

# **Abdul Hamid Shamsi vs Abdul Majid And Others on 12 April, 1988**

**Equivalent citations: 1988 AIR 1150, 1988 SCR (3) 507, AIR 1988 SUPREME COURT 1150, 1988 (2) SCC 575, AIR ONLINE 1988 SC 324**

**Author: L.M. Sharma**

**Bench: L.M. Sharma, A.P. Sen**

PETITIONER:  
ABDUL HAMID SHAMSI

Vs.

RESPONDENT:  
ABDUL MAJID AND OTHERS

DATE OF JUDGMENT 12/04/1988

BENCH:  
SHARMA, L.M. (J)  
BENCH:  
SHARMA, L.M. (J)  
SEN, A.P. (J)

CITATION:  
1988 AIR 1150                      1988 SCR (3) 507  
1988 SCC (2) 575                JT 1988 (2) 69  
1988 SCALE (1) 694  
CITATOR INFO :  
R                1988 SC1636 (23)  
R                1992 SC1526 (3)

ACT:

Court Fees Act, 1870 . Section 7(iv) (b) Suit for accounts-Plaintiff not obliged to state exact amount that may result after taking all accounts-But not permitted to choose unreasonable and arbitrary figure-It is open to the Court to reject such figure, though ordinarily the Court does not examine the correctness of the valuation.

HEADNOTE:

The father and brothers of Respondent No. 1 were running a proprietary business, which was later converted into a partnership firm by a regular deed. On the death of

the father, the two brothers had effectively taken control of the business and excluded Respondent No. 1. The suggestion to reconstitute the partnership made repeatedly by Respondent No. 1 had been ignored.

The two brothers represented before the Income Tax Officer that a new deed of partnership had been executed on 15.1.1979 to be effective from 1.1.1979 in which Respondent No. 1 had no interest and on that basis the Income Tax Officer passed an order. In the suit filed by Respondent No. 1, he challenged the partnership deed as being illegal and void and prayed for a decree for dissolution of the partnership firm and for accounts. Valuation of the suit was put as Rs.150 i.e., Rs.50 each for declaration, rendition of accounts, and for profit to the share of the plaintiff. Court fee was paid accordingly.

The defendants in the suit denied the allegations made in the plaint and also challenged the valuation as being grossly undervalued and arbitrary. The issue relating to the correct valuation and pecuniary jurisdiction of the Court was decided in favour of the plaintiff. The defendants challenged the order by a Civil Revision Application which was dismissed by the High Court.

This appeal by special leave is against the High Court's order. On behalf of the appellant, it was contended that while relief to the tune of lakhs of rupees had been claimed, the plaint had been tentatively valued for Rs.50 only, which is preposterous. The contention of Respondent No. 1 was that a Plaintiff has the absolute right to put on the plaint any

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value he wishes and the court has no jurisdiction to examine the matter.

Allowing the appeal, this Court,

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HELD: 1. It is true that in a suit for accounts the correct amount payable by one party to the other can be ascertained only when the accounts are examined and it is not possible to give an accurate valuation of the claim at the inception of the suit. The plaintiff is, therefore, allowed to give his own tentative valuation. Ordinarily the Court shall not examine the correctness of the valuation chosen, but the plaintiff cannot act arbitrarily in this matter. If a plaintiff chooses whimsically a ridiculous figure it is tantamount to not exercising his right in this regard. In such a case it is not only open to the Court but its duty to reject such a valuation. [512D-E]

2. In the instant case the valuation put by the plaintiff on the plaint is arbitrary and unacceptable. However, the question is remitted to the trial court for reconsideration. It is open to the trial court to take into consideration the statement in the plaint that the plaintiff has been ousted from the partnership business. If the court comes to the conclusion that the tentative valuation of the

suit would be beyond its pecuniary jurisdiction, it shall pass an appropriate order under Order VII of the Code of Civil Procedure. [512F-G]

Smt. Tara Devi v. Sri Thakur Radha Krishna Maharaj, [1987] 4 SCC 69; Meenakshisundaram Chettiar v. Venkatachalam Chettiar, [1979] 3 SCR 385, relied on.

Aizaz Ahmad v. Nazirul Hasan, AIR 1935 Allahabad 849; Attar Singh v. Manohar Singh, ILR (1947) Nagpur 933; Mata Ram v. Daulat ILR (1938) Nagpur 588 (F.B.); Salahuddinhyder v. Dhanoolal, [1945] ILR XXIV Patna 334; Shama Pershad Sahi v. Sheopershad Singh XLI I.C. 95 (Patna); Gouri Lal and others v. Raja Babu, AIR 929 Patna 626, approved.

Krishnaji Hari v. Gopal Narayan. AIR 1936 Bombay 166 and Ishwarappa v. Dhanji, AIR 1932 Bombay 111, overruled.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1004 of 1988.

From the Judgment and Order dated 2.12.1987 of the High Court of Calcutta in Civil Order No. 2506 of 1987.

S.N. Kacker, N. Choudhary and Rathin Das for the Appellant.

A.P. Chatterjee, Deepak Mitra and G.S. Chatterjee for the Respondents.

The Judgment of the Court was delivered by SHARMA, J. The jurisdiction of the City Civil Court, Calcutta to entertain a suit being T.S. No. 520 of 1983 filed by the respondent No. 1 is under challenge in the present appeal, on the ground that the correct value of the suit is beyond the pecuniary jurisdiction of the Court. The plaintiff-respondent No. 1 has alleged that he is a partner of a partnership business along with his brothers defendant Nos. 1 and 2. Originally it was a proprietary business belonging to Abdul Samad, father of the plaintiff and defendant Nos. 1 and 2, and was later converted into a partnership firm by a regular deed. During his life time the business was under the control of Abdul Samad, but on his death the defendants Nos. 1 and 2 have effectively taken charge of the business and excluded the plaintiff. A suggestion to re-constitute and partnership made and repeated by the plaintiff has been ignored. In reply to the plaintiff's letter seeking information the defendant no. 2- petitioner has stated in his letter to the plaintiff that he (the plaintiff) has no interest in the firm. In paragraph 11 of the plaint it is stated that he has on enquiry discovered that the defendants nos. 1 and 2 have been falsely representing before the Income-Tax department, inter alia, that a new deed of partnership had been executed on 15.1.1979 to be effective from 1.1.1979 in which the plaintiff has no interest. The Income-Tax Officer passed an order on 26th December 1981 on the basis of the false allegations made by the defendants. The plaintiff has challenged the aforementioned partnership deed of 1979. In paragraph 16 of the plaint the amount of profit from the business has been described as "huge". In the prayer portion of the plaint the plaintiff prayed for declaring the partnership deed of 1979 as illegal and void and for

passing a decree for dissolution of the partnership firm and for accounts. The valuation of the suit was put as Rs.150 being the sum of Rs.50 for declaration, Rs. 50 for rendition of accounts and another sum of Rs. 50 for profit to the share of the plaintiff arising out of the business. Court fee was accordingly paid.

2. The defendants no. 1 and 2, besides denying the plaint allegations made by the plaintiff, challenged the valuation given by the plaintiff as grossly undervalued and arbitrary. The issues relating to the correct valuation and pecuniary jurisdiction of the court to enter-

tain the suit were taken up as preliminary issues and were decided in favour of the plaintiff. The defendants challenged the order by a civil revision application before the Calcutta High Court which was dismissed. The defendant no. 2 has now come to this Court against the High Court's order. Special leave is granted.

3. Mr. Kacker, the learned counsel for the appellant, has contended that it is manifest that relief to the tune of lacs of rupees has been claimed by the plaintiff in the suit. He said that the plaintiff has laid claim to a sum of Rs.1,26,796.72 besides another sum of over Rs.84,000 as his share in the profit for a particular period by reference to the proceeding of the Income-Tax department mentioned in paragraph 11 of the plaint, and it is, therefore, preposterous on his part to suggest in paragraph 19 of the plaint that it could be tentatively valued at Rs.50 only. According to the defence case which is challenged as incorrect by the plaintiff, the plaintiff requested for and was allowed a larger share 'in the well established and reputed business of auctioneer known as "Russell Exchange"

and its assets and goodwill as well as the amount lying in the Habib Bank, Karachi Branch, solely and absolutely'. The "Russell Exchange" building is a very valuable property near Park Street in the city of Calcutta. A copy of the Profit and Loss Account for the calendar year 1979 attached by the plaintiff to the additional affidavit filed on his behalf before this Court mentions figures in lacs.

4. Mr. Arun Prakash Chatterjee, the learned counsel for the plaintiff-respondent no. 1, has argued that the suit is governed for the purpose of court fees by s. 7(iv)(f) of the Court Fees Act, and the plaintiff has the absolute right to put on the plaint any value he wishes to and the court has no jurisdiction to examine the matter. In other words, it is the sweet-will of the plaintiff to choose any figure he likes and thus decide finally the court which shall have jurisdiction to entertain the suit without reference to the subject matter of the litigation, the nature and extent of the relief claimed or any other factor. He has relied upon the decision of this Court in Smt. Tara Devi v. Sri Thakur Radha Krishna Maharaj, [1987] 4 SCC 69, and Meenakshisundaram Chettiar v. Venkatachalam Chettiar, [1979] 3 SCR 385. Reference was also made to Krishnaji Hari v. Gopal Narayan, AIR 1936 Bombay 166 and Ishwarappa v. Dhanji, AIR 1932 Bombay 111. Mr. Chatterjee claimed that the different High Courts in the country have consistently confirmed this right of the plaintiff and he has not discovered any decision to the contrary.

5. We are afraid, the interpretation put by the learned counsel on the decisions of this Court is not correct and cannot be accepted. None of the two cited judgments relied upon by Mr. Chatterjee helps him. It is true that in a suit for accounts the plaintiff is not obliged to state the exact amount which would result after taking all the accounts and he may, therefore, put a tentative valuation upon the suit, but he is not permitted to choose an unreasonable and arbitrary figure for that purpose. At page 392 of the judgment in *Meenakshisundaram Chettiar v. Venkatachalam Chettiar*, (supra) this Court while taking note of the plaintiff's right to give a tentative valuation on the suit, observed:

"The plaintiff cannot arbitrarily and deliberately under-value the relief."

In *Smt. Tara Devi v. Sri Thakur Radha Krishna Maharaj*, [1987] 4 SCC 69, the view was reiterated thus at page 70:

"..... The plaintiff however, has not been given the absolute right or option to place any valuation whatever on such relief and where the plaintiff manifestly and deliberately under- estimates the relief the court is entitled to examine the correctness of the valuation given by the plaintiff and to revise the same if it is patently arbitrary or unreasonable ....."

6. So far as the opinion of the High Courts is concerned, it is not uniform. The argument, "that the plaintiff can give an arbitrary valuation in the plaint, and that the court is bound to accept that" made on behalf of the plaintiff before the Allahabad High Court in *Aizaz Ahmad v. Nazirul Hasan*, AIR 1935 Allahabad 849, was rejected, after observing that there was some authority for the extreme view as urged in two Calcutta decisions but later a different view was taken by the said Court as also by the Allahabad Court. In *Attar Singh v. Manohar Singh*, ILR (1947) Nagpur 933, the plaintiff non-applicant before the High Court filed a suit for dissolution of partnership and accounts valuing at Rs.150 as has been done in the case before us. The defendant's objection to the valuation was rejected by the trial court "on the ground that the court was powerless to challenge the valuation put by the plaintiff on the relief claimed in the suit." The Full Bench decision in *Mata Ram v. Daulat*, ILR (1938) Nagpur 588 (F.B.) was attempted to be distinguished on the basis that it was a case covered by s. 7(iv)(c). of the Court Fees Act and not by s. 7(iv)(f). The High Court while repelling the argument pointed out that the principle underlying both the clauses (c) and (f) of s. 7(iv) is substantially the same and the Full Bench decision governed the case. Accordingly it was held that when the valuation put by the plaintiff appears to be arbitrary and unreasonable the court may reject it and leave the plaintiff to correct the valuation or have the suit rejected. Similar was the view of the Patna High Court in suits covered by s. 7(iv)(c) in *Salahuddinhyder v. Dhanoolal*, [1945] ILR XXIV Patna 334, and *Shama Pershad Shahi v. Sheopershad Singh* XLI, I.C. 95 (Patna). In *Gouri Lal and others v. Raja Babu*, AIR 1929 Patna 626, the respondent filed a suit praying for accounts from appellant no. 1. Rejecting his claim to put any valuation under s. 7(iv)(f) of the Court Fees Act the High Court observed that when a plaintiff is required to place the valuation on his claim he must state a valuation which need only be approximately correct but qualified it by saying that, "it must not be arbitrary or manifestly inadequate."

7. It is true that in a suit for accounts the correct amount payable by one party to the other can be ascertained only when the accounts are examined and it is not possible to give an accurate valuation of the claim at the inception of the suit. The plaintiff is, therefore, allowed to give his own tentative valuation. Ordinarily the Court shall not examine the correctness of the valuation chosen, but the plaintiff cannot act arbitrarily in this matter. If a plaintiff chooses whimsically a ridiculous figure it is tantamount to not exercising his right in this regard. In such a case it is not only open to the Court but its duty to reject such a valuation. The cases of some of the High Courts which have taken a different view must be held to be incorrectly decided.

8. The learned counsel for the parties have placed before us the materials on the record at considerable length and we do not have any hesitation in holding that the valuation put by the plaintiff (respondent before us) on the plaint is arbitrary and unacceptable. We, however, do not propose to examine the matter further and remit this question to be reconsidered by the trial court. While examining the issue it will be open to the trial court to take into consideration the statement in the plaint that the plaintiff has been ousted from the partnership business. If the court comes to the conclusion that the tentative valuation of the suit would be beyond its pecuniary jurisdiction, it shall pass an appropriate order under Order VII of the Code of Civil Procedure. The appeal is accordingly allowed with costs payable by the plaintiff respondent.

G.N.

Appeal allowed.