

**Devendra Singh Vs. Bhole Ram**

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**SooperKanoon Citation :** [sooperkanoon.com/450630](http://sooperkanoon.com/450630)

**Court :** Allahabad

**Decided On :** Dec-11-1990

**Reported in :** AIR1991All157

**Judge :** N.L. Ganguly, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9 and 15 - Order 7, Rule 10

**Appeal No. :** Civil Revn. No. 348 of 1990

**Appellant :** Devendra Singh

**Respondent :** Bhole Ram

**Advocate for Pet/Ap. :** K.G. Srivastava, Adv.

**Judgement :**

ORDER

1. This revision was presented on 10th May, 1990 with an application under Sec. 5 of Limitation Act. The Court was pleased to issue notice on the application under Sec. 5 of the Limitation Act. The plaintiff/respondent has been served. He has filed counter affidavit. A rejoinder affidavit has also been filed on behalf of the applicant to the said counter affidavit. After considering the cause shown in the application, it appears that the cause shown is sufficient.

2. In the circumstances, the delay was condoned by me just yesterday on 10-12-90. The revision itself was heard partly yesterday and is being taken up today. The counsel for the respondent is not present in the court.

3. Two preliminary issues, issues Nos.9 and 10 were decided b/v the court below which related to the question whether by allowing the amendment in the valuation clause of the plaint the pecuniary jurisdiction of the court below would change or not. The court below recorded clear finding to the effect that the valuation of the suit after being reduced by the amendment application, the suit became triable by the court of Munsif. On the second issue whether by reducing the valuation of the suit in case the valuation of court-fees is paid was it necessary for the court below to return the plaint for presentation to the court having pecuniary jurisdiction to try such suit, the court below recorded a finding that since the plaintiff paid higher court-fees and valued the suit at a higher valuation, it was his choice to fix the valuation of the suit and the pecuniary jurisdiction of the court would depend on the valuation tentatively affixed by the plaintiff. After recording this finding, the court below directed that suit may proceed in the Court of Addl. Civil Judge V, Bareilly.

4. The defendant being aggrieved of the findings recorded by the court below, filed this present civil revision. His contention is that consent of the parties cannot confer jurisdiction to the court to try the suit. He relied on : [1955]1SCR117 , Kiran Singh v. Chaman Paswan. The Authority of the Supreme Court is clear on the point that consent of the party cannot confer jurisdiction on the court to try a suit. This authority may not be directly on the point. Another case cited by the counsel for the applicant is 0049/1932 : AIR1932 All413 , Inayat Husain v. Bashir Ahmad. The Division Bench of this Court held that:

'Where the valuation of the suit for purposes of jurisdiction is contested, the value must be determined by the Court, and where the valuation can be ascertained correctly, the plaintiff cannot be allowed to put an arbitrary value upon his claim nor can he be allowed to overvalue or undervalue his claim with a view to choose his forum.'

This Authority is directly on the point. After considering the submission of the applicant counsel, I am of the opinion that the court below has committed a manifest error of law and he has illegally held that even by giving higher valuation by the dependent, the jurisdiction of the court would remain the same in spite of the fact that the correct valuation of the suit is much lower than what was assessed by the plaintiff. The case is fully covered by the case of Inayat Husan (supra). The revision is hereby allowed. The order of the court below dated 6-1-90 is set aside. The court below is directed to return the plaint to the plaintiff for presentation of the plaint to the court having jurisdiction to try the suit. No other question of jurisdiction was raised before this Court. If any such other question is being raised, it shall be open for the court below to consider it.

5. The revision is allowed. The parties to bear their own costs.

6. A copy of this order be given to the counsel for applicant in three days' time on payment of usual charges.

7. Revision allowed.

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