value of the plaintiff''s share in the assets of the partnership was taken as the valuation for purposes of payment of court-fees. But from the judgment it does not appear that there were any liabilities at all. That case, therefore, does not support the contention

of the learned Counsel for the applicant. In our view the lower Court was right in holding that in calculating the approximate amount due to the plaintiff, not only the assets but also the liabilities should be taken into account.

11. This brings us to a consideration of the question whether the amount approximately due to the plaintiff has to be ascertained upon a regular enquiry made by the Court. We cannot persuade ourselves to think that this can be the intention of the law.

12. In a suit for (dissolution of?) partnership and accounts the Court will ultimately have to go into the accounts, find out the assets and the liabilities and then determine the amount due to the plaintiff. All these processes will have to be gone into in the course of the suit. If this enquiry has to be embarked upon at the very threshold of the suit merely for the purposes of ascertaining the valuation of the suit for the purposes of payment of court-fee and jurisdiction, then practically the whole suit will have to be decided. Nor can we see that in a contested matter any satisfactory result can be arrived at by a rough calculation and an incomplete enquiry. The difficulty envisaged by us is fully illustrated by the result arrived at by the lower Court on a rough calculation. The learned Judge of the Court below has come to the conclusion that Rs. 4300 would be the approximate amount due to the plaintiff. Naturally he is not satisfied with it because calculation cannot be said to be exact, an throw the plaint on the result of such a rough enquiry may cause injustice. We think, therefore, that in a case of this kind where an enquiry into the valuation of the plaintiff''s share have ultimately to be made in the suit itself, should not be undertaken at the preliminary stage. It cannot be the intention of the law the valuation of the suit for purposes of jurisdiction and payment of court-fees must be determined upon a regular enquiry to be made a the amount due to the plaintiff. Section 7(iv) (b) as amended speaks of the valuation put down in the plaint as the approximate sum due to the plaintiff. This must inevitably refer to the statement of the plaintiff himself as to what he thinks is the approximate sum due to him. If an amount in excess of the amount which he has stated in the plaint is ultimately found d him, he will, of course, be required to pay court-fee on such excess amount. There is, therefore, no loss of revenue to the State. There may, however, be cases in which upon the admitted facts of a case, the Court can say without making any enquiry at all, that the valuation put down by the plaintiff is obviously wrong. For instance, where the plaintiff himself has admitted in the body of the plaint that on the taking of accounts such and such an amount will be found to him, but has deliberately undervalued his claim for purposes of payment of court-fees; or where the plaintiff admits that there are no liabilities and the value of the assets is also admitted, then, in such cases, the Court will be justified in not accepting the valuation as put by him in the plaint, and in calling upon him to correct it according to his own admission. In other cases what the plaintiff states to be the approximate gum due to him is to be taken as determining the valuation of the suit. Our view is in accord with what was held by a Bench of this Court in Chief Inspector of Stamps Vs. Ramesh Chandra

adopted son of B. Sheo Prasad, .

13. It may further be pointed out that where the defendant alleges that on proper accounts being taken no amount will be found due to the plaintiff or that an amount less than the amount. alleged by the plaintiff will be found due, he can hardly be in a position to take the plea of undervaluation. Such a plea coming from him will not be entertained by the Court.

14. In Inayat Husain Vs. Bashir Ahmad and Another , it was apparently held that:

Where the valuation of the suit for purpose of jurisdiction is contested, the value must be determined by the Court; and where the valuation can be ascertained correctly, the plaintiff cannot be allowed to put an arbitrary value upon his claim, nor can be allowed to overvalue or undervalue his claim with a view to choose his forum.

15. As we have pointed out earlier in this judgment, that was a simple case in which the value of the assets found by the amin was not disputed and there did not seem to have been any liabilities. That was, therefore, a case where the valuation of the suit could be correctly ascertained without any difficulty. If, however, the learned Judges meant to lay down that in all cases for accounts where the valuation is contested the Court is bound to enter into an enquiry as to the amount due to the plaintiff, we respectfully differ.

16. Two cases were relied upon by the learned Judges for the views expressed in that case: (1) Jageshra v. Durga Prasad Singh AIR 1914 All. 72 and (2) Rachappa Subrao Jadhav Desai v. Shidappa Venkatrao Jadhav Desai AIR 1918 P.C.188. Now Jageshra''s case AIR 1914 ALL.72 was not for accounts at all. The relief claimed was to obtain a declaratory decree where consequential relief was prayed. Rachappa Subrao Jadhav''s case AIR 1918 P.C. 188 which was decided by the Privy Council was also not a suit for accounts. The learned Judges in Inayat Husain Vs. Bashir Ahmad and Another have relied upon the following passage supposed to have been laid down by their Lordships of the Privy Council:

When a notional value, different from the real value, is placed upon property for the purpose of the court-fee, such notional value cannot displace the real value for the purpose of jurisdiction.

17. This sentence is not to be found in the judgment of the Privy Council and with great respect to the learned Judges we find that no such general proposition was laid down by their Lordships of the Privy Council. In that case the suit was, for the purpose of jurisdiction, valued at Rs. 69000 and therefore was filed in the Court of the first Class Subordinate Judge of Belgaum, Bombay, but a court-fee only of Rs. 10-6-0 was paid. The reliefs sought were:

(1) a declaration that the plaintiff being the lawfully adopted son of the deceased Venkatrao Desai is owner of all his property...Rs. 130

(2) a permanent injunction may be issued to the defendant prohibiting him from causing obstruction to the immovable and movable property that is in the plaintiff''s possession. Valuation for this purpose is Rs. 5.

(3) If it be deemed desirable to grant to the plaintiff any other relief besides this the same may be given.

18. The Judicial Committee held that from an examination of the plaint it was clear that as to the whole of the properties in suit excepting one house no consequential relief could have been prayed and that even as to the house the injunction prayed was demurrable in the sense that no cause of action was disclosed which could have supported this relief.

19. The Privy Council further found that the valuation of Rs. 130 put down on the relief for declaration was not its true value, but had been noted in the plaint in accordance with the practice prevailing in Bombay for declaratory relief to be valued at Rs. 130 as being the value on which the fee nearest to Rs. l0 would be leviable. The defendant did not take any objection to the jurisdiction of the Court or to the amount of court-fee paid on the plaint in the trial Court. The Subordinate Judge decreed the suit. The defendant filed two appeals--one in the Court of the District Judge and the other in the High Court. In these appeals the defendant seems to have raised the plea that the suit was not cognizable by the Subordinate Judge because under. Section 8, Suits Valuation Act the valuation for purposes of jurisdiction should have been the same as was put down for purposes of court-fee, the '' case being one in which ad valorem court-fee was payable. The District Judge upheld his plea, but the High Court rejected it. The defendant went up in appeal to the Privy Council. The Privy Council on these facts strongly repelling the defendant''s technical plea and holding that the Court-fees Act was not intended "to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State", observed as follows:
If regard be had to the real as distinct from the imputed value of the property, the suit was properly instituted in the Court of the First Class Subordinate Judge, and if any part of the fee payable and paid was a fixed fee under Schedule II of the Act, then the notional value of the property or any part of it could not displace its real value for the purposes of jurisdiction.

20. It will be observed that no valuation for the purposes of court-fee is required to be stated when the relief sought is a declaratory relief on which a fixed court-fee under Schedule II, Court-fees Act is payable and it should be further observed that to such a case Section 8, Suits Valuation Act does not apply and does not require the plaintiff to fix the same valuation for jurisdiction as for payment of court-fee. In short, the words, "notional value of the property or any part of it could not displace its real value for the purpose of jurisdiction" were used by the Privy Council in connection with a case in which a fixed fee under Schedule II was payable, and not

in connection with a case truly falling u/s 7 (iv), Court-fees Act.

21. It may be said that if no enquiry is to be made by the Court, the plaintiff will have the liberty to choose his own forum. We think in a suit for accounts this is to some extent, inevitable. This difficulty was recognized by this Court and so at one time rules were framed that all suits for accounts, were to be valued between the sums of Rs. 100 and Rs. 500 and so were made entertainable by Munsifs. In any case, this is a lesser evil than the evil of asking the Court to embark upon an enquiry which in the end may prove to have been wholly futile and sheer waste of time.

22. We, therefore, hold that in a suit for accounts u/s 7 (iv) (b), Court-fees Act as applicable to these Provinces:

(1) The plaintiff should be required to state the approximate sum due to him;

(2) The sum so stated by the plaintiff shall be taken as value of the suit both for purposes of payment of court-fee and jurisdiction;

(3) Even if the matter is contested, the Court, at the preliminary stage, is not to enter into any enquiry for the purpose of determining the approximate amount due to the plaintiff except when the matter can be decided upon the admitted facts of the case.

23. In our opinion, the lower Court rightly set aside the order of the Munsif and rightly remanded the case to him but erred in ordering him to hold an enquiry as to the approximate amount due to the plaintiff. What it should have done was to ask the learned Munsif to require the plaintiff to state what, according to him, was the approximate sum due to him and to proceed upon that basis.

24. We, therefore, allow this revision in part and modify the order passed by the lower Court and direct that the learned Munsif shall require the plaintiff to state the approximate sum due to him and to apply for the amendment of the plaint accordingly. When this has been done by the plaintiff, the learned Munsif shall proceed to decide the case if after the amendment of the plaint the suit is cognizable by him. No further enquiry into the valuation of the suit shall be necessary. Costs of this revision shall abide the result.