

Jagdish Singh Vs. Daljit Singh

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Court : Delhi

Decided On : Feb-26-1980

Reported in : 18(1980)DLT23; 1980RLR546

Judge : O.N. Vohra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17; [Court Fees Act, 1870](#) - Sections 7; [Suits Valuation Act, 1887](#) - Sections 8; [Delhi High Court Act, 1966](#) - Sections 5(2)

Appeal No. : Interim Application No. 349 of 1980 and Suit No. 249 of 1978

Appellant : Jagdish Singh

Respondent : Daljit Singh

Advocate for Def. : Shri. Gian Singh Vohra

Advocate for Pet/Ap. : Arun Mohan,; Y.P. Narulla,; G.S. Vohra and;

Judgement :

O.N. Vohra, J.

(1) The facts that have given rise to this application for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure, briefly stated, are these. Jagdish Singh, plaintiff, sued for rendition of accounts alleging that there was

partnership in between him and Daljit Singh, defendant, that the defendant was maintaining accounts and was controlling sales and purchases besides doing other acts. It was further alleged that the deed of dissolution was executed on July 1, 1977 subject to finalisation of accounts and inasmuch as the books of accounts were with the defendant and the kacha balance sheet which was prepared by the defendant was not accepted, the defendant was requested to settle the accounts but he went on postponing on one pretext or the other. In para 20 of the plaint, it was stated that the amount due to the plaintiff should be Rs. 80,000.00 and it was added that the exact amount cannot be ascertained till accounts were rendered by the defendant. In para 22, all that was mentioned was that fixed court fee of Rs. 20.00 had been affixed but valuation for the purpose of court fee and valuation for purposes of jurisdiction were not specified. Thereafter, 1. A. No. 1740 of 1978 was moved under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure praying that valuation for purposes of court fee and jurisdiction had not been mentioned on account of inadvertent mistake and, therefore, permission may be granted in that behalf. There was no opposition on behalf of the defendant with the result that the request was allowed vide order dated May 10, 1978 and amended plaint was taken on record. According to para of the amended plaint, the valuation for purposes of jurisdiction was mentioned as Rs. 80,000.00 and valuation for court fee was mentioned as Rs. 200.00. The defendant filed written statement to the amended plaint raising two preliminary objections, one in regard to the plaint having not been properly valued for the purpose of court fee and jurisdiction and the second in regard to this Court having no jurisdiction to entertain the suit. There was contest on merits as well. Accordingly, issues were framed on August 29, 1978. Issue No. 1 which was taken up as preliminary issue was in these words:

'WHETHER the suit is not properly valued for the purposes of court fee and jurisdiction?' O.P.P.

(2) On December 17, 1979, when the preliminary objection was taken up for consideration, it was submitted by the learned counsel for the plaintiff that he may be allowed to amend the plaint by fixing valuation for purposes of court fee as Rs. 80,000.00. Obviously, the purpose was not to join issue on the point of valuation.

(3) Shri Gian Singh Vohra, learned counsel for the defendant, has opposed the application on the ground that this Court lacks the inherent jurisdiction to allow the amendment. The precise argument is that according to Section 7(iv)(f) of the Court Fees Act, 1870, the valuation for the purposes of jurisdiction under Section 8 of the [Suits Valuation Act, 1887](#) has to follow valuation for purposes of court fee and inasmuch as the relief was valued for purposes of court fee at Rs. 200.00, the valuation for purposes of jurisdiction should also be Rs. 200.00. It is submitted that this being the position under law, this Court lacks jurisdiction to entertain the suit and for that reason cannot entertain the request for amendment of the plaint.

(4) It is observed that despite the fact that objection in regard to jurisdiction of this Court was raised in the written statement, no issue on that point was claimed as is clear from the order dated August 29, 1978. However, in view of the nature of the objection, I would not resort to technicalities to shut out the argument. The contention of Shri Gian Singh Vohra that according to Section 7(iv)(f) of the Court Fees Act, valuation for purposes of jurisdiction in a suit for rendition of accounts would be the same as valuation for purposes of court fee is, so far as it goes, unassailable. However, the fact is that this provision stands overridden by Rules 3 and 4 framed by the High Court of Judicature at Lahore in 1942 with the previous sanction of the State Government under powers conferred by Section 9 of the [Suits Valuation Act, 1887](#) and all other powers in that behalf. Section 9 reads as under :

'DETERMINATION of value of certain suits by High Court. When the subject matter of suits of any class, other than suits mentioned in Court Fees Act, Section 7, paragraph (v) and (vi, and paragraph (x), clause (d) is such that in the opinion of the High Court it does not admit of being satisfactorily valued the High Court may, with the previous sanction of the State Government direct that the suits of that class shall, for the purposes of the [Court Fees Act, 1870](#) and of this Act and any other enactment for the time being in force, be treated as if their subject matter were of such value as the High Court thinks fit to specify in this behalf.'

RULE 3 reads as under :

'SUITS in which the plaintiff in the plaint asks for accounts only not being:- (i) Suits to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant; (ii) Suits of either of the kinds described in Order Xx, Rule 13 of Code of Civil Procedure, value-(a) For the purposes of the [Court Fees Act, 1870](#)..... ..Rs. 200.00 (b) For the purposes of the [Suits Valuation Act, 1887](#), and the Punjab Courts Act, 1918,.....Rs. 1000/..'

Rule 4 reads as under :

'4(I)Suits in which the plaintiff in the plaint seeks to recover the amount which may be found due to the plaintiff of taking unsettled accounts between him and defendant; (ii) Suits of either of the kinds described in order Xx, rule 13 of the Code of Civil Procedure- Value for the purposes of court fees..... as determined by the [Court Fees Act, 1870](#). value for the purposes of jurisdiction for the purpose of the [Suits Valuation Act, 1887](#), and the Punjab Courts Act, 1918, as valued by the plaintiff in the plaint subject to determination by the Court at any stage of the trial.'

(5) SUB-SECTION (2) of Section 5 of the [Delhi High Court Act, 1966](#), says that notwithstanding anything contained in any law for the time being in force, the High Court of Delhi has in respect of the Union Territory of Delhi ordinary original civil jurisdiction in every suit in the value of which exceeds Rs. 25.000.00 since raised to Rs. 50,000.00 by Section 3 of the Delhi High Court (Amendment, Act, 1969. Section 7 of the [Delhi High Court Act, 1966](#) which deals with 'practice and procedure' to be followed in the High Court of Delhi says :

'SUBJECT to the provisions of this Act, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Punjab shall, with the necessary modifications, apply in relation to the High Court of Delhi and accordingly the High Court of Delhi shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the appointed day exercisable by the High Court of Punjab and shall also have powers to make rules and orders with respect to practice and procedure for the exercise of its ordinary original civil jurisdiction.'

(6) The procedure comprehends all steps necessary to be taken in litigation for the establishment of a right in order that the right is judicially recognised and declared in such manner as will enable the party asserting the right to legally enjoy it. In 'Words and Phrases', Volume 33, published by West Publishing Company, at page 188 'practice and procedure' are said to relate to the legal rules directing the manner of bringing parties into the Court and the method of the Court after they are brought in, in hearing, dealing with, and disposing of, matters in dispute between them.

(7) It is, thereforee evident that practice and procedure relate to the body of rules prescribing the method for seeking the remedy and not the enforcement of a right. Suits Valuation Act prescribes the method of valuing certain suits for determining the jurisdiction of Court with respect thereto. Section 9 of that Act deals with that class of suits which do not admit of being satisfactorily valued. The rules framed under Section 9 by the High Court of Judicature at Lahore provide a mode for valuing the suits for purposes of jurisdiction in cases which do not admit of being satisfactorily valued. Accordingly, if practice and procedure are to be taken to mean to relate to body of rules directing the manner of bringing the parties in Court, it cannot be gainsaid that the framing of the rules by the High Court under Section 9 of the Suits Valuation Act squarely fall within the purview of the expression 'procedure and practice' mentioned in Section 7 of the [Delhi High Court Act, 1966](#).

(8) The conclusion is, thereforee, forgone that Rules 3 and 4 framed by the High Court of Judicature at Lahore have a binding force and have to be preferred.

(9) In all fairness to the learned counsel, it may bear mention that reliance was sought to be placed on a Full Bench decision of this Court in Smt. Sheila Devi and others v. Shri Krishan Lal Kdlra and others I. L. R. (1974) li Del 491 as also Hans Raj Kalra v. Kishan Lal Kalra and others I. L. R. (1976) li Del 745, to canvass that there was some controversy in regard to rules in question having the force of law so far as this High Court is concerned but was abandoned when it was noticed that the Full Bench after making the observation that prima facie the rules were applicable to Delhi, left the question open for being agitated before the learned

Single Judge who in turn did not feel the necessity of determining the question as it was not found to be necessary for the purposes of the case before him.

(10) Besides, there is a Division Bench judgment of this Court in *Badhey Sham and others v. Bawa Joginder Singh Bhalla and others* A. I. R. 1969 Del 142 in support of the proposition that all the rules and orders of the Punjab High Court which were applicable in the Union Territory of Delhi, as on coming into force of the Delhi High Court continue to operate by virtue of Section 7 of the [Delhi High Court Act, 1966](#) and I need not dilate.

(11) It is, however, submitted by Shri Gian Singh Vohra that it is Rule 3 and not Rule 4 which is attracted in this case. I do not find any merit in this contention. It is manifest that suits for accounts were divided into two categories. One category comprised of suits in which the plaintiff seeks to recover the amount which may be found due to him on taking unsettled accounts between him and the defendant while the other category stood for all other suits for accounts. Rule 4(i) is a specific rule which concerns suits in which the plaintiff seeks to recover the amount found due on taking unsettled accounts. In case the instant suit falls under this category, one need not, in fact, bother as to what would remain for the second category. Now it is a trite saying that for determining court fee payable on the plaint allegations and prayers made in the plaint alone have to be considered. On persual it is found that there are clear allegations that the defendant was liable to render accounts and has failed to do so and the prayer is that the defendant may be ordered to render the accounts to the plaintiff and that the actual amount due and payable as per the books of account of M/s. Monarch Packages of India with respect to all the years with effect from 1971 may be determined and decreed. It cannot be gainsaid that this suit for accounts is actually and really a suit in which the plaintiff seeks to recover the amount which may be found due to him on taking unsettled accounts between him and the defendant.

(12) There is no other opposition to the grant of the judgment sought and in fact Shri Gian Singh Vohra has fairly and frankly conceded that in case this Court has the jurisdiction to entertain the suit, he has nothing to urge against the proposed amendment and Consequent payment of the deficiency in court fee.

(13) For the foregoing reasons the application is allowed. The plaintiff is directed to put the amended plaint with requisite court fee.

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