

**IN THE HIGH COURT OF LAHORE  
FULL BENCH**

Decided On: 09.01.1925

Appellants: **Sardar Khan and Ors.**

**Vs.**

Respondent: **Aizha Bibi**

**ORDER**

**Martineau and Zafar Ali, JJ.**

1. The Jama or revenue assessed on the land in dispute being Rs. 177-14 0, the value of the suit for purposes of jurisdiction was thirty times that amount i.e., Rs. 5,336.4.0, and the suit was, therefore, beyond, the pecuniary jurisdiction of a second class Sub-Judge. But though the amount of revenue assessed was correctly stated in the petition of-plaint, thirty times that amount was stated to be Rs. 4,336 4.0 instead of Rs. 5,336 4 0, and on that erroneous valuation the suit was made over to and tried and decided by a Sub-Judge, 2nd Class. From his decision, which was in favour of the plaintiffs, the defendants appealed to the District Judge and even before that officer no objection as to valuation or jurisdiction was taken. The result of the appeal to him was that he remanded the case for fresh decision. From that order of remand the plaintiffs have lodged a second appeal in this Court and have taken the objection for the first time that the proper value of the suit being Rs. 5,336-4-0, the defendants' appeal from the judgment and decree of the Sub-Judge lay to the High Court and not to the Dist. Judge, and that the proceedings of the Dist. Judge being with-out jurisdiction are null and void.

2. As the plaintiffs themselves undervalued their suit the responsibility for what followed as a result of that under - valuation rests entirely on their heads, and it is a question whether they can be allowed to raise the objection as to jurisdiction in second appeal. In Kishan Lal v. Rup Chand (1889) A.W.N. 169 it was held that such objection cannot be entertained in second appeal. But the

learned Counsel for the defendants respondents meets the objection by a reference to Section 11 of the Suits Valuation Act (VII of 1887) which lays down that an objection as to pecuniary jurisdiction shall not be entertained by an Appellate Court unless (a) it was taken in the Court of first instance or in the lower Appellate Court, or (b) the Appellate Court is satisfied that the overvaluation or undervaluation " has prejudicially affected the disposal of the suit or appeal on its merits." The present case does not fall under Clause (a), and as regards (b) it was neither stated in the grounds of appeal nor in arguments before us that the undervaluation of the suit had prejudicially affected the disposal of the appeal on its merits." But counsel for the appellants on the authority of Ganga Sahai v. Sheo Lal (1894) 132 P.R. 1894 and the string of the Punjab cases noted in the margin (footnote) Khuda Yar v. Wahab (1901) 25 P.R. 1901. Sanga v. Mali (1910) 214 P.L.R. 1910. Mahomed Shah v. Abdullah Shah (1919) 56 I.C. 918 and Ghulam Akbar Khan v. Bhakat Bibi (1915) 116 P.L.R. 1915 in which that ruling was followed, contends that Section 11 is not applicable. In 132 P.R. 1894, it was held for the first time that

Section 11 is limited to cases in which the valuation depends on the discretion of the parties or the Court, and is not applicable to cases in which the valuation is fixed by rules having the force of law.

3. This proposition was recited and followed in all the subsequent cases quoted above; but with all respect to the learned Judges, who laid down or adopted that rule, we consider it opposed to the plain and comprehensive language of the section

which enacts a general rule without any indication, express or implied, of the intention of the Legislature to exclude from its scope any class of cases whatever. Where the language of a legal enactment is neither vague nor ambiguous the Courts are bound to interpret it as it stands and for obvious reasons it is not permissible to read between the lines anything which the Legislature itself would have undoubtedly added if it had been its intention to frame a rule of limited and not general application. The proposition that "the section must be limited to cases in which the valuation depends on the discretion of the parties or the Courts" (a) and "is not applicable to cases in which valuation is fixed by rules having the force of law" (b) which occurs in *Ganga Sahai v. Sheo Lal* (1894) 132 P.R. 1894 and was repeated in almost every subsequent case would itself, if scrutinised, appear to be neither well conceived nor sound. The valuation of a suit is in no case left to the discretion of the parties i.e., both parties, or Court. The plaintiff can in certain classes of suits put his own valuation on the relief sought by him and that valuation cannot be questioned and determines the forum. How then would Section 11 come into play in cases where plaintiff's valuation of the suit has to be accepted? In no case does the valuation of a suit depend on the discretion of the Court, though the Court can make an enquiry and determine the valuation. Thus part (a) of the proposition is untenable, and (b) cannot stand if it rested on (a). If it did not, there is nothing else to support it. Section 11 was enacted to validate proceedings that were otherwise void for want of pecuniary jurisdiction. If the intention of the Legislature had been to exclude from the scope of the section cases in which valuation is fixed by the rules having the force of law it would have given expression to that intention by adding a clause to that effect. But it appears that the construction put on Section 11 in *Ganga Sahai v. Sheo Lal* (1894) 132 P.R. 1894 was never properly criticised till a Punjab ruling based upon it i.e., *Ghulam Akbar Khan v. Bakhat Bibi* (1915) 116 P.L.R. 1915 was referred to in the Madras High Court in *Vedaji Baskara Tirumala Rao v. Subramania Gurukkal* (1918) 52 I.C. 992. *Kumara swami Sastri, J.*, who disposed of that case, observed as below:

Mr. Govinda raghava Aiyar contends that Section 11 can only apply to cases where the plaintiff having an option as to valuation gives an incorrect valuation, and not to cases where the principle of valuation is incorrect and a wrong principle has been followed in cases where there is only one method by which the suit is to be valued. He refers to *Ghulam Akbar Khan v. Mt. Bakht Bibi* (1915) 116 P.L.R. 1915. I do not think there is anything in Section 11 of the Suits Valuation Act which suggests the difference Bought to be made by Mr. Govindaraghava Aiyar. The words are general and the section refers to over-valuation and under-valuation. It does not matter how the same arises. The very object of Section 11 is to prevent the operation of the general rule that neither consent nor waiver can confer jurisdiction on Courts which have under law only a limited pecuniary jurisdiction in cases where there has been no prejudice on the merits. In *Govinda Menon v. Karunakara Menon* (1901) 24 Mad. 43 it was held that in cases of over-valuation or under-valuation the Appellate Court should not interfere unless the disposal of the suit has been prejudicially affected.

4. The Punjab rulings were again cited before a Division Bench of the Madras High Court in *Ammalu Ammdl v. Krishnan Nair* (1921) 30 M.L.T 38 and were dissented from. One of the learned Judges observed as below:

As pointed out in *Narayani Ammal v. Secretary of State* (1917) 41 I.C.167, *Vedaji Baskara v. Subramania* (1918) 52 I.C. 992 and *Raghava Chariar v. Raghava Chariar* MANU/TN/0094/1893 : (1910)20MLJ726 the language of Section 11 of the Suits Valuation Act is very wide and the restrictions sought to be imposed by the decisions of the Punjab Chief Court cannot in my opinion control the plain words of the section.

5. We are also strongly of opinion that the language of Section 11 does not admit of the construction put upon it in *Ganga Sahai v. Sheo Lal* (1894) 132 P.R. 1894 and the subsequent cases based upon that ruling, and we therefore refer to a Full Bench the question whether Section 11 of the Suits Valuation Act admits of the interpretation put on it in *Ganga Sahai v. Sheo Lal*

(1894) 132 P.R. 1894 or, in other words, whether Section 11 is limited to cases in which valuation depends on the discretion of the parties or the Court and is not applicable to cases in which valuation is fixed by rules having the force of law ?

**Shadi Lal, C.J.**

6. This reference raises the question of the correctness of the rule laid down in *Ganga Sahai v. Sheo Lal* (1894) 132 P.R. 1894 and followed in *Khuda Yar v. Wahab Din* (1901) 35 P.R. 1901 and other subsequent judgments that Section 11 of the Suits Valuation Act VII of 1887 is limited to cases in which the valuation depends on the discretion of the parties or the Court and is not applicable to cases in which valuation is fixed by the rules having the force of law.

7. The action, which has led to the reference, was brought for the possession of agricultural land, and it is common ground that, if the suit had not been under-valued, it would have been tried in the first instance by a Subordinate Judge of the first class, instead of a Subordinate Judge of the second class whose jurisdiction was limited to suits not exceeding Rs. 5,000 in value; and that the first appeal from the decree of the trial Court would have been heard by the High Court and not by the District Judge. No objection on the ground of under-valuation was, however, taken either in the Court of first instance or in the lower Appellate Court; and it was only in this Court that the objection was first raised that neither the trial Court nor the District Court was competent to adjudicate upon the dispute between the parties.

8. Now, if the judgment in *Ganga Sahai v. Sheo Lal* (1894) 132 P.R. 1894 correctly interprets Section 11 of the Suits Valuation Act, the objection urged by the appellants must prevail because it is beyond dispute that the valuation of the suit was fixed by the rules having the force of law. The section in so far as is relevant to the question before us runs as follows:

Notwithstanding anything in Section 578 of the Code of Civil Procedure, 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,

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded or in the lower Appellate Court in the memorandum of appeal to that Court, or

(b) the Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued, or under-valued and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in Clause (a) of Sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in Clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower Appellate Court.

(3) If the objection was taken in that manner and the Appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

9. The language of the section is comprehensive enough to include all cases of erroneous valuation and does not suggest any distinction between cases in which the valuation depends upon rules having the force of law and those in which the valuation is determined otherwise. The learned Judge, who decided the cases of *Ganga Sahai v. Sheo Lal* (1894) 132 P.R. 1894 holds that the section " is limited to cases in which the valuation depends on

the discretion of the " parties or the Court.....and is not applicable to cases in which the valuation is fixed by rules having the force of law." He does not, however, give any reason for making this distinction, nor does he state how it can be deduced from the language of the statute which is general in its terms. Moreover, if the value of a particular suit depends upon the discretion of the plaintiff, e.g., a suit for accounts, or upon the decision of the Court, it seems to me that, when the plaintiff exercises his option or the Court determines the value, the suit has been properly valued and no question of over-valuation or under-valuation could arise. It does not appear what cases were within the contemplation of the learned Judge when he referred to valuation " which depends upon the discretion of the parties." There are no doubt some suits in which the law allows the plaintiff to state the amount at which he values the relief sought by him, but I am not aware of any case, and certainly none has been mentioned by the learned Vakil for the appellants, in which the defendant has any discretion in fixing its valuation.

10. I consider that the distinction referred to above is not warranted by the language of the section and appears to be arbitrary. It is no doubt undesirable that a Court whose pecuniary jurisdiction is limited to suits not exceeding, say, Rs. 1,000 in value, should be allowed to try a suit regarding property worth a lac of rupees, and that in the event of no objection as to under valuation being raised in the manner mentioned in Clause (a) of Section 11, Sub-section (1), the decree passed by such Court should be held to be binding upon the parties.

11. The general rule relating to jurisdiction is that neither consent nor waiver by a party to the suit can confer jurisdiction upon a Court which has no inherent jurisdiction; and that jurisdiction over the subject-matter of a suit can be given only by law. As pointed out by their Lordships of the Privy Council in *Ledgard v. Bull* (1887) 9 All. 191 " When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter and be

bound by his decision on the merits when these are submitted to him.

12. Section 11, however, provides an exception to the general rule and lays down that a party, who has not taken objection as to the pecuniary jurisdiction of the Court at the time specified in Clause (a), Cannot be allowed to dispute that jurisdiction afterwards. It appears that the object of the Legislature in enacting this provision was to ensure that the time and labour spent by a Court in deciding a case should not be wasted, if the party concerned has joined issue and gone to trial upon the merits without raising objection to the pecuniary jurisdiction of the court at the earliest opportunity. It will be observed that a similar rule has been enacted by the new Code of Civil Procedure in order to cure a defect of territorial jurisdiction. Section 21 of the Civil Procedure Code of 1908 provides that no objection as to the place of suing shall be allowed by any appellate or re-visional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice.

13. The object of the Legislature in both cases is the same, namely, that the defect of jurisdiction on territorial or pecuniary ground should not render proceedings in a case abortive if such objection was not taken at the earliest opportunity and there has been no consequent failure of justice. I must, therefore, hold that there is nothing in the language of Section 11 of the Suits Valuation Act which would warrant the distinction drawn in *Ganga Sahai v. Sheo Lal* (1894) 132 P.R. 1894 and that the section governs all cases of erroneous valuation irrespective of the question as to whether the value of the suit is determined by rules having the force of law or in any other manner.

**Scott-Smith, J.**

14. I concur.

**Martineau, J.**

15. I concur.

**Zafar Ali, J.**

16. I concur.

**Campbell, J.**

17. I also concur.

**By the Court**

18. The case will now be heard by the Division Bench on the merits.

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