

(1923) 01 MAD CK 0033

Madras High Court

Case No: None

Naduvil Edom
Karnavan and Manager
Kelu Achan

APPELLANT

Vs

Cheriya Parvathi
Nethiyar and Others

RESPONDENT

Date of Decision: Jan. 30, 1923

Acts Referred:

- Suits Valuation Act, 1887 - Section 11

Citation: (1923) ILR (Mad) 631 : 73 Ind. Cas. 87 : (1923) 18 LW 81 : (1923) 45 MLJ 135

Hon'ble Judges: Walter Salis Schwabe, J; Oldfield, J; Old Field, J; Coutts Trotter, J

Bench: Full Bench

Judgement

Walter Salis Schwabe, K.C., C.J.

In this case the suit was commenced before the District Munsif and it appears that there was an

undervaluation of the suit. If it had been properly valued, the case would not have gone to the District Munsif but would have gone to the

Subordinate Judge, in the first instance, and thence on appeal to the High Court instead of to the District Court and on second appeal to the High

Court as is the case in decisions from District Munsifs. This objection to jurisdiction by reason of undervaluation was taken before the District

Munsif who held that he had jurisdiction and heard the case. There was an appeal from him to the District Court, the lower appellate Court in this

case. The District Judge held also that the suit was not undervalued but he also held that, if the suit were undervalued, still its valuation had not

prejudicially affected the disposal of the suit on its merits. That decision on appeal comes to this Court by way of Second Appeal and, there having

been a difference of opinion, it is referred to a Full Bench.

2. The question turns on the proper interpretation of Section 11 of the Suits Valuation Act of 1887 which provides that objections to jurisdiction,

by reason of overvaluation or undervaluation of a suit or appeal, are not to be entertained by an appellate Court, unless the objection is taken in the

Court of First Instance or in the lower appellate Court and the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit

or appeal was overvalued or undervalued and that the overvaluation or undervaluation thereof has prejudicially affected the disposal of the suit or

appeal on its merits. It is contended before us that the District Judge was wrong because the mere fact of undervaluation, involving a trial before

the District Munsif, must be prejudicial to the unsuccessful party, because an appeal from him lies to a District Court and then to the High Court by

Second Appeal where questions of fact are not open to discussion, whereas, if the suit had been brought originally before the Subordinate Court, it

would come by first appeal to this Court where questions of fact are open to discussion. In my judgment, the clause of the Suits Valuation Act,

when referring to prejudicially affecting the disposal of a suit or appeal on its merits, is not considering at all the different rules of procedure that

there may be on appeal from one Court to another Court. If, as has been contended before us., the mere fact of there being some different rules in

the procedure on appeal must prejudicially affect the disposal of a suit on its merits, the section has really no meaning at all, because in every case

from a District Munsif to a lower Appellate Court, where there had been undervaluation the appeal would have to be allowed and a new trial

ordered, because the trial on its merits was prejudiced and that in my judgment, is absurd. There is ample authority of this Court that the lower

Appellate Court in such a case not only has jurisdiction to hear the appeal from a District Munsif who has exceeded his jurisdiction but that it must

do so unless it is satisfied, as required by Section 11 of the Suits Valuation Act, first, that the point was taken, and secondly, that the decision on

the merits was prejudicially affected. See *Raghavachariar v. Raghavachariar* 20 M.L.J. 726, *Narayani Ammal v. Secretary of State* (1918) 41 I.C.

167, *Ammalu Ammal v. Krishnan Nair* (1916) 62 I.C. 715. There is a decision to the contrary in *Mohini Mohan Misser v. Gour Chandra Rai*

(1921) 5 P.L.J. 397. With that decision I do not agree. The point was also discussed in *Sidappa Venkatrao v. Rachappa* ILR 36 B. 628, but the

point at present before the Court is not decided there.

3. Our answer to the question, therefore, is that the second appeal must be heard on its merits. The same point arises in Second Appeal No. 287

of 1920 which is also referred to us and our answer in that case must be the same.

Old field, J.

4. I agree.

Coutts Trotter, J.

5. I am of the same opinion and I should have thought that the contention put before us was absolutely unarguable were it not that it apparently has

commended itself to at least one Bench of Judges in this country. I take it that the object of Section 11 of the Suits Valuation Act is to provide a

machinery for curing the original lack of jurisdiction in such circumstances. If it does not do that, it does nothing else : yet, it is argued before us

that, if you once start a suit in one Court which decides prejudicially on the merits, the section has no power to cure the original lack of jurisdiction

which remains uncured to the end; that is to say, that the section gives you something with one hand and immediately takes it away with the other.

Mr. Ananthakrishna Ayyar did not contend otherwise than that the ""Court of First Instance"" referred to in Sub-section 1(a) of Section n must mean

not the Court in which the suit ought to have been started, but the Court in which it was, in fact, started. It seems to me to follow from that, beyond

a possibility of question, that, in Sub-section 1(b) when we get to talking about ""Appellate Court,"" that means not the Court in which the appeal

should have been started in the first instance but the Court to which it did, in fact, go and ought to have gone if the lack of jurisdiction were to be

condoned. In this case in fact it was condoned. In my opinion, the only possible answer to this reference is the one proposed by my lord.