

Dhan Singh Vs. Madan Singh

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Court : Himachal Pradesh

Decided On : Sep-18-1950

Reported in : AIR1951HP22

Judge : Chowdhry, C.J.

Acts : [Evidence Act, 1872](#) - Section 115; ;Himachal Pradesh (Courts) Order, 1948; ;Extra-Provincial Jurisdiction Act, 1947 - Sections 3 and 4; ;Suits Valuation Act - Sections 8 and 11; ;Court Fees Act - Section 7

Appeal No. : Second Appeal No. 145 of 1949

Appellant : Dhan Singh

Respondent : Madan Singh

Advocate for Def. : Puran Chand, Adv.

Advocate for Pet/Ap. : A.N. Bhoil, Adv.

Disposition : Appeal dismissed

Judgement :

Chowdhry, J.

1. This is a defendant's second appeal arising out of a suit for big ejectment from a double storeyed house situate in Mauza Cheli, pargana Chabrogti, tehsil Kasumpti

District Mahasu, and for recovery of Rs. 60 (rupees sixty) as one year's arrears of rent at Rs. 5 per mensem.

2. The plaintiff-respondent filed this suit purely as a suit based on a contract of tenancy. The defendant-appellant not only denied the tenancy but also contended that he, and not the plaintiff, was the owner of the house. The trial Court, the first class Subordinate Judge of Kasumpti, held that the alleged tenancy was not proved, but he decreed the suit for possession on the finding that the plaintiff was the owner of the house. It also gave the plaintiff a decree for Rs. 24 (rupees twenty-four) as damages for use and occupation of the house for one year. The defendant went up in appeal to the District Judge of Mahasu, and that Court, concurring with the finding of the trial Court as regards plaintiff's title, confirmed the trial Court's decree for possession, but, in view of the fact that the alleged tenancy had not been proved, varied the decree of the trial Court by disallowing the damages for use and occupation. The defendant has now filed this second appeal from the appellate judgment and decree of the District Judge Mahasu, and he purports to do so under para. 32 sub-para, (1) (a) (i) and (ii), Himachal Pradesh (Courts) Order, 1948.

3. A number of grounds have been taken by the defendant-appellant before me, but it is not necessary to mention any of them inasmuch as a preliminary objection taken by the plaintiff-respondent as to the maintainability of the present second appeal must prevail. The preliminary objection is that the present appeal does not lie under the provisions of the aforesaid para. 32, Himachal Pradesh (Courts) Order, 1948. This was countered by the learned counsel for the defendant-appellant contending that the present was a good appeal under the provisions of Section 100, Civil P. C., and that the provisions of para. 82 of the aforesaid Order were ultra vires. He pleaded that the Himachal Pradesh (Courts) Order, 1948, was only an order promulgated by the Central Government and could not, therefore, abrogate the provisions of an enactment like the Civil P. C., 1908, which had been passed by the Central Legislature. Apart from having been thus platitudinously propounded, the argument was not supported by any reasoning. It seems also to have been forgotten that the appeal itself purports to have been filed, as adverted to above, under para. 32, Himachal Pradesh (Courts) Order, 1946. That being so,

it does not lie in the mouth of the defendant-appellant to put forward the aforesaid contention in reply to the preliminary objection raised on behalf of the plaintiff-respondent. It may, however, be stated en passant that, as the Notification preceding the aforesaid Order shows, the Central Government purported to make the Order in exercise of the powers conferred on it by Sections 3 and 4, Extra-Provincial Jurisdiction Act (XLVII [47] of 1947). On the maxim *omina præsumentur rite esse acta* it must be presumed that the Central Government had the requisite authority, jurisdiction and power to make the Order in question in exercise of the powers conferred on it by Sections 3 and 4, Extra-Provincial Jurisdiction Act, 1947. The defendant-appellant cannot, therefore, escape the provisions of Para. 32 of the Order in question.

4. Coming back to the preliminary objection raised on behalf of the plaintiff-respondent the present second appeal arises out of a suit belonging to the category of an unclassified suit' under Clause (vi) of para. 2 of the aforesaid Order and as the decree of the District Court varied that of the Court of first instance the present appeal falls under Para. 32 (1) (a) (i) of that Order. That being so, in order that this second appeal be competent, the value of the suit out of which it arises should have been one thousand rupees or upwards. The value of the present suit was, however, only Rs. 120, that is, Rs. 60 for one year's arrears of rent and Rs. 60 for the relief of possession, and court-fees were paid accordingly. Obviously, the court-fee on the relief of possession was paid under Section 7 (xi) (cc), Court-fees Act. There can be no doubt, therefore, that, on the value of the suit as given in the plaint, this second appeal is barred by the provisions of Para. 32 (1) (a) (i), Himachal Pradesh (Courts) Order, 1948.

5. The defendant-appellant must have foreseen this objection for one of the grounds taken by him in this appeal is that the proper valuation of the suit for purposes of jurisdiction should have been Rs. 2,500 which, he contended, was the market value of the house in suit. It was, therefore, contended on his behalf that this second appeal was quite competent under Para. 32 (1) (a) (i) of the aforesaid Order. It may be noted here that although that is now the contention of the defendant-appellant in order to escape the objection as regards the maintainability of the present appeal, neither in the Court of the District Judge nor in this Court has

he paid court-fee under Section 7 (v) (e), Court-fees Act, as he should have done consistently with the aforesaid contention, but under Section 7 (xi) (cc) of that Act. It is also noteworthy that the defendant-appellant raised no objection in the Court of first instance or in the first appellate Court in regard to the valuation of the suit. But this contention of the defendant-appellant is not sustainable because it is well established that, unless the true value has been misrepresented, it is the plaintiff's valuation in the plaint which controls the jurisdiction in all Courts.

6. The learned counsel for the plaintiff, respondent cited two rulings in this connection: *Chhunnu Lal v. Bank of Upper India, Ltd.*, Delhi, A.I.R. (4) 1917 Lah. 386: (40 I.C. 904) and *Bapurao v. Narayan Keshav*, A. I. R. (14) 1927 Nag, 321 : (103 I. O, 337). The appropriate rulings, however, which support the view enunciated by me above are the following rulings of the Allahabad High Court. The first is the one reported as *Jag Lal v. Har Narayan Singh*, 10 ALL. 634 : (1888 A. W. N. 218). In that case the plaintiff sued for possession of a certain immovable property on the allegation that the defendants had fraudulently caused him to execute a sale-deed in their favour for the nominal consideration of Rs. 3,000. The plaintiff valued his suit at Rs. 10,000. The defendants pleaded that the value of the property was Rs. 8,000 but did not dispute the valuation of the suit. On the suit being decreed the defendants filed an appeal to the District Judge who returned the memorandum of appeal on the ground that the value of the subject-matter of the appeal exceeded Rs. 5,000, the pecuniary limits of his appellate jurisdiction. The defendants then presented the appeal to the High Court where, on a question of condonation of delay in filing the appeal arising under Section 5, Limitation Act, it was urged by the defendants-appellants that as they had pleaded that the value of the property was Rs. 3,000 their filing of the appeal in the Court of the District Judge was a bona fide proceeding. In repelling this contention it was observed by Mahmood J. as follows:

'The learned pleader argued that where a plaintiff values his claim at a particular sum of money, and the defendant raises a plea disputing such valuation, reducing it to a sum lower than that named by the plaintiff, an unsuccessful defendant in such a litigation has got a right, in appealing from the decree of the first Court, to go not to the Court which would have jurisdiction with reference to the pecuniary

valuation of the suit, but to the Court which with reference to the defence set up by the defendant as to the valuation of the suit would ordinarily have jurisdiction. And upon this argument the learned pleader argues that because the defendants in this case had set up a plea that Rs. 3,000 was the value of the property in suit, therefore, they were perfectly justified in not preferring their appeal to this Court, but preferring it to the Court of the District. Judge of Azamgarh. I am of opinion that this contention is entirely unsound. Questions of jurisdiction, whether with reference to the nature of the suit or with reference to the pecuniary limits of the claim, are matters to be governed by the statements contained in the plaint..... I have no hesitation in saying that it is the valuation of the plaint which would govern the action, not only for the purpose of the original Court but also for the purpose of appeal and indeed throughout the litigation.'

In the present case the defendant-appellant wants to put a higher valuation than that put in the plaint, but that does not make any difference in regard to the principle laid down in the above ruling. Again, it was laid down in another ruling of the same High Court, reported as *Madho Das v. Ramji Patak*, 16 ALL. 286 : (1894 A. W. N, 84) as follows:

'The pecuniary jurisdiction of a civil Court on its original or appellate side is, ordinarily speaking, governed by the value stated by the plaintiff in his plaint.'

To the same effect is the view expressed by that High Court in *Muhammad Abdul Majid v. AlaBakhsh*, 47 ALL, 534 : (A.I.R. (12) 1925 ALL. 376). It was laid down in that ruling as follows :

'In order to determine the proper appellate Court what has to be looked at is the value of the original suit that is to say the amount or value of the subject-matter of the suit, and that must be taken to be the value assigned by the plaintiff in his plaint, and not the value as found by the Court, unless it appears that either through carelessness or gross negligence, the true value has been altogether misrepresented by the plaintiff. It is the plaintiff's valuation in his plaint which controls the jurisdiction not only at the first Court but of the appellate Court.'

7. Now, there is nothing in the present case to show that, in the words of the ruling just cited, 'either through carelessness or gross negligence, the true value has been altogether misrepresented by the plaintiff'. On the contrary, a reference to the provisions of Section 7, Court-fees Act, and Section 8, Suits Valuation Act. will show that the valuation put in the plaint both for purposes of court-fee and of jurisdiction was the correct valuation. The suit being purely a suit for the recovery of immovable property from a tenant by the landlord, court-fee was payable, and was in fact paid under Section 7 (xi) (cc), Court-fees Act, according to the amount of rent of the immovable property to which the suit refers payable for the year next before the date of presenting the plaint, that is, on Sections 60. Under Section 8, Suits Valuation Act, in a suit of this nature the value as determinate for the computation of court-fees and the value for purposes of jurisdiction shall be the same. That being so, the proper value of the suit in the present case for jurisdictional purposes was RS. 60 and, therefore, this second appeal is barred by the provisions of para. 32 (1) (a) (i), Himachal Pradesh (Courts) Order, 1948. Allowing the preliminary objection raised on behalf of the plaintiff, respondent, therefore, I dismiss this appeal with costs.