

Commercial Aviation & Travel Company & ... vs Vimal Pannalal on 13 July, 1988

Equivalent citations: 1988 AIR 1636, 1988 SCR SUPL. (1) 431

Author: M.M. Dutt

Bench: M.M. Dutt, Misra Rangnath

PETITIONER:

COMMERCIAL AVIATION & TRAVEL COMPANY & ORS.

Vs.

RESPONDENT:

VIMAL PANNALAL

DATE OF JUDGMENT 13/07/1988

BENCH:

DUTT, M.M. (J)

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DUTT, M.M. (J)

MISRA RANGNATH

CITATION:

1988 AIR 1636	1988 SCR Supl. (1) 431
1988 SCC (3) 423	JT 1988 (3) 41
1988 SCALE (2) 1	

ACT:

CIVIL PROCEDURE CODE, 1908: order VII Rule (11b)-Plaint to be rejected where relief claimed undervalued-Duty of Court to come to a finding that relief claimed is undervalued.

Court Fees Act 1870:Section 7(iv) (f)Suit for dissolution of partnership and accounts-Valuation of suit-Suit valued for jurisdiction at Rs.25 lakhs and at Rs.500 for court fee-Whether suit undervalued for the purpose of court fee.

Suits Valuation Act 1887/Rules Framed by Punjab High Court as Applicable to Delhi. -

HEADNOTE:

The respondent plaintiff filed a suit in the High Court against the appellants inter alia for dissolution of partnership and for accounts. The plaintiff valued the suit

for the purpose of jurisdiction at Rs.25 lakhs and for the purpose of court fee at Rs.500.

The appellants raised a preliminary objection as to the valuation of the suit contending that the relief sought for in the suit had been grossly undervalued and the Court should reject the plaint under order VII, Rule 11(b), Civil Procedure Code.

The learned Single Judge overruled the preliminary objection and held that the suit was not undervalued. The Division Bench in dismissing the appeal; followed a Full Bench decision of the same High Court wherein it was observed that paragraph (iv) of section 7 of the Court Fees Act gave the right to the plaintiff in any of the suits mentioned in the clauses of that paragraph to place any value that he liked on the relief he sought, subject, however, to any rule made under section 9 of the Suits Valuation Act, and the Court had no power to interfere with the plaintiff's valuation.

Before this Court, the appellant contended (1) that in a suit for accounts the plaintiff could not value the suit most arbitrarily according to her whims and (2) that an objective standard or positive material

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appeared on the face of the plaint and the valuation of the relief ignoring such objective standard was demonstratively arbitrary.

Dismissing the appeal it was,

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HELD: (1) The suits which are mentioned under section 7(iv) are of such nature that it is difficult to lay down any standard of valuation. Indeed, the Legislature has not laid down any standard of valuation in the Court Fees Act. [435B-C]

(2) It is apparent from Rule 4(i) of the Rules framed by the Punjab High Court under section 9 of the Suits Valuation Act, which are applicable to the Union Territory of Delhi, that valuation for the purposes of Court Fee and jurisdiction is not the same. Under these Rules, the value of suit for accounts for purposes of court fee will have to be determined by the plaintiff. [434G-H]

(3) It is manifestly clear from the provision of order VII, Rule 11 (b), that a Court has to come to a finding that the relief claimed has been undervalued which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief. But ordinarily it is not possible for the Court at a preliminary stage to determine the value of the relief in a suit for accounts simpliciter and the Court has no other alternative than to accept plaintiff's valuation tentatively. [435G-H; 436B-C]

(4) Where there are objective standard of valuation or, in other words, the plaintiff or the Court can reasonably value the relief correctly on certain definite and positive materials, the plaintiff will not be permitted to put an

arbitrary valuation dehors such objective standards or materials. [439C-D]

(5) The plaintiff cannot whimsically choose a ridiculous figure for filling the suit where there are positive materials and/or objective standards of valuation of the relief appearing on the face of the plaint. These materials or objective standards will also enable the Court to determine the valuation for the purpose of Order VI, Rule 11(b), of the Code of Civil Procedure.[441C-D]

(6) The valuation of the relief in the instant case, for the rendition of accounts under Section 7(iv)(f) of the Court Fees Act. is neither unreasonable nor it is demonstratively arbitrary.[442E]

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Smt. Sheila Devi & Ors. v. Shri Kishan Lal Kalra & Ors., ILR 1974 Delhi 491; S. Rm. Ar. S.Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar, 119581 SCR 1024; Urmilabala Biswas v. Binapani Biswas, AIR 1938 Cal 161; Kishori Lal Marwari v. Kumar Chandra Narain Deo, AIR 1939 Patna 572; Nalini Nath Mallik Thakur v. Radhashyam Marwari, AIR 1940 Cal 482; Meenakshisundaram Chettiar v. Venkatachalam Chettiar, [1979] 3 SCR 385; Tara Devi v. Sri Thakur Radha Krishna Maharaj, [1987] 4 SCC; Abdul Hamid Shamsi v. Abdul Majid, JT (1988) 2 SC 69 and Atma Ram Charan Das v. Bisheshar Nath Dina Nath, AIR 1935 Lah 689 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2137 of 1988.

From the Judgment and order dated 14.3.1986 of the Delhi High Court in F.A.O. (O.S.) No. 65 of 1986.

Soli J. Sorabjee, S.K. Mehta, P.H. Parekh and M.K.S. Menon for the Appellants.

Rajinder Sachar, K.C. Dua and G.S. Sistan for the Respondents.

The Judgment of the Court was delivered by DUTT, J. Special leave is granted. Heard learned Counsel for the parties.

This appeal is at the instance of the defendants and is directed against the judgment of the Division Bench of the Delhi High Court whereby the Division Bench affirmed the judgment of a learned Single Judge of that Court rejecting the contention of the appellants that the suit was undervalued by the plaintiff-respondent and, accordingly, the plaint should be rejected under clause (b) of Rule 11 of order VII of the Code of Civil Procedure.

The respondent, who is the plaintiff, has filed a suit against the appellants, inter alia, for dissolution of partnership and for accounts. The suit has been valued for the purpose of jurisdiction at Rs.25 lakhs and at Rs.500 for the purpose of court fee.

The appellants filed an application wherein a preliminary objection was raised as to the valuation of the suit. It was contended by them that the relief sought for in the suit had been grossly undervalued and the Court should reject the plaint under order VII, Rule 11(b) of the Code of Civil Procedure. The learned Single Judge of the High Court overruled the said preliminary objection and held that the suit was not undervalued. On appeal by the appellants, a Division Bench of the High Court took the same view as that of the learned Single Judge. The Division Bench placed reliance upon and followed a Full Bench decision of the same High Court in Smt. Sheila Devi & Ors. v. Shri Kishan Lal Kalra & Ors., ILR 1974 Delhi 491 where it has been observed, inter alia, that paragraph (iv) of section 7 of the Court Fees Act gives a right to the plaintiff in any of the suits mentioned in the clauses of that paragraph to place any value that he likes on the relief he seeks, subject, however, to any rule made under section 9 of the Suits Valuation Act and the Court has no power to interfere with the plaintiffs valuation. The Division Bench felt itself bound by the said Full Bench decision and, accordingly, it dismissed the appeal of the appellants. Hence this appeal.

At the outset, it may be mentioned that in regard to suits for accounts, the Punjab High Court has framed rules under section 9 of the Suits Valuation Act fixing court fee and jurisdictional value of a suit for accounts. Rule 4 of the Rules framed by the Punjab High Court provides as follows:

"4(i) Suits in which the plaintiff in the plaint seeks to recover the amount which may be found to be due to the plaintiff on taking unsettled account 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 purpose of court fee .. as determined by the Court Fees Act, 1870.

value for the purposes of jurisdiction for the purpose of 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."

It is not disputed that the above rules framed by the Punjab High Court under section 9 of the Suits Valuation Act are applicable to the Union Territory of Delhi. It is apparent from Rule 4 extracted above that valuation for the purposes of court fee and jurisdiction is not the same. Indeed, in the instant case, the respondent has valued the suit at Rs.25 lakhs for the purpose of jurisdiction. That valuation has not been challenged by the appellant either in the High Court or in this Court. The only challenge that has been made by the appellant is the valuation of the suit for the purpose of court fee.

So far as suits coming under section 7(iv) of the Court Fees Act are concerned, the Legislature has left the question of valuation of the relief sought in the plaint or memorandum of appeal to the

plaintiff. The reason is obvious. The suits which are mentioned under section 7(iv) are of such nature that it is difficult to lay down any standard of valuation. Indeed, the Legislature has not laid down any standard of valuation in the Court Fees Act. Under Section 9 of the Suits Valuation Act, the High Court may, with the previous sanction of the State Government, frame rules for the valuation of suits referred to in section 7(iv) of the Court fees Act. Although the Punjab High Court has framed rules under section 9 of the Suits Valuation Act which are applicable to the Union Territory of Delhi, such rules do not lay down any standard of valuation with regard to suits coming under section 7(iv) of the Court Fees Act. It has already been noticed that under Rule 4(i) of the Punjab High Court Rules, the value of suit for accounts for purposes of court fee will be as determined by the Court Fees Act, which means that the valuation of the relief will have to be made by the plaintiff under section 7(iv)(f) of the Court Fees Act.

In a suit for accounts it is almost impossible for the plaintiff to value the relief correctly. So long as the account is not taken, the plaintiff cannot say what amount, if at all, would be found due to him on such accounting. The plaintiff may think that a huge amount would be found due to him, but upon actual accounting it may be found that nothing is due to the plaintiff. A suit for accounts is filed with the fond hope that on accounting a substantial amount would be found due to the plaintiff. But the relief cannot be valued on such hope, surmise or conjecture.

In this connection, we may refer to the provision of order VII, Rule II(b) of the Code of Civil Procedure, which provides, inter alia, that the plaint shall be rejected where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so. It is manifestly clear from the provision of order VII, Rule II(b) that a Court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the Court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected. The question is whether in a suit for accounts simpliciter, the Court can come to a finding as to the proper and correct value of the relief until the final determination is made. In our opinion, ordinarily it is not possible for the Court at a preliminary stage to determine the value of the relief in a suit for accounts simpliciter. If the Court is itself unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation that has been made by him. Indeed, in a suit for accounts it is also difficult for the Court to come to a finding even as to the approximate correct valuation of the relief. In such a case, the Court has no other alternative than to accept plaintiff's valuation tentatively.

There has been a divergence of judicial opinion on the question as to whether the plaintiff in a suit for accounts is entitled to put any valuation he likes. It is not necessary to refer to the decisions of different High Courts on the point, and suffice it to say that they are not uniform, some holding that the plaintiff is free to give his own valuation and others holding that the plaintiff is not entitled to give an arbitrary valuation without having any link or connection with the relief in question.

In this connection, we may refer to a Five-Judge Bench decision of this Court in *S.Rm. Ar. S.Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar*, [1958] SCR 1024 Gajendragadkar, J.

speaking for the Court observed as follows:-

"If the scheme laid down for the computation of fees payable in suits covered by the several sub- sections of s. 7 is considered, it would be clear that in respect of suits falling under sub-s.

(iv), a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court fees. The theoretical basis of 'this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim with any precision or definiteness. Take for instance the claim for partition where the plaintiff seeks to enforce his right to share in any property on the ground that is joint family property. The basis of the claim is that the property in respect of which a share is claimed is joint family property. In other words, it is property in which the plaintiff has an undivided share. What the plaintiff purports to do by making a claim for partition is to ask the court to give him certain specified properties separately and absolutely on his own account for his share in lieu of his undivided share in the whole property. Now it would be clear that the conversion of the plaintiff's alleged undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. That is why legislature has left it to the option of the plaintiff to value his claim for the payment of court fees. It really means that in suits falling under s.

7(iv)(b) the amount stated by the plaintiff as the value of his claim for partition has ordinarily to be accepted by the court in computing the court fees payable in respect of the said relief. In the circumstances of this case it is unnecessary to consider whether, under the provisions of this section, the plaintiff has been given an absolute right or option to place any valuation whatever on his relief.
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In the above decision, this Court took the view that the conversion of the plaintiff's undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. It is true that the Court did not consider whether the plaintiff had been given an absolute right or option to place any valuation whatever on his relief under the provision of section 7(iv) of the Court Fees Act, but the difficulty that would be felt by the Court in exercising its power under order VII, Rule 11(b) of the Code of Civil Procedure is that if it is unable to determine the correct value of the relief, it cannot direct the plaintiff to correct the valuation. Order VII, Rule 11(b) contemplates correct valuation and not approximate correct valuation and such correct valuation of the relief has to be determined by the Court. If the Court cannot determine the correct valuation of the relief claimed, it cannot require the plaintiff to correct the valuation and, consequently, order VII, Rule 11(b) will not be applicable.

But, there may be cases under section 7(iv) where certain positive objective standard may be available for the purpose of determination of the valuation of the relief. If

there be materials or objective standards for the valuation of the relief, and yet the plaintiff ignores the same and puts an arbitrary valuation, the Court, in our opinion, is entitled to interfere under order VII, Rule 11(b) of the Code of Civil Procedure. for the Court will be in a Position to determine the correct valuation with reference to the objective standards or materials available to it. In *Urmilabala Biswas v. Binapani Biswas & ors.*, AIR 1938 Cal 161 a suit was instituted for declaration of title to Provident Fund money amounting to a definite sum with a prayer for injunction restraining the defendant from withdrawing the said money. It was held that there was no real distinction between the right to recover money and the right to that money itself, and that the relief should have been valued at the Provident Fund amount to which title was claimed by the Plaintiff. Thus, it appears that although in that case the suit was one under section 7(iv)(c) of the Court Fees Act, there was an objective standard which would enable the plaintiff and the Court too to value the relief correctly and, in such a case, the Court would be competent to direct the plaintiff to value the relief accordingly.

In *Kishori Lal Marwari v. Kumar Chandra Narain Deo and another*, AIR 1939 Patna 572 a question arose as to the valuation of a suit for injunction restraining a decree-holder from executing his decree on the ground that the decree was collusive and obtained by fraud and, therefore, void and incapable of execution. It was held by the Patna High Court that the plaintiff must value his suit according to the amount of decree and must pay ad valorem court fee on such amount. In this case also, there was a positive objective standard for the valuation of the suit.

We may now refer to a decision of the Calcutta High Court in *Nalini Nath Mallik Thakur v. Radhashyam Marwari & Ors.*, AIR 1940 Cal 482. But, before we refer to the decision, we may point out that by the Bengal Amendment Act VII of 1935, a new section 8-C has been inserted in the Court Fees Act. Section 8-C provides that if the Court is of opinion that the subject-matter of any suit has been wrongly valued, it may revise the valuation and determine the correct valuation and may hold such enquiry as it thinks fit for such purpose. In *Nalini Nath Mallik Thakur's* case (*supra*), it has been observed that although a satisfactory valuation may not be possible in the majority of the cases falling under section 7(iv), when once the Court has formed the opinion that the plaintiff's estimate is wrong, it becomes the duty of the Court to estimate a correct and reasonable valuation of the relief claimed and it is for the Court to decide on the merits of each particular case whether the provisions of section 8-C should be invoked for the purpose of revising the plaintiff's valuation. Further, it has been observed that if the relief claimed is impossible to value, the Court is, of course, not in a position to say that such relief has been wrongly valued and there is consequently no scope for the operation of section 8-C, but in a suit where it is sought to set aside a decree, such valuation, although difficult, is not impossible. In a suit to set aside a decree *prima facie* the value of the relief claimed by the plaintiff would be the value of the decree and the onus would clearly lie on him to show that the relief should be valued at some smaller amount. It thus follows from

the above decision that if the Court is of the opinion that the plaintiff's estimate is wrong, it becomes the duty of the Court to estimate a correct and reasonable value of the suit. If, however, the Court is not in a position to decide the correct value of the suit, it has to accept the value that has been put the plaintiff on the relief claimed. In *Nalini Nath Mallik Thakur's case* (supra), there was an objective standard of valuation, namely, the decree which was sought to be set aside.

Thus, where there are objective standards of valuation or, in other words, the plaintiff or the Court can reasonably value the relief correctly on certain definite and positive materials, the plaintiff will not be permitted to put an arbitrary valuation dehors such objective standards or materials.

Mr. Sorabjee, learned Counsel appearing on behalf of the appellants, has strenuously urged that, in the instant case, the respondent has valued the suit most arbitrarily according to her whims. It is submitted by him that in a suit for accounts the plaintiff cannot put an arbitrary valuation on the relief claimed by him. Much reliance has been placed by him on a few decisions of this Court which will be referred to presently.

In *Meenaakshisundaram Chettiar v. Venkatachalam Chettiar*, [1979] 3 SCR 385 this Court made the following observation:

"The plaintiff is required to state the amount at which he values the relief sought. In suits for accounts it is not possible for the plaintiff to estimate correctly the amount which he may be entitled to for, as in the present case, when the plaintiff asks for accounting regarding the management by a power of attorney agent, he might not know the state of affairs of the defendant's management and the amount to which he would be entitled to on accounting. But it is necessary that the amount at which he values the relief sought for should be a reasonable estimate."

That observation has been made by this Court with reference to the special provision, namely, section 35(1) of the Tamil Nadu Court Fees and Suits Valuation Act XIV of 1955. Section 35(1) provides that in a suit for accounts, fee shall be computed on the amount sued for as estimated in the plaint. Section 35(1) of the Tamil Nadu Court Fees and Suits Valuation Act is different from section 7(iv)(f) of the Court Fees Act. While under section 7(iv), the court fee is payable according to the amount at which the relief sought is valued in the plaint or memorandum of appeal, under section 35(1), the court fee shall be computed on the amount sued for as estimated in the plaint. In *Meenakshisundaram's case* (supra) the plaintiff had given a detailed estimate in the plaint and this Court was satisfied that the estimate was quite adequate and reasonable.

In *Tara Devi v. Sri Thakur Radha Krishna Maharaj*, [1987] 4 SCC 69 it has been laid down by this Court that in a suit for declaration with consequential relief falling under section 7(iv)(c) of the Court Fees Act, the plaintiff is free to make his own estimation of the relief sought in the plaint and such valuation both for purposes of court fee and jurisdiction has to be ordinarily accepted. Further it has been observed that it is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has

been demonstratively undervalued, the Court can examine the valuation and can revise the same. In that case, the plaintiff had valued the lease-hold interest on the basis of the rent and such valuation was held to be reasonable and not demonstratively arbitrary.

In making the above observation, this Court has placed reliance upon its earlier decision in Meenakshisundram's case (supra) which, as noticed above, related to section 35(1) of the Tamil Nadu Court Fees and Suits Valuation Act. But one significant fact that is to be noticed in the case is that there is an objective standard of valuation, that is, the rent of the lease-hold interest. It may be reiterated that when there is an objective standard of valuation, to put a valuation on the relief ignoring such objective standard, might be a demonstratively arbitrary and unreasonable valuation and the Court would be entitled to interfere in the matter.

Another decision of this Court on which much reliance has been placed by the appellants is the case of Abdul Hamid Shamsi v. Abdul Majid & ors, JT 1988 (2) SC 69. It was also a suit for accounts and came under section 7(iv)(f) of the Court Fees Act. It has been observed as follows:

VINEET "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 chose, 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."

We are also of the view that the plaintiff cannot whimsically choose a ridiculous figure for filing the suit most arbitrarily where there are positive materials and/or objective standards of valuation of the relief appearing on the face of the plaint. These materials or objective standards will also enable the Court to determine the valuation for the purpose of order VII, Rule 11(b) of the Code of Civil Procedure. Indeed, in Abdul Hamid Shamsi's case, it has been noticed by this Court that the plaintiff has laid a claim to a sum of Rs1,26,796.72, 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 Incom-Tax Department mentioned in paragraph 11 of the plaint. Further, a copy of the profit and loss account for the calendar year 1979 was annexed by the plaintiff to the additional affidavit filed on his behalf before this Court, which also gave positive indication as to the valuation of the relief. The plaintiff in that case valued the suit without making any reference whatsoever to those materials or objective standards available to him and in the context of these facts, this Court made the above observation. But, if there be no material or objective standard, the plaintiff's valuation has to be accepted.

It is however, urged by Mr. Sorabjee that such an objective standard or positive material appears on the face of the plaint. Our attention has been drawn to paragraph 33 of the plaint where it has been stated by the plaintiff that on rendition of accounts, the plaintiff estimates that approximately a sum of Rs.25 lakhs to 30 lakhs would become due to her share. It is submitted on behalf of the appellants that in view of such a statement in the plaint, the respondent should have valued the relief for rendition of accounts at Rs.25 lakhs. We are unable to accept the contention. The statement does not, in our opi-

nion, constitute any objective standard of valuation or a positive material from which it can be said with any amount of certainty that the valuation of the relief for accounts should be at the sum of Rs.25 lakhs. The respondent was not required to make such a statement in the plaint. It is the wishful thinking of the respondent that on account being taken, she would be entitled to such a huge amount. The respondent has not given in the plaint any material in support of the estimate of Rs.25 lakhs to Rs.30 lakhs to her share. As has been stated already, this is no material at all on which any reliance can be placed for the purpose of valuation of the relief. In this connection, we may refer to a decision of the Lahore High Court in *Atma Ram Charan Das v. Bisheshar Nath Dina Nath*, AIR 1935 Lahore 689. In that case also the question was whether the plaintiff had correctly valued the relief for the rendition of accounts. in the plaint, the plaintiff stated that a sum of Rs.8,000 was due to him from the defendants, but he valued the suit for purposes of jurisdiction and court fee at Rs.5000 tentatively. It was . held that the plaintiff could not be prejudiced or damnified merely because he added to the plaint a computation which was unnecessary for him to live.

We have considered the facts and circumstances of the case and also the legal position and, in our view, the valuation of the relief for the rendition of accounts under section 7(iv)(f) of the Court Fees Act is neither unreasonable nor it is demonstratively arbitrary.

In the circumstances, the appeal is dismissed with costs quantified at Rs.5,000.

R.S.S.

Appeal dismissed.