

(1879) 06 CAL CK 0005

Calcutta High Court

Case No: None

Aukhil Chunder Sen
Roy

APPELLANT

Vs

Mohiny Mohun Dass
and Others

RESPONDENT

Date of Decision: June 27, 1879

Citation: (1880) ILR (Cal) 489

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Morris, J.

The plaintiff sued for possession of an 8-anna share of a taluk, bearing No. 1159 on the rent roll of the Collectorate of Zilla Tippera, and paying a revenue of Rs. 384 per annum. He valued the suit at ten times his share of the Government revenue, or Rs. 1,920, and paid stamp-duty accordingly. The defendants, in their written statement, objected, amongst other things, to the valuation of the suit. In para. 2 they say: "The plaintiff has stated in his plaint, that the value of the properties is Rs. 60,000; but in reality the value of them may be Rs. 15,000 or 16,000. Under such circumstances the plaintiff having instituted the suit estimated at Rs. 1,920, the valuation of the estimated property is, therefore, less, and the cognizance of this case by this Court in appeal hereafter will be altered."

2. The first Court overruled this objection in the following terms: "The claim has been valued, I find, at ten times the revenue of the share in claim. It has not, therefore, been undervalued, see Rule 5, Section 7, chap. iii Act VII of 1870." The Subordinate Judge finally gave a decree in favour of the plaintiff. Against this decree the defendants appealed to the Court of the District Judge, and amongst other objections took the following, the translation of which has been furnished to this Court by their pleader: "That it being undisputed that the proper value of the property in suit is Rs. 60,000, the plaintiff, in instituting the suit without laying the

valuation, and paying stamp-duty accordingly, has altered the jurisdiction of the Appellate Court. The lower Court has wrongly overruled the objection without regard to this defect." The District Judge dealt with this objection thus: "There are many grounds of appeal against this decision,--1st, that the value of the suit has been erroneous. That it should have been calculated at Rs. 60,000, which would have taken the case to the High Court in Regular Appeal. With the finding of the lower Court on this point, I am not now inclined to interfere. He has been guided by Rule 5, Section 7, chap. iii of Act VII of 1870, and which seems applicable." The Judge proceeded to deal with the rest of the appeal, and gave a decree, modifying that of the first Court. Dissatisfied with this, the plaintiff now prefers this special appeal to this Court. The first ground that he takes is in these words: "For that, as the value of the property in dispute was upon the allegation of both parties above Rs. 5,000, the District Judge had no jurisdiction to hear the defendants' appeal, or to set aside the finding, arrived at by the first Court; that the decision of the Judge should be set aside; and that of the Subordinate Judge should be restored." The plaintiff, appellant, contends that, for the purpose of the stamp-duty, he rightly valued the suit in the first instance; that he made no concealment of the real value of the property, estimating it in his plaint at Rs. 60,000; that defendants at their own risk took their appeal into the wrong Court, and even there raised the issue of valuation and jurisdiction as they had done in the first Court, but were overruled, and so the appeal had to be heard; and that consequently, he, the plaintiff, is not debarred from taking this objection now. The defendants reply that the plaintiff consented to the hearing of the appeal in the Court below, and went so far as to ask the Judge to make one Koylas Chunder Chowdree a co-respondent with him in the appeal, and that therefore he must be held to have submitted to the jurisdiction of the Court of the District Judge, and cannot be allowed to raise the point at this late stage of the case. Various authorities have been cited in support of the proposition that the jurisdiction having been consented to in the lower Appellate Court, objection to the jurisdiction cannot be taken in the High Court in special appeal.

3. What has happened here is, that neither the parties nor the Courts below were apparently aware that the valuation of the suit for the purposes of stamp-duty, and the valuation of the subject-matter of the suit for the purpose of determining the jurisdiction of the Court in appeal, are two different things. Throughout the proceedings up to the presentation of this appeal they have treated the two as inseparable; and thus it comes about that the defendants now desire to take advantage of the ignorance or inability of the plaintiff to urge this plea properly in the Court below, and so shut him out from the benefit which he might otherwise derive from this distinction. I am disposed to think that the preponderance of authority favours the view that where a Court has no jurisdiction to entertain, as here, an appeal, no consent of parties can give it a jurisdiction which it does not by law possess. But independently of this, I am unable to hold that the conduct of the plaintiff, who was respondent in the Court below, amounts to a consent to its

jurisdiction. The point of jurisdiction was directly raised in the grounds of appeal of the defendants, and the Court having overruled it, whether from not rightly grasping its full significance, is immaterial. Nothing really remained to the respondents but to resist the appeal to the best of their ability. I consider, therefore, that plaintiff's conduct in this respect cannot be construed as such a consent to the jurisdiction as debars him from taking this objection now in special appeal. This being so, it seems clear that as both parties admit the value of the property in suit to be more than Rs. 5,000, the District Judge had no jurisdiction to hear the appeal of the defendants. His order, therefore, as being ultra vires, must be set aside, and the decree of the first Court restored. Plaintiff will get his costs in this Court and in the Court below.

4. This Judgment will govern appeal No. 674 of 1878, which is dismissed with costs.

Prinsep, J.

5. There is no doubt that, until the presentation of this special appeal, the parties to this suit, as well as the lower Appellate Court, misapprehended the law regarding jurisdiction to try a suit or appeal as determined by the value of the subject-matter involved. That, as has been pointed out by this Court in more than one case, is quite irrespective of the value for purposes of assessing the court-fee payable on the plaint or petition of appeal, which, for the sake of convenience, is fixed by certain rules which determine an artificial value for purposes of the stamp-revenue. The value of the subject-matter of a suit or appeal, on which depends the jurisdiction of the several grades of Civil Courts, is the actual value of the property in litigation. The objection taken both in their written statement and first ground of appeal to the lower Appellate Court by the defendants, was directed to the valuation of the suit for purposes of stamp-revenue, and this, it was contended, would affect the jurisdiction of the lower Appellate Court. It cannot, in my opinion, be rightly said that the defendants objected to the jurisdiction of the lower Appellate Court, for they submitted to that jurisdiction by filing their appeal there, and if they had correctly understood the law, they would have presented their appeal to this Court as a regular appeal, for there can be no question, on admitted facts, that the value of the property in suit is much beyond Rs. 5,000, or the jurisdiction of the Court of the District Judge as a Court of appeal. It is only when it is necessary to find any fact regarding the value of the subject-matter of a suit, that this Court, in special appeal, is precluded from entertaining the objection of want of jurisdiction of the Court of the District Judge as a Court of appeal. The fact that the respondents may not have objected in the lower Appellate Court is immaterial, since no consent of parties can give a Court jurisdiction, when jurisdiction on the face of the pleadings does not exist.

6. On these grounds, I concur in setting aside the judgment of the lower Appellate Court.