

**Bardichand Vs. Soni**

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**Court :** Madhya Pradesh

**Decided On :** Nov-13-1956

**Reported in :** AIR1957MP92

**Judge :** Nevaskar and ;Samvatsar, JJ.

**Acts :** [Suits Valuation Act, 1887](#) - Sections 11; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 21, 99, 115 and 149; [Constitution of India](#) - Article 227

**Appeal No. :** Civil Revn. No. 73 of 1954

**Appellant :** Bardichand

**Respondent :** Soni

**Advocate for Def. :** S.D. Sanghi, Adv.

**Advocate for Pet/Ap. :** B.R. Thakkar, Adv.

**Disposition :** Revision dismissed

**Judgement :**

**Nevaskar, J.**

1. Bardichand son of Magniram filed a suit against defendants Sonibai and Laxmibai in the Court of Civil Judge Second Class, Badnawar for declaration and separate possession of certain items of joint family property consisting of land,

mango-trees and houses. Before the trial Court objection was raised on behalf of the defendants with regard to the court-fees paid. Along with the other issues at the time of final decision the trial Court held on the question of court-fees that it was inadequate. The appropriate amount, according to him, ought to be Rs. 253-2-0 whereas the amount paid was Rs. 41-6-0.

He, therefore, while decreeing the plaintiff's suit for possession gave a direction in the decree that unless the requisite amount of court-fees were made good within 15 days the plaintiff-decree-holder will not be entitled to execute his decree, and that the said decree would not be binding upon defendants in any manner. The plaintiff failed to deposit the requisite court-fee within the time limited in the decree. He thereafter gave an application on 26-9-1953 to condone the delay. This application was rejected by the trial Court.

2. The present revision petition is directed against that order and the jurisdiction of this Court both under Section 115 of the Civil Procedure Code and under Article 227 of the [Constitution of India](#) is invoked.

3. Mr. Thakkar who appeared for the applicant has for the first time before this Court raised a question which has a reference to the question of pecuniary jurisdiction of the Court. According to him on the finding given by the trial Court the valuation of the suit was Rs. 3354-12-9 and that on that finding the Court had no pecuniary jurisdiction to decide the case.

4. In my opinion this question cannot be raised by Mr. Thakkar at this stage of the case. Section 11 of the Suits Valuation Act is based on the principle that a decree passed by a Court which would have had no jurisdiction to hear a suit for over-valuation or under-valuation is not to be treated as, to what it would be but for the section, null and void, and that an objection to jurisdiction based on over-valuation or under-valuation, should be dealt with under that section and not otherwise.

Such an objection can prevail only if the two conditions laid down in the section are fulfilled that the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded or in the lower appellate Court in the memorandum of appeal to that Court and the appellate

Court is satisfied, for reasons to be recorded by it in writing that the suit or appeal was overvalued or under-valued and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits. Their Lordships of the Supreme Court in Kiran Singh v. Chaman Pas wan, AIR 1954 SC 340 (A) at p. 342 have laid down that:

'The policy underlying Sections 21 and 99, C. P. C. and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a Court on merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court unless there has been a prejudice on merits.'

5. In the present case therefore it could not be said by the plaintiff that there was any case of prejudice so far as he is concerned. The plaintiff has obtained a decree in his favour. The difficulty for him has arisen not because there was prejudice by reason of under-valuation made by himself but because he was unable to pay the requisite court-fees within the time limit given by the Court. For this he himself is to be blamed. It is therefore too late in the day for him to contend that the Court whose jurisdiction he himself invoked and who had granted a decree in his favour at his instance had no jurisdiction to do it.

6. The decree as it was granted was perfectly good and the direction given by the Court for payment of deficient court-fees cannot be said to be without jurisdiction. The period within which the court-fee, was to be paid having expired the plaintiff's right to execute the decree came to an end by the force of the decree itself. The plaintiff did not prefer any appeal against that decree and when he invoked the power of the Court for condonation of the delay the Court rightly held that the direction being one contained in the decree it was not competent for it to extend the time.

The decision given by the Court below refusing to condone the delay cannot therefore be said to be illegal or without jurisdiction. Even on merits it could not be said that the Court ought to have ex-extended the time. Fifteen days had been given

by the Court for payment of court-fees and it cannot be said that this was so inadequate as to justify an interference in revision.

7. The petition therefore has no force.

8. It is accordingly dismissed with costs.

**Samvatsar, J.**

9. I agree.

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