

(1871) 07 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 94 of 1871

Kali Kumar Dutt and
Others

APPELLANT

Vs

The Collector of Sylhet

RESPONDENT

Date of Decision: July 18, 1871**Final Decision:** Dismissed

Judgement

Norman, Offg. C.J.

1. In this case Udaya Chand Dutt, the plaintiff, brought a suit in the Court of the Moonsiff of Lashkerpore, in the district of Sylhet, for some lands, valuing his rights at Rs. 82-1-4. A preliminary objection was raised by the Collector of Sylhet on the part of Government, the defendant in the suit, to the effect that the Moonsiff had no jurisdiction, the property having been undervalued. The Moonsiff made a local enquiry, and finding the value of the property in suit to be Rs. 2,250, which was beyond his jurisdiction, returned the plaint to the plaintiff, in order that it might be filed in the Subordinate Judge's Court on a stamp of Rs. 2,250. The plaintiff appealed to the Subordinate Judge against the order of the Moonsiff rejecting the plaint, on the ground that the value of the claim, the subject-matter of the suit, was beyond his jurisdiction, under the provisions of the 36th section of the Code of Civil Procedure, Act VIII of 1859. The Subordinate Judge entertained the appeal, and tried the question of the valuation of the property. He found that the value of the claim was Rs. 500, and accordingly reversed the order of the Moonsiff which rejected the plaint. He directed the Moonsiff to receive the plaint upon a valuation of Rs. 500, and to try the case upon the merits.

2. From that decision a special appeal was presented to this Court, and the objection taken was that no appeal lay from the decision of the Moonsiff as to the market value of the property in suit. The appellant relied on a note to Article 11 of Schedule B, Act XXVI of 1867, which provides that (reads.) The case came before a Division Bench of this Court, Justices E. Jackson and Mookerjee, who, finding that there had been two decisions to the effect that in such cases no appeal lies from the determination of the first

Court as to the value,--one of them being the case of *Madhusudan Chuckerbutty v. Rymani Dasi Ante* p. 664, and the other of *Ishan Chandra Mookerjee v. Lokenath Roy* 6 B.L.R., App., 12, referred this case for the opinion of a Full Bench.

3. We are of opinion that, whenever a plaint is rejected under the provisions of section 30 of Act VIII of 1859, on the ground that the amount or estimated value of the claim, as stated by the plaintiff, is beyond the jurisdiction of the Court, an appeal is given by section 36 from the order rejecting the plaint. We think it clear that the provisions in the note to the Stamp Act XXVI of 1867, which was passed for a totally different purpose, namely, to prevent appeals upon questions of stamp duty where the sole question is as to the amount of stamp to be impressed on the plaint, cannot have the effect of repealing by implication the provisions of the Code of Civil Procedure, which in clear and distinct terms give a right of appeal where a plaint is rejected upon the ground that it is undervalued. We think it clear that, whenever for the purpose of determining the question whether or not the lower Court was right in rejecting the plaint upon the ground that it had no jurisdiction to entertain the suit, it becomes necessary to try what is really and truly the value of the property in suit, the Court which has to determine the appeal upon the question of jurisdiction has incidentally power to determine all those questions of fact which are necessary to enable it to arrive at a satisfactory determination on the question of jurisdiction. We think therefore that there is no doubt that an appeal to the Subordinate Judge lay in the present case, and for the purpose of determining that appeal, the Subordinate Judge had the power to enquire into and determine the question of the value of the property in suit. Were it otherwise, the greatest possible inconvenience would result. If a plaint had been presented to the Moonsiff, and the Moonsiff had tried the question as to the value of the property, and had decided that he had no jurisdiction, he would of course dismiss the suit. Suppose then the plaintiff being unable to appeal, to have presented his plaint to the Court of the Subordinate Judge, and the defendant had there objected that the valuation was not such as to give the Subordinate Judge jurisdiction. It is easy to imagine cases in which that course would be open to a defendant, notwithstanding an objection made by him to the valuation in the lower Court. If the objection on the part of the special appellant is well founded, it would become the duty of the Subordinate Judge to take up and try the question of valuation and his decision also would be final, and therefore there would be a final decision that the suit could not be maintained in the Moonsiff's Court, and also a decision equally final that the suit could not be maintained in the Subordinate Judge's Court, which would lead to a practical absurdity and the greatest inconvenience. The result of this decision is that the appeal will be dismissed with costs; the respondent will be allowed full costs, both in this Court and before the Division Bench.

¹ Act XXVI of 1867, Schedule B, Article 11, note b.--"In order to ascertain the market value or the annual net profits of any such property as is described in note (a) and in note (6), the Court may, either of its own motion or on application of any party to the suit, issue a commission to any proper person, directing him to make such local or other

investigation as may be necessary, and to report thereon to the Court, and the decision of the Court, as to the market value or annual net profits, shall be final. If in the result of any such investigation the Court shall find that the market value or net profits has or have been erroneously estimated for the purpose of computing the stamp duty, the Court shall either (as the case may be) refund the excess paid as such duty, or require the plaintiff to pay so much additional stamp duty as would have been payable, had the said market value or net profits been correctly estimated, and in such case the suit shall be stayed until the additional duty shall have been paid.

Act VII of 1870, Sec. 9.--"If the Court sees reason to think that the annual net profits or the market value of any such land, house, or garden, as is mentioned in Section 7, paragraphs 5 and 6, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court"

Sec. 10.--"If in the result of any such investigation the Court finds that the net profits or market value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion, refund the excess paid as such fee; but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market value or net profits been rightly estimated. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

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Before Mr. Justice Loch and Before Mr. Justice Hobhouse.

The 29th April 1870.

Madhusudan Chuckerbutty (Plaintiff) v. Rymani Dasi and Another (Two of the Defendant).

Special Appeal No. 2665 of 1869, from a decree of the Judge of West Burdwan, dated the 16th August 1869, affirming a decree of the Moonsiff of that district, dated the 14th June 1869.

Baboo Durga Das Dutt for the appellant.

Baboo Bansi Dhar Sein for the Respondents.

The facts are fully stated in the judgment of the Court which was delivered by

Hobhouse, J.--We think that the Judge was right in this instance. The plaintiff sued, averring that the value of his suit was represented by a certain sum. The Judge of the first Court directed the plaintiff, the valuation of the property being disputed by the defendant,

to deposit the necessary fees for the enquiry provided for by the note to Article 11, clause 3, note (b), Schedule B., Act XXVI of 1867. The plaintiff refused to deposit the fees in question, and elected rather to rely on certain witnesses whom he adduced to prove the valuation in question. The Court found that even upon the evidence of those witnesses the plaintiff had undervalued his suit, and therefore rejected the plaint. The plaintiff appealed to the Judge, and the Judge held that the order of the Court below was final, and rejected the appeal.

We think the Judge was right. The law says that in order to ascertain the market value or the annual net profits of any property in suit, the Court may either of its own motion or on the application of any party to the suit issue a commission to any person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court, and the decision of the Court as to the market value or annual net profits shall be final." We do not understand that the Legislature there intended to restrict the Court in the matter of such investigation so that it could only take the Ameen's report in such matter, but evidently the Legislature there intended to give the Court the benefit, if it so chose, of the result of an Ameen's investigation such as is provided for in other matters in the Code of Civil Procedure. But what the Legislature does in so many words say, is, that "the decision of the Court as to the market value or annual net profits shall be final." About these words and the meaning of them there cannot we think be any reasonable dispute.

Then the pleader for the special appellant states that there is no decision upon this point. This, however, is an error of fact. Because what the Court has done, and what indeed the special appellant complains of, is that the Court has found that his suit was undervalued, and that under-valuation could only have reference either to the market value or to the matter of the annual net profits; because it is one or other of these facts which is the measure of the valuation at which any particular suit is to be assessed.

The pleader, however, refers us to certain sections of Act VIII of 1859, namely sections 31 and 36, which provide, that when the first Court has rejected a plaint for improper valuation, then an appeal shall lie from the order of that Court to the Court to which it is subordinate. No doubt those sections do so provide. But the section of the Act which is passed at a later period provides exactly the contrary, and of course by implication the section of the first Act is repealed by the provisions of the last Act.

We think the Judge is right, and we dismiss the appeal with costs.

I may add that in the decision of a cognate matter, in *Eshanchunder Chuckerbutty v. Soorjo Loll Gossain* Sp. No. W.R., 1 a Bench of three Judges of this Court held that whereas in this case the plaintiff had refused to obey the order of the Court on the matter of a Civil Ameen's proceeding and investigation, it was held that in reality he was in default, and his suit should have been, and was, properly dismissed for default, and no appeal or special appeal lay against the order of the Court dismissing the plaintiff's suit and that his only remedy was by way of review.