

(1933) 03 CAL CK 0028**Calcutta High Court****Case No:** None

Naran Chandra Ghose and
Others

APPELLANT

Vs

Rangalal Ghose and Others

RESPONDENT**Date of Decision:** March 22, 1933**Citation:** 150 Ind. Cas. 744**Hon'ble Judges:** Mallik, J; Jack, J**Bench:** Division Bench**Judgement**

Mallik, J.

In a suit for partition in which the properties sought to be partitioned, had been valued by the plaintiffs at Rs. 800, a preliminary decree was passed ex parte by the Munsif and a Commissioner was appointed for effecting the partition. From the evidence adduced by the plaintiffs it appeared to the Commissioner that the properties to be partitioned were worth more than Rs. 4,700 (which was beyond the pecuniary jurisdiction of the Munsif) and the Commissioner submitted a report to that effect. The defendants then filed an application unsuccessfully before the Munsif not to pass any final decree in the suit on the ground that the suit was beyond his pecuniary jurisdiction. Thereafter the plaintiffs moved the District Judge to transfer the suit from the file of the Munsif to that of a Subordinate Judge. This application for transfer was, however, refused. The defendants on these facts obtained the present Rule on the plaintiffs to show cause why the order of the Munsif dated February 17, 1933, whereby he rejected the defendants' application not to pass a final decree in the suit, should not be set aside.

2. In support of the Rule our attention was drawn to a decision of the Court in the case of *Raj Lakshmi Dassi v. Katyayani Dassee* 12 Ind. Cas. 464 : 38 C. 639, where it was held that when a decree is passed by a Court which had no jurisdiction in the matter, the decree is void. But the question is whether this objection on the ground of pecuniary jurisdiction could be raised at the time it was raised in the present case.

On behalf of the petitioners it was contended that it could be raised at any time and in support of this contention the decisions in Ramlal-Hargopal v. Kishanchandra 83 Ind. Cas. 531 : 51 C 361 : (1924) M.W.N. 79 : AIR 1924 P.C. 95 : 7 N.L.J. 62 : 20 N.L.R. 33 : 19 L.W. 549 : 34 M.L.T. 62 : 22 A.L.J. 386 : 46 M.L.J. 628 : 26 Bom. L.R. 586 : 28 C.W.N. 977 : 61 I.A. 72 : L.R. 5 A (P.C.) 216, Meenakshi Naidoo v. Subramaniya Sastri 14 I.A. 160 : 11 M. 26 : 5 Sar. 54 : 11 Ind. Jur. 393 (P.C.) and Maha Prasad Singh v. Ramani Mohan Singh 25 Ind. Cas. 451 : 42 C. 116 : 18 C.W.N. 994 : 16 M.L.T. 105 : (1914) M.W.N. 565 : 1 L.W. 619 : 20 C.L.J. 831 : 27 M.L.J. 459 : 16 Bom. L.R. 824 : 41 I.A. 197(P.C.) were cited before us. But these cases were all cases in which the jurisdiction that was wanting, was territorial jurisdiction and not pecuniary jurisdiction as in the present case. In the present case Section 11 of the Suits Valuation Act, 1887, seems to me an insuperable bar against the petitioner. Under that section an Appellate or Revisional Court cannot entertain an objection as regards jurisdiction on the ground of undervaluation unless (1) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded or in the lower Appellate Court in the memo, of appeal to that Court or (2) the Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

3. In the present case the first condition was clearly not fulfilled, no objection having been taken by the petitioners in the Court of first instance at or before the hearing at which the issues were first framed and recorded, and as regards the second condition it is true that the suit was undervalued but it cannot be contended that that under-valuation has prejudicially affected the disposal of the suit on its merits.

4. I would, therefore, discharge the Rule with costs, one gold mohur. Let the record go down without delay.

Jack, J.

5. I agree.