

**Ram Krishna Panda and anr. Vs. Natabar Panda and ors.**

**Ram Krishna Panda and anr. Vs. Natabar Panda and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/526344](http://sooperkanoon.com/526344)

**Court :** Orissa

**Decided On :** Dec-17-1959

**Reported in :** AIR1960Ori130

**Judge :** S. Barman, J.

**Acts :** [Suits Valuation Act, 1887](#) - Sections 8 and 11

**Appeal No. :** Civil Revn. No. 258 of 1958

**Appellant :** Ram Krishna Panda and anr.

**Respondent :** Natabar Panda and ors.

**Advocate for Def. :** A.K. Tripathy, Adv.

**Advocate for Pet/Ap. :** R. Mohanty, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**S. Barman, J.**

1. In this civil revision the defendant Nos. 1 and 2 are the petitioners in revision directed against an order of the learned Munsif of Kendrapara District Cuttack, in Title Suit No. 98 of 1956, whereby he rejected the defendant-petitioners'

application for hearing an issue as to pecuniary jurisdiction as a preliminary issue.

2. The plaintiff-opposite parties Nos. 1 to 4 brought the suit for partition against the defendant-petitioner and defendant-opposite parties Nos. 5 to 7 in the Court of Munsif, Kendrapara. In the suit plaintiff-opposite parties, inter alia, also prayed for declaration of title in respect of a portion of the suit land and for damages. The plaintiffs put the valuation of the suit at Rs. 1,500/- for the purpose of jurisdiction as stated in the plaint. In the written statement filed by the defendant-petitioners they took the defence that the present market value of the properties in dispute will be Rs. 5,000/- and as such the Court has no pecuniary jurisdiction to try the suit.

Before the hearing of the suit the defendant-petitioners filed a petition before the learned Munsif praying to decide the issue on jurisdiction first. The learned Munsif disposed of the application by a short order set out below for convenience of reference :

'30-6-1958 : Defendant Nos. 1 and 2 file a petition praying for hearing the issue on jurisdiction at first. Copy served. Heard. In view of the fact that the suit land measures only one acre and some odd land, I do not think it just and proper to allow the petition. The petition is therefore rejected.'

Hence the present application in revision.

3. The only point for consideration in this revision is whether the learned Munsif should have tried the question of pecuniary jurisdiction of the Court to entertain the suit filed before him. Mr. R. Mohanty, learned counsel for the defendant-petitioners, by reference to several decisions contended that whether or not a suit has been properly valued is a preliminary question which ought to be disposed of before the Court goes to trial. Whether or not the lands under claim had been properly valued is not an issue which ought to be fixed for the trial of the case. The question of valuation is a preliminary question that ought to be disposed of before the case can or ought to go to trial.

Though the valuation of the suits for the purpose of jurisdiction is distinct from their valuation for the fiscal purpose of court-fees, still Section 8 of the Suits Valuation

Act (VII of 1887) provides that when in suits other than those referred to in the Court-fees Act (VII of 1870), Section 7, paras v, vi, ix and x, Clause (d), ad valorem court-fees are payable, the value as determinable for the computation of court-fees and the value for the purpose of jurisdiction shall be the same. The words 'as determinable' in Section 8 of the Suits Valuation Act (VII of 1887) mean, as determinable by the High Court which has to try the case.

Section 4 of the Suits Valuation Act (VII of 1887) seems to indicate that the principle adopted by the legislature for valuing a suit, mentioned in Schedule II, Art. 17 of the Court-fees Act (VII of 1870) which relates to land or an interest in land, is that the value of such a suit for purposes of jurisdiction shall be governed by the value of the land or interest in land. It being nowhere enacted in the Act that where such value is not determined by rules made under Section 3, the value shall be such as the plaintiff chooses to adopt, the value must be (where disputed) determined by judicial decision in the suit, such determination being subject to the provisions of Section 11 of the Suits Valuation Act (VII of 1887).

The real as well as the court-fee value should be stated on every plaint and memorandum of appeal, and in case of dispute an issue should be raised as to the real value: (Joytara Dasse v. Mohomed Mobaruck, ILR 8 Cal 975; Dayaram Jagjivan v. Gordhandas Dayaram, ILR 31 Bom 73; Bai Meherbai v. Maganchand Motiji, ILR 29 Bom 229).

4. Mr. Tripathy, learned counsel appearing for the plaintiff-opposite parties, strongly relied on a passage in a decision of the Supreme Court in a Civil Appeal from Madras, Sathappa Chettiar v. Ramanathan Chettiar, AIR 1958 SC 245, where in connection with a suit filed in the original side of the Madras High Court, the plaint was filed by the plaintiff-appellant valuing the claim for accounts at Rs. 1,000/- under Section 7(iv)(f) of the Act and court-fee of Rs. 112/7/- was paid on the said amount on an ad valorem basis. In regard to the relief for partition the fixed court-fee of Rs. 100/- was paid by the plaintiff-appellant under Article 17-B (Madras) of Schedule II of the Act. For the purposes of jurisdiction, however, the appellant gave Rs. 15,00,000/- as the value of his share.

In the particular circumstances of the case as fully stated in the judgment, their Lordships of the Supreme Court thought it necessary to consider whether the plaintiff had been given an absolute right or option to place any valuation whatever on his relief. Mr. Tripathy, however, relied on paragraph 15 of their Lordships' judgment where it was observed that once the plaintiff exercises his option and values his claim for the purpose of court-fee, that determines the value for jurisdiction; the value for court-fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value for court-fees stated by the plaintiff that is of primary importance; it is from this value that the value for jurisdiction must be determined.

Their Lordships, however, made it clear in the said paragraph that the result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of court-fees that determines the value for jurisdiction in the suit and not vice versa. In the judgment their Lordships laid down the principles on which the question of valuation for jurisdiction and the question of valuation for the purpose of court-fees are to be considered. The learned counsel also cited before this Court various decisions of the different High Courts purported to be in support of the contention of the plaintiff-opposite parties. This court has noticed the views, on this aspect of the question in the cases' cited, in the particular context that had been expressed in each case.

5. In this connection the learned counsel for the plaintiff-opposite parties relied on a decision of this Court in *Krushnamurthy v. Veeranna*, ILR 1958 Cut 180, where on the facts of that particular case, it was held that in determining the question of jurisdiction the trial court should always consider the matter on the pleadings as they stand; the Court should not try any issue piecemeal. This and other 'decisions on similar points relate to territorial jurisdiction of the Court and not pecuniary jurisdiction as here and therefore have no application to the facts of the present case. It must not be overlooked that in appropriate cases an obligation is laid on the Court to try the issue of jurisdiction as a preliminary issue, if it is such an issue of law which can be decided without going into the evidence which relates to the merits of the case itself.

Indeed, where the question of jurisdiction is inextricably mixed up with the other issues on merits of the case, it should not be tried piece-meal but should be tried along with the other issues all together. Each case thus depends on the facts and circumstances peculiar to itself. There can be no rough and ready formula for dealing with such cases. The courts have to apply their mind to the particular point involved in each case. The Courts have to consider the ultimate consequences of the course that they may take in deciding the question of jurisdiction as a preliminary issue.

6. It is well settled law that if the over-valuation or under-valuation is patent on the face of the plaint, it is the duty of the Court to which the plaint is presented to return it to the plaintiff 'at any stage' of the suit to be presented to the proper court under Order 7 Rule 10, Civil Procedure Code. If it is not patent on the face of the plaint, but objection is taken by the defendant that it is over-valued or under-valued, the Court may require the plaintiffs to show that the suit has been properly valued if there are prima facie grounds for believing that the suit has not been properly valued but not otherwise.

In the present case, the learned Munsif was to decide whether he could try a question of pecuniary jurisdiction first as a preliminary issue; and if he took the view that he could so decide the question of pecuniary jurisdiction first, then he was to give his finding thereon; if on the other hand he took the contrary view, then of course the question of his giving any finding would not arise. The learned Munsif has instead, made an unintelligible order which appears to have been perfunctorily made. The reason that the learned Munsif gave for rejecting the petition was that the suit land measures only one acre and some odd land.

He clearly appears not to have applied his mind to the points involved in the application before him. His order clearly appears to be an error on the face of it. The learned Munsif appears to have acted in exercise of his jurisdiction illegally and with material irregularity. I think this is a fit case to be sent back to the learned Munsif for reconsideration of the application made before him in the light of the observations made in this judgment and to give his decision on evidence, if necessary, according to law.

7. In this view of the matter the order of the learned Munsif is set aside. This case is sent back to him for reconsideration in the light aforesaid and for giving his decision according to law. This revision is accordingly allowed with costs. Hearing fee Rs. 32/-.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**