

(1938) 08 CAL CK 0019

Calcutta High Court

Case No: Civil Rev. No 1344 of 1937

Gahar Ali Sikdar

APPELLANT

Vs

Nesar Ali Sikdar

RESPONDENT

Date of Decision: Aug. 9, 1938

Judgement

Edgley, J.

In the case with reference to which this petition arises the Plaintiffs instituted a suit against the Defendants the main purpose of which, as appears from the plaint, was to ensure that a certain adjustment should be maintained under which the Plaintiffs had agreed to pay the Defendants a sum of Rs. 3,111-8 as., provided the Defendants agreed not to execute certain decrees which they had obtained against the Plaintiffs and not to take possession of some properties which the Defendants had purchased at certain execution sales The specific prayers mentioned in the plaint were to the effect that the Plaintiffs should obtain a declaration to the effect that their rights had not been affected by the decrees obtained by the Defendants against them, that the execution sales held by the Defendants were null and void, and that they should obtain an injunction restraining the Defendants from interfering with their possession. If, however, these prayers are read in the light of the recitals made in the plaint it is clear that the relief which the Plaintiffs desired was that the adjustment with the Defendants should be maintained under which the Plaintiffs were to pay the Defendants a sum of Rs. 3,111-8 as. When the matter came before the learned Munsif, he directed that the plaint should be returned on the ground that the relief claimed by the Plaintiffs had been under-valued. In the opinion of the learned Munsif the relief claimed should have been valued at Rs. 3,111-8 as. As the order of the learned Munsif was to the effect that the plaint should be returned, it follows that the Plaintiffs had a right of appeal against this order under Or. 43, r. 1 (a) of the Code of Civil Procedure. The learned Subordinate Judge who heard the appeal decided that the plaint had been properly filed in the Court of the learned Munsif and he also held that having regard to certain principles enunciated by a Full Bench of this Court in the case of The Narayanganj Central Cooperative Sale and

Supply Society, Limited v. Maulvi Mafizuddin Ahmed 38 C.W.N. 589 (1934) the relief claimed by the Plaintiffs had been properly valued.

2. In view of the fact that the Court Fees Act has been amended since the date of the Full Bench decision mentioned above, the main ground upon which the learned Subordinate Judge held that the plaint had been (properly?) valued fails. The question must however be considered whether the learned Munsif was justified in coming to the conclusion that the Plaintiffs should have valued the relief sought by them in their plaint at Rs. 3,111-8 as. Under the provisions of the Court Fees Act as they now stand it is, of course, competent for a Court, in fact in many cases, it is the duty of the Court, to hold an enquiry regarding the proper valuation of the subject-matter of suits under sec. 7 (iv) of the Court Fees Act in cases in which there is reason to suppose that the relief sought has been undervalued. As has been pointed out by the learned Subordinate Judge, in this particular case no such enquiry under sec. 8C of the Court Fees Act was actually held by the learned Munsif. But, having regard to the nature of the prayers in the plaint, it cannot be said that in the circumstances of the case it was necessary to hold any such enquiry. In this connection it was pointed out by Mr. Justice S.K. Ghose in the case of Jitendra Nath Ghose v. Hiranmoy Kumar Saha 41 C.W.N. 977: s.c. 67 C.L.J. 123 (1937) that the effect of the enactments as provided by the recent amendments and in Court Fees Act is to remove the disadvantages under which the Court laboured by non-existence of rules framed under the Suits Valuation Act, though it may be that the advance is little where there is no objective standard of valuation forthcoming. Ordinarily the objective standard of valuation should be regarded as the value of the benefit which the Plaintiff seeks to obtain if he succeeds in his suit. In the case before us if the Plaintiffs succeed they will have to pay to the Defendants a sum of Rs. 3,111-8 as. As against this payment they will be allowed to retain possession of certain properties which have already been sold by the Defendants in execution of their decrees and they will obtain the additional advantage of not having certain other decrees put into execution against them. Even if an enquiry under sec. 8 (c) had been held by the learned Munsif, it would have been extremely difficult, if not impossible, to estimate the precise value of the relief sought by them in respect of the decrees and the execution sales. From the recitals in the plaint it would appear to be highly probable that the advantages obtained by them in respect of these decrees and sales in the execution proceedings would be almost entirely counter-balanced by the fact that he would have to pay to the Defendants a sum of Rs. 3,111-8 as due to them under the adjustment. The Plaintiffs actually valued the relief which they sought at Rs. 50. Having regard to the circumstances stated above, I am of opinion that this valuation was as (accurate as could be expected in the circumstances of the case. It therefore was unnecessary for the learned Munsif to hold an enquiry under sec. 8C of the Court Fees Act and in this view of the case he should not have returned the plaint to the Plaintiff for presentation to another Court. Although I do not agree with the line of reasoning that has been adopted by the Lower Appellate Court, I arrive at the

same conclusion as the learned Subordinate Judge. This Rule is therefore discharged with costs; I assess the hearing-fee at one gold mohur.