

(1950) 03 CAL CK 0027

Calcutta High Court

Case No: Civil Revision Case No. 1529 of 1949

Meittyunjoy Banerji

APPELLANT

Vs

Bibhuti Bhusan Chakrabarti

RESPONDENT

Date of Decision: March 14, 1950

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 21
- Court Fees Act, 1870 - Section 8B
- Suits Valuation Act, 1887 - Section 11, 8

Citation: (1951) 1 ILR (Cal) 535

Hon'ble Judges: Boxburgh, J

Bench: Single Bench

Advocate: Sachindra Chandra Das Gupta, for the Appellant; Chandra Sekhar Sen and Hiran Kumar Roy, for the Respondent

Judgement

Boxburgh, J.

This is a Rule against an order of the Munsif, First Court, Tamluk, directing a plaint to be returned for filing in proper court. Two Plaintiffs originally filed their suit in the Third Court of the Munsif at Tamluk, who had jurisdiction up to Rs. 1,000 only. He examined the question of court-fees u/s 8B of the Court-fees Act and decided, on February 11, 1949, that the Plaintiff's valuation of Rs. 900 was correct. There was an issue as to jurisdiction but no specific finding was recorded on that, although the decision of the question of jurisdiction automatically followed in view of the nature of the case and the provisions of Section 8 of the Suits Valuation Act.

2. When the case was ready on June 3, 1949, it was transferred, at the request of the Subdivisional Munsif, First Court (who presumably was short of work) and in anticipation of the sanction of the District Judge. The case proceeded and just before judgment, the Munsif in the First Court decided, rightly, that under the provisions of Section 8B of the Court-fees Act he was required again to certify that the court-fees

paid was correct, notwithstanding the fact that the question had already been considered at an earlier stage. On investigating the question, he came to the conclusion that the value on which court-fee should be paid was in fact nearer Rs. 4,000 than the figure determined by the Munsif of the Third Court and directed the plaint to be returned, as this was beyond his own pecuniary jurisdiction.

3. This Rule was obtained principally on the ground that the learned Munsif in the first court had acted erroneously in reopening the question of court-fee at a late stage. Having regard to the clear provisions of Section 8B of the Court-fees Act, I have no doubt that the learned Munsif acted correctly in this matter. In the present case, there can be no doubt that some hardship has been caused to the Plaintiff as a result of the learned Munsif following the provisions of the Court-fees Act. In fact, it seems to me there is a direct conflict of principle between the provisions of the Court-fees Act and those of the Suits Valuation Act, which comes into play in those cases which come u/s 8 of the Suits Valuation Act, which makes valuation for the purposes of jurisdiction to be the same as that for court-fees. The principle underlying the amended sections of the Court-fees Act, as in operation in West Bengal, is to see that the Government revenue does not suffer and the provisions are made stringent, so that, even at a very late stage, the court is enjoined to see that proper court-fee has been paid. But the result is, where in cases governed by Section 8 of the Suits Valuation Act, this very action may, as in the present case, suddenly show that the whole proceedings have been without jurisdiction. Section 11 of the Suits Valuation Act deals, among other matters, with the position in the appellate court dealing with cases where the question of jurisdiction may or may not have been agitated in the trial court. The principle underlying the section is very similar to that underlying Section 21 of the Code of Civil Procedure, namely, that questions of jurisdiction are to be agitated and decided at the earliest stage and as far as is reasonable and just, suits should, if possible, not be allowed to fail because subsequently it can be shown that under the rules applicable, the trial court did not, in fact, have pecuniary jurisdiction. The two principles are irreconcilable and as I have said, are brought into headlong collision in cases where Section 8 of the Suits Valuation Act operates. The present is an instance. If the learned Munsif had overlooked his duties u/s 8B of the Court-fees Act and the matter had gone on appeal, it may well have been that the appellate court, under the provisions of Section 11 of the Suits Valuation Act, could have, in fact, itself overlooked the defect in jurisdiction.

4. So far as the actual decision on the question of valuation goes, there is nothing to be added to the reasoning of the learned Munsif, which seems to be entirely sound and goes to show that the learned Munsif, Third Court, in dealing with the question of valuation, was in error in so far as the case of Plaintiff No. 1 was concerned, in allowing for the supposed fact that there was a charge on the properties in question. It is the Plaintiff No. 1's case that there is no charge. There is a separate and alternative case by Plaintiff No. 2 on the basis that such a charge exists. In that

view of the matter, as the learned Munsif, First Court, has pointed out, even on the findings of the learned Munsif, Third Court, the value of the suit was beyond the pecuniary jurisdiction, namely, Rs. 1,000 of the Third court, the court, in which the plaint was originally filed. As that court had no jurisdiction to deal with the case, the matter could not be improved by the transfer to the First Court, so that, in any view of the matter, the only order the Third Court could pass, once it ascertained that the First Court had no jurisdiction, was to return the plaint for being filed in the proper Court.

5. The learned Munsif, First Court, has not dealt with the case precisely on these lines, but has analysed the real nature of the cases of the two Plaintiffs and held that the total value of the reliefs claimed by the two exceeded Rs. 4,000 (i.e., the amount of his own pecuniary jurisdiction) and for that reason has decided to return the plaint. I mention this because the Plaintiffs sought before the Munsif of the First Court to reduce the value of the reliefs claimed by deleting certain prayers relating to the case of Plaintiff No. 2, so that, at any rate, the case might be brought within the jurisdiction of the Munsif of the First Court, which is Rs. 2,000. Before me, it was urged that I might allow this to be done. But, even if I were prepared to do so, this would still not remove the original and fundamental defect, namely, that the court of the Third Munsif, itself had no jurisdiction.

6. The result is that this Rule must be discharged. I make no order as to costs.

7. It seems to me that Section 8 of the Suits Valuation Act in "West Bengal might profitably be amended, in view of the provision of Section 8B of the Court-fees Act, so that the valuation for court-fees made at the first preliminary determination should be the final value for jurisdiction so far as the trial court is concerned, leaving it to the appellate court to proceed u/s 11 of the Act, if it finds that this valuation is wrong, that is to say, in cases where the trial court on a final determination u/s 8B of the Court-fees Act finds that the valuation for court-fees comes to an amount in excess of the amount of its pecuniary Jurisdiction and the appellate court accepts the later figure.