**(1911) 04 CAL CK 0019**

**Calcutta High Court**

**Case No:** Rule No. 4933 of 1910

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| Krishna Das Lala, and others | APPELLANT |
| Vs | |
| Hari Churn Banerjee | RESPONDENT |

**Date of Decision:** April 7, 1911

**Judgement**

1. The substantial question of law which calls for decision in this rule is, whether the suit as framed was cognisable in the Court of the Munsif or in that of the Subordinate Judge. The Plaintiff alleges that he is the owner of the property in dispute and that he is entitled to collect rent from the cultivating raiyats at specified rates. His grievance is that in proceedings under Chap. X of the Bengal Tenancy Act, some of the Defendants have got themselves registered as the persons entitled to collect rent from the cultivating raiyats. He therefore prays for declaration of his title and for an injunction to restrain the Defendants from collecting rent from the cultivating raiyats. He describes his suit as one for declaration of title with consequential relief and values the reliefs claimed at Rs. 500. The Defendants object that the value of the property in dispute is at least Rs. 5,000 and that the suit is not maintainable in the Court of the Munsif. Upon these pleadings, the Munsif took evidence upon the question of the value of the property and came to the conclusion that it was worth from Rs. 4,000 to Rs. 5,000. In this view, he held that he had no jurisdiction to try the suit and returned the plaint for presentation to the proper Court. The Plaintiff then appealed to the Subordinate Judge and contended that under sec. 7, sub-sec. (4), cls. (a) and (d) of the Court Fees Act, 1870, he was entitled to value the relief sought at any figure he chose, and that Court-fees had to be paid upon such amount which also determined the jurisdiction of the Court under sec. 8 of the Suits Valuation Act 1887. The learned Subordinate Judge gave effect to this contention and held upon the authority of the decision of this Court in the case of Hari Sankar Dutt v. Kali Kumar Patra I. L. R. 32 Cal 734 (1905) that the Court as well as the Defendants were bound to accept the valuation arbitrarily fixed by the Plaintiff, in other words, that whatever the real value of the subject-matter in controversy might be, the Court had no jurisdiction to adjudicate upon the question

of the just and proper valuation of the suit. We are now invited by the Defendants to hold that this order is erroneous. In our opinion, there is no room for serious controversy that the order cannot be supported. In the first place, as was pointed out by this Court in the case of Umatul Batul v. Naufi Kuor 6 C. L. J. 427 (1907) upon a true construction of sec. 7 of the Court Fees Act and a consideration of the history of the legislation on the subject, the proposition cannot possibly be maintained that the Plaintiff is entitled to fix arbitrarily the value of the relief claimed by him. The learned Vakil for the Plaintiff is not prepared to question the reasonableness of this view, but he places reliance upon the decision of this Court in the case of Hart Sankar Dutt v. Kali Kumat Patra I. L. R. 32 Cal. 731 (1905) and presses for a reference of the question to a Full Bench for decision. It is not necessary, in our opinion, to adopt the course suggested, because the facts of the litigation in Hari Sankar Dutt v. Kali Kumar Paha I. L. R. 32 Cal. 731 (1905) were very peculiar, and till another case arises of precisely the same description, the consideration of the question, whether the view adopted in that case can be supported on principle, may be deferred. But it is worthy of note that the case mentioned seems to stand by itself and cannot be reconciled with the earlier decision of this Court in Boidya Nath Adya v. Makhan Lal Adya I. L. R. 17 Cal. 680 (1890). It cannot be disputed for a moment that if the view suggested on behalf of the Plaintiffs is accepted, questions and controversy relating to property of considerable value may be tried in a Court in which the Legislature never intended that matters of that description should be litigated. To adapt to this case the language used by their Lordships of the Judicial Committee in Run Bahadur v. Lucho Koer I. L. R. 11 Cal. 301 (1884), if the construction of sec. 7 of Court Fees Act suggested by the Plaintiff were adopted, the lowest Court in India might determine finally I he title to any property in the empire. The matter, it may be observed, is not one of form but of sub, stance. If the suit is tried in a Court of competent jurisdiction (in this case the Court of the Subordinate Judge) a first appeal might lie to this Court and possibly an appeal to His Majesty in Council. On the other hand, if the suit is tried in the Court of the Munsif, an appeal would lie to the District Judge, and only a second appeal to this Court in which questions of fact could not be investigated. We, therefore, adhere to the view taken in the case of Umatul v. Nauji 6 C. L. J. 427 (1907) as well-founded on first principles, and justified by the plain construction of the Act as also the history of the legislation on the subject.

2. We may add that in the case before us, the Plaintiff although he nominally seeks for declaration of title and for an injunction, essentially asks for recovery of possession. At any rate, if the Plaintiff succeeds, the obvious result will follow that the Defendant will no longer be in a position, as against the Plaintiff, to collect rent from the cultivating raiyats. In substance, therefore, the Plaintiff will obtain possession of the property as landlord of the cultivating raiyats, whereas under the decision of the Settlement Officer, such right belongs to the Defendants. In a case of this description, the value of the relief sought is manifestly the value of the property in dispute. We are supported in this conclusion by the judgment of Muthusami

Ayyar and Wilkinson, JJ., in Ganapati v. Chathu I. L. R. 12 Mad. 223 (1689), which was accepted by Ayyar and Park, JJ., in Ibrayan v. Komamutti I. L. R. 15 Mad. 501 (1891). We, therefore, entertain no doubt whatever that the order of the Subordinate Judge is erroneous and that its effect is to confer jurisdiction upon a Court which is not competent to try this suit. The result is that this rule is made absolute, the order of the Subordinate Judge discharged and that of the original Court restored. The Petitioners will have their costs both here and before the Subordinate Judge. We assess the hearing fee in this Court at three gold mohurs.