

(1924) 07 CAL CK 0009

Calcutta High Court

Case No: None

G.M. Falkner, Official Assignee,
High Court

APPELLANT

Vs

Mirza Mahammad Syed Ali and
Others

RESPONDENT

Date of Decision: July 16, 1924

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Court Fees Act, 1870 - Section 7(iv)

Citation: AIR 1925 Cal 814 : 86 Ind. Cas. 853

Hon'ble Judges: Suhrawardy, J; Duval, J

Bench: Division Bench

Judgement

1. This Rule was issued at the instance of defendant No. 1 in a suit pending in the Court of the Munsif, First Court at Alipur. The Rule is in these terms: "Let a Rule issue calling upon the opposite party to show cause why the suit complained of in the petition should not be dismissed on the grounds stated therein." The facts are that the opposite party has brought a suit in the Court of the Munsif on the allegation that the property in dispute was included in the wakf created by Prince Kumar Kadar Mirza (father of the plaintiff), that the plaintiff is the mutwalli of that wakf, that one Saheba Khatun was the benamidar of the said Prince Kumar Kadar the property having been purchased in her name and that she wrongfully sold it to one Suprasanna Roy Choudhuri who was subsequently declared an insolvent and his properties became vested in defendant No. 1, the Official Assignee. The plaintiff prays in the suit that it may be declared that the property in dispute is one of the wakf properties of which he is the mutwalli and is in possession under the deed of trust: and as the defendant No. 1 is attempting without any right to sell this property as the property of the insolvent he prays that the plaintiff's title to the property as mutwalli of the wakf estate of Prince Kumar Kadar may be declared and

a permanent injunction granted restraining the defendant No. 1 from bringing the disputed property to sale as the property of any of the defendants. He valued his claim in respect of the declaration sought at Rs. 100 and his claim in respect of the injunction prayed for at Rs. 75. He paid Court-fees on these amounts.

2. An objection was taken before the learned Munsif by the Official Assignee on the ground that the suit was not maintainable in the Court of the Munsif inasmuch as the value of the property in suit exceeded the pecuniary jurisdiction of the Court. The learned Munsif went into the matter thoroughly and found that the property was, as a matter of fact, worth Rs. 40,000; but as the plaintiff was in possession of the property and derived a nominal income from it he held that the valuation by the plaintiff of the reliefs sought was right and that accordingly he had jurisdiction to try the suit. Against this order this Rule has been obtained. It is difficult to understand what is meant by the Rule which calls upon the other side to show cause why the suit should not be dismissed. At the hearing, the learned Vakil for the petitioner conceded that he cannot ask for the dismissal of the suit, but he contends that the suit is beyond the jurisdiction of the Munsif and that the plaint should be returned for presentation to proper Court. The objection of the petitioner as to the competency of the Munsif to hear the suit is based on the view of the law which has been laid down in several cases by this Court that the plaintiff should not be allowed to arbitrarily fix the value of his claim u/s 7 Clause (iv) of the Court Fees Act, 1870. The leading case on the point is the case of *Umatul Batul v. Nanji Kuar* 6 C.L.J. 427 : 11 C.W.N. 507, which has been followed in a number of cases. See the cases of *Krishna Das Laha v. Hari Charan Banerjee* 10 Ind. Cas. 865 : 14 C.L.J. 47 : 15 C.W.N. 823 and *Raj Krishna Dey v. Bepin Behary Dey* 17 Ind. Cas. 162 : 16 C.L.J. 194 : 17 C.W.N. 591 : 40 Cal. 245. The view taken in these cases is that though Section 7, Clause (iv) of the Court Fees Act leaves it absolutely to the discretion of the plaintiff to value his relief under Clauses (c) and (d), the Court is competent to exercise its powers conferred on it by Order VII, Rule 11, C.P.C. There has been a divergence of judicial opinion upon this point. The High Courts of Bombay and Allahabad have given a strict meaning to the words of the Court Fees Act; whereas this Court and the High Court of Madras have taken a different view. The decisions in this Court too have not been uniform. See *Rup Chand Ghose v. Khirodamayi Dasi* 75 Ind. Cas. 567 : 27 C.W.N. 457 : AIR (1923) (C) 329. It is not necessary in this case to examine all the conflicting authorities as we are of opinion that this Rule must fail u/s 115, C.P.C. The case on which much reliance has been placed, namely, the case of *Umatul Batul v. Nanji Kuar* 6 C.L.J. 427 : 11 C.W.N. 507, was an appeal in which the plaintiff complained against an order of the Court below fixing a value higher than that put by the plaintiff in the plaint and the learned Judges in the course of the judgment made the following observation: "We do not think it can be affirmed as an inflexible rule of law that it is not open to the Court to revise the valuation put by the plaintiff, when it is conclusively established that it is arbitrary and improper...it is open to the Court, if a question is raised as to the true valuation of the suit, to determine such

question, and that it is not only within the power of the Court but it is also its duty to take action u/s 54 (Order VII, Rule 11) of the C.P.C. if it is established that the valuation is improper." All the other cases that have followed this case are also cases in which the Courts below had fixed a valuation according to their judgment and different from that put by the plaintiff. The result of these authorities is that the Court is empowered under the law to revise the valuation put by the plaintiff and if on such revision, it is of opinion that the valuation is insufficient or arbitrarily low, it has jurisdiction to fix the proper value. But no case has been brought to our notice which has gone the length of holding that where a Court determines the valuation according to its judgment or holds that plaintiff's valuation is correct, it commits such an error of law as to entitle this Court to interfere u/s 115, C.P.C. What the learned Munsif has done in this case is that on an examination of the alleged facts of this case he has come to the conclusion that the valuation as put by the plaintiff on the plaint is correct. That view may be right or may be wrong; but it cannot be said that the learned Munsif has exercised a jurisdiction not vested in him or has failed to exercise jurisdiction vested in him. There is another view of the matter, namely, that the decision of the Munsif on the present question may be challenged in appeal from the decree in the suit. This is an additional reason why we should not interfere in the exercise of our revisional jurisdiction. We therefore, think that this is not a case in which we should interfere u/s 115 C.P.C.

3. The Rule is accordingly discharged with costs two gold mohurs.