

Jasoda Chhotu Vs. Chhotu Mannu

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Court : Mumbai

Decided On : Nov-11-1909

Reported in : 4Ind.Cas.836

Judge : Chandavarkar and ;Heaton, JJ.

Appellant : Jasoda Chhotu

Respondent : Chhotu Mannu

Judgement :

1. It is contended before us on the authority of Aklemannessa Bibi v. Mahomed Hatem 31 C 849; 8 C.W.N. 705 that the suit for restitution of conjugal rights, out of which this second appeal arises, did not lie in the Court of the Second Class Subordinate Judge, by whom it was tried, because, according to the Bombay Civil Courts Act, that Court has jurisdiction to try no suit other than that the subject-matter of which is of the value of less than Rs. 5,000, whereas a suit for restitution of conjugal rights (it is urged) is not one the subject-matter of which can be valued. What is meant by this argument is, as we understand it, that a suit for restitution of conjugal rights is not one the subject-matter of which can be precisely and definitely valued. In such cases the law leaves it to the plaintiff to put his own valuation on the plaint and accepts it for the purposes of jurisdiction unless it is vitiated by some improper motive SUCH as a deliberate design to give the Court a jurisdiction which it has not. As was said in the case of Lakshman Bhatkar v. Babaji Bhatkar 8 B. 31 what prima facie determines the jurisdiction is the claim or

subject-matter of the claim as estimated by the plaintiff, and this determination having given the jurisdiction, the jurisdiction itself continues unless a different principle comes into operation to prevent such a result or to make the proceeding from the first abortive. This law has been followed in a series of cases in this Court: *The firm of Jechand Khushalchand v. The firm of Moti Lavji* (1888) P.J. 1 and *Gulabchand Motiram Gujar v. Fulchand Panachand* (1880) P.J. 191. It has also been adopted by the other High Courts.

2. In the present case, the plaintiff valued the subject-matter of the suit at Rs. 65 and nothing was urged against the valuation in either of the lower Courts. The point as to want of jurisdiction in the Second Class Subordinate Judge's Court is raised for the first time in second appeal. The case of *Aklemannessa Bibi v. Mahomed Hatem* 31 C 849: 8 C.W.N. 705 cannot be accepted as a decision on the point because, as has been pointed out by the same Court in *Jan Mahamed Mandal v. Mesher Bibi* 34 C. 352: 5 C.L.J. 400: 11 C.W.N. 458 the observations in the former case are mere obiter dicta. In the latter case the Calcutta High Court has held that, where the claim in a suit for restitution of conjugal rights is valued by the plaintiff, that valuation must be accepted for the purpose of jurisdiction unless it is shown to have been made either from any improper motive or deliberately for the purpose of giving the Court a jurisdiction which it has not.

3. The decree must be confirmed.