

**In Re: Ghosh Beevi**

**In Re: Ghosh Beevi**

**SooperKanoon Citation :** [sooperkanoon.com/786859](http://sooperkanoon.com/786859)

**Court :** Chennai

**Decided On :** Feb-25-1944

**Reported in :** AIR1944Mad406

**Appellant :** In Re: Ghosh Beevi

**Judgement :**

ORDER

**Krishnaswami Ayyangar, J.**

1. The matter comes before me on a reference made by the Taxing Officer. The suit out of which the present second appeal has been sought to be preferred was instituted on 13th December 1941 for a permanent injunction restraining the defendants from trespassing on land alleged to be in the lawful possession of the plaintiff as a usufructuary mortgagee. The plaintiff valued the suit for the purposes of court-fee and jurisdiction on her own valuation at Rs. 100, a course which was open to her under Section 7, Clause (iv) (d), Court-fees Act, read with Section 8, Suits Valuation Act. A decree was passed in favour of the plaintiff and thereupon defendant 1 appealed to the District Court. The appeal was disposed of on 4th October 1943 and it resulted in a reversal of the decree passed by the District Munsif. The plaintiff is now endeavouring to file a second appeal and she filed her memorandum in this Court on 3rd January 1944. Between the date when the District Court passed its decree and the date when the second appeal was filed here, a notification has been issued by the High Court under Section 9, Suits

Valuation Act, with the previous sanction of the Provincial Government directing a change in the method by which the subject-matter of a suit of the character here in question is to be valued for the purposes of court-fee and jurisdiction. The notification amongst others states:

In suits for injunction, where relief is sought with reference to any immoveable property, on the ground that the defendant denies the title of the plaintiff to the property and disturbs or threatens to disturb the plaintiff's possession thereof, the value of the subject-matter of the suit shall not be less than half the value of the property calculated in the manner provided in Section 7, para. 5, Court-fees Act, 1870.

The intention behind the notification is to take away from the plaintiff or the appellant as the case may be the right he had under Section 7 (iv) (d) to value a suit of this kind at his discretion at any amount he likes. This notification came into force on 1st November 1943 more than two months before the second appeal was filed. The question is whether the plaintiff-appellant is entitled to pay the same court-fee on his memorandum of second appeal as he originally paid when he filed the suit or whether he should pay a fee determinable according to the method indicated by the new notification. Mr. R. Kesava Aiyengar, the learned advocate for the appellant, has contended that the value which was correctly fixed when the suit was instituted according to the law then in force continues to apply to the appeal and second appeal, in spite of alterations subsequently made. For this contention he relies on the decision of the Full Bench in *Daivanayaga v. Renukambal* A.I.R. 1921 Mad. 977. It is clear from the judgment of the Full Bench that the Court was then called upon to decide whether an amendment of the law made after the institution of the suit affected the right of appeal which the parties possessed as matters stood at the date of the suit. The Full Bench held that an amendment which came into force after the institution of the suit would not deprive the plaintiff of his right of appeal to the Court to which appeals lay at the date of the suit. There was no question raised there as to whether the alteration made in the court-fee payable applied to the appeal or not. If we look at the ground of the decision it seems clear that it proceeded on the well-known principle of law that the moment a suit is filed the plaintiff has a vested right of appeal to a particular

tribunal which cannot be taken away by a subsequent enactment. This, of course, does not touch the question of court-fee in regard to which it is not possible to maintain that there is such a vested right. Strong reliance is placed upon the following passage occurring at p. 865 of the report, namely:

Presumably the value of the subject-matter of the suit is its value at the time of filing. Such value has to be set forth in the plaint and court-fees paid accordingly. It is, however, contended that the value varies according to the particular enactment in force at the time; and that, although it may have a particular value when it is filed, the value of the suit can be changed if the law in respect of valuation is altered. This contention was distinctly negatived so long ago as 1874 in *Muthusami v. Muthu Chidambara* M.H.C.R. 356, where it was held that it is the money value of the original suit that fixes the jurisdiction throughout the subsequent litigation in its several stages. If this is so, the value of the subject-matter of the suit is the same throughout and it cannot be altered after the decree has been passed simply by an alteration in a fiscal enactment.' The last sentence in this extract clearly implies that the value of the subject-matter for the purpose of fixing the forum remains the same throughout and that it is not altered by a change in a fiscal enactment. The Full Bench had not to consider the effect of a fiscal enactment in so far as fiscal purposes are concerned and the ruling does not touch the question of court-fee. In the case before me the question is not a question of forum but a question of pure court-fee. The same remarks apply to the decision of the Punjab Chief Court in *Dhirta v. Kesri* 3 IND.CAS. 484. The notification having taken effect on 1st November 1943, I can see no reason why it should be held inapplicable to an appeal preferred after it came into force. It follows that the court-fee payable in respect of the memorandum of second appeal must be calculated and paid in the manner laid down in the notification. Time for payment of the court-fee three weeks.