

Mohd. Mushtaq vs Mt. Baqridan And Ors. on 6 February, 1951

Equivalent citations: AIR1952ALL413, AIR 1952 ALLAHABAD 413

Author: Ghulam Hasan

Bench: Ghulam Hasan

JUDGMENT

Ghulam Hasan, J.

1. This appeal was filed on 10-7-1948, against the judgment and decree of the civil Judge, Bahraich dated 9-2-1948, dismissing the plaintiffs suit. An application was made (civil Misc. Appln. No. 883 of 1960) on 16-8-1950, by the respondents challenging the maintainability of the appeal in this Court and praying that the preliminary point about jurisdiction should be decided first in order to save time and cost to parties. The ground of the application is that the plaintiff's suit was one for partition of three pies share out of sixteen annas. The entire property was valued in the plaint at Rs. 23,000 and the plaintiff's share at Rs. 359-6-0. In view of the valuation put by the plaintiff on his claim for partition the appeal, according to the respondents' contention, lay to the District Judge and not to this Court. Reliance is placed upon the provisions of Section 4, Suits Valuation (United Provinces Amendment) Act No. VII [7] of 1939. That section lays down that certain suits including a suit under VI A of Section 7, Court fees Act, 1870, which is a suit for partition, shall be valued for the purposes of jurisdiction at the market value of the property involved in or affected by or the title to which is affected by the relief sought, or at the amount involved in or affected by or the title to which is affected by the relief sought, and such value shall, in the case of land, be deemed to be the value as determinable in accordance with the rules framed under Section 3. There can be no doubt that according to Section 4, the suit for partition must be valued for purposes of jurisdiction according to the share of the plaintiff. This was so held in an unreported case on 14-10-1949 by a Bench of this Court in *Muneshwar Bakhsh v. Shrimati Chhoti*, First civil No. 131 of 1943. That decision is binding and there can be no question that that is the correct view of law. The plaintiff's share was valued in the plaint at Rs. 359 6 0 and ordinarily that suit should have been filed in the Court of the Munsiff but no objection was taken, in the trial Court upon this point. The case proceeded to trial and the civil Judge dismissed the plaintiff's suit. An appeal against that decree lay to the Court of the District Judge for the value of the original suit did not exceed Rs. 5,000. (See Section 39, Oudh Courts Act). In the appeal filed in this Court the valuation of the appeal was the same as the valuation in the trial Court. It is urged on behalf of the appellant that though the view of law that the plaintiffs' share determines the jurisdiction cannot be contested, it is not open to the respondents in view of Section 11. Suits Valuation Act VII [7] of 1887 to raise the question of jurisdiction which they had not raised in the Court of first instance. The respondents' failure to raise the question of jurisdiction to the effect that the suit should have been filed in the Court of the Munsif and not in the Court of the civil

Judge, it is contended, precludes the respondents from challenging the maintainability of the appeal in this Court. Reliance is placed in support of this contention on *Tara Chand v. Collector of Aligarh*, 1989 R.D. 882 and *Kanhaiya Lal v. Hamid Ali*, 1940 Oudh W. N. 462. All that Section 11 lays down is that an objection that by reason of the over valuation or under valuation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless the objection was taken in the Court of first instance or, in the lower appellate Court as the case may be. The object of this provision is to prevent the party from raising the objection to the jurisdiction of the Court of first instance or the lower appellate Court which he had not raised in those Courts at the proper time, but no such objection is raised here by the respondents. It is not contended on their behalf that the decree of the civil Judge is without jurisdiction because the suit should have been filed in the Court of the Munsif. If such an objection had been raised by them, no doubt they would have been precluded by the provisions of Section 11 from raising it. This provision, however, cannot have the effect of determining the forum of appeal, which depends upon the valuation of the plaintiff's share in the partition suit filed by him. That question of jurisdiction must be determined upon valuation. of the plaintiff's share, as provided by Section 4, Suits Valuation Act. The cases relied upon for the appellant are distinguishable on that ground. In the first case the suit was for account under Section 33, U. P. Agriculturists' Relief Act, and was filed in the Court of the civil Judge while it should have been filed in the Court of the Munsif according to the rules framed by the High Court under the Suits Valuation Act which require that all such suits should be valued between Rs. 100 and Rs. 500 irrespective of the amount that might be due to the defendant from the plaintiff. No objection as to valuation for purposes of jurisdiction was taken by the defendant before the civil Judge. The learned Judges rightly held that each an objection was barred by virtue of the provisions of Section 11(1)(a), Suits Valuation Act No. VII [7] of 1887. The appeal to the High Court was entertained because the plaintiff had valued his suit at Rs. 6,72,988. And the appeal against the decision of the learned civil Judge was rightly held to lie to the High Court and not to the Court of the District Judge.

2. In the second case the position was different. There the suit had been filed before a Munsif and the decree of the Munsif was attacked on the ground that the suit should have been filed before a civil Judge. It was held that Section 11 barred the raising of the plea of jurisdiction. In the present appeal, the decree of the civil Judge is not attacked on the ground of jurisdiction and the point that arises before the Court is that accepting the decree to be a decree passed by the civil Judge who had jurisdiction to pass it whether the appeal against that decree lies to the Court of the District Judge or to this Court. Upon this point for the reasons given above, there cannot be the slightest doubt that having regard to the valuation put by the plaintiff on his share in the partition suit, the appeal lies to the District Judge and this Court has no jurisdiction to entertain the appeal.

3. I, therefore, hold that the appeal was wrongly filed in this Court I direct that the appeal be returned to the appellant for presentation to the proper Court. The respondents will be entitled to their costs from the appellant.