

In the result, this appeal fails and it is dismissed with costs.

R.S.

REVISIONAL CIVIL

Before Harbans Singh, J.

BAWA BIR SINGH,—*Petitioner,**versus*ALI NIWAZ KHAN,—*Respondent.*

Civil Revision No. 560 of 1962.

Court Fees Act (VII of 1870)—S. 7(iv) (c) and Article 17 of Schedule II—Suit for declaration that money lying in bank belongs to plaintiff and he alone is entitled to receive the same—Whether suit for declaration with consequential relief or for mere declaration—Suit falling under S. 7(iv) (c)—Value for purpose of court-fee—Whether to be taken as value for purposes of jurisdiction—If different values fixed for court fee and jurisdiction—Which one to be ignored—Proviso to S. 7(iv)(c)—Whether applies to suits in respect of money.

1963

July 26th.

Held, that if in a suit, main declaration is sought and another declaration, which springs from the main declaration, is also sought, the second declaration would amount to a consequential relief and the suit would fall under section 7(iv) (c) of the Court-fees Act and not under Article 17 of Schedule II to the Act. A suit for a declaration to the effect that a sum of Rs. 52,000 lying to the credit of the defendant in the current account of the State Bank of India at Ferozepore exclusively belonged to the plaintiff, that the plaintiff was entitled to receive this amount from the State Bank, Ferozepore, and that the defendant was not entitled to receive the same is a suit for declaration with consequential relief and not for a mere declaration and, therefore, falls under section 7(iv) (c) of the Court Fees Act and not Article 17 of Schedule II and the plaintiff is entitled to fix his own value for purposes of court-fee which will also be the value for purposes of jurisdiction.

Held, that if in a suit properly falling under section 7(iv) (c) one value is given for purposes of court-fee and another different value for purposes of jurisdiction, then it is the value for purposes of court-fee which has also to be taken for purposes of jurisdiction and different value mentioned for purposes of jurisdiction has to be ignored. The plaintiff cannot be compelled to adopt the jurisdictional value as the value for purposes of court-fee and he has to be given the option to fix his own value.

Held, that the proviso to section 7(iv) (c) of the Court Fees Act applies only to suits relating to property, the method of Calculation of the value of which is given in clause (v) of section 7 of the Act and not to other suits. This proviso has, therefore, no application to the present suit.

Petition under Section 44 of Act IX of 1919 for revision of the order of Shri Jagmail Singh, Senior Sub-Judge, (With Enhanced Appellate Powers), Ferozepore, dated the 8th August, 1962, returning the memo of appeal filed against the judgment of Shri S. K. Jain, Sub-Judge, 1st Class, Muktsar, dated 15th November, 1961, to the appellant for presentation to the proper Court.

PARTAP SINGH, ADVOCATE, for the Petitioner.

J. N. SETH, ADVOCATE, for the Respondent.

JUDGMENT.

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J.

HARBANS SINGH, J.—Facts leading to this revision petition may shortly be stated as follows: On 2nd May, 1961, a suit was brought by Bawa Bir Singh, against Ali Niwaz Khan, who had migrated to Pakistan praying for a declaration to the effect that a sum of Rs. 52,000 lying to the credit of the defendant in the current account of the State Bank of India at Ferozepore exclusively belonged to the plaintiff, that the plaintiff was entitled to receive this amount from the State Bank, Ferozepore, and that the defendant was not entitled to receive the same. The plaintiff treated this suit as a purely declaratory one and in paragraph 9 of the plaint he mentioned that the court-

fee payable was fixed, being Rs. 19.50 nP., and the value for purposes of jurisdiction was Rs. 52,000. The case proceeded *ex parte* but after the recording of the *ex parte* evidence the suit of the plaintiff was dismissed by the trial Court. The plaintiff filed an appeal in the Court of the Senior Subordinate Judge on 14th February, 1962. Apart from other grounds, it is necessary to refer to ground No. 11 which is to the following effect:—

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“That on a declaratory suit court-fee payable is Rs. 19.50 nP. under Schedule II, Article 17, Court-fees Act. According to the Court-fees Act, the value for jurisdiction is Rs. 195 and for this reason the appeal is cognisable by this Court and has been filed within limitation and this matter is purely legal. Mention in the plaint by the plaintiff that value for purposes of jurisdiction is Rs. 52,000 is not admitted to be correct because the suit in question is one for a declaration plus consequential relief.”

In other words, in the appeal the petitioner himself raised the point that the dispute originally brought was one for a declaration and consequential relief and, consequently, value for purposes of court-fee could be fixed by the plaintiff at his own choice, and in a way he treated Rs. 195 as the value for purposes of court-fee, although in the plaint he had not given any value for purposes of court-fee and value for purposes of jurisdiction was given as Rs. 52,000. For administrative reasons the appeal was transferred to the file of the District Judge and entrusted to the Second Additional Judge who held that proper value for purposes of jurisdiction was Rs. 52,000 and consequently returned the memorandum of appeal for presentation to the Court of proper jurisdiction. Strangely enough, instead of presenting the appeal to the High Court, the petitioner presented the appeal again to the

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Court of the Senior Subordinate Judge who, as was to be expected, in view of the finding of the Second Additional District Judge, returned the memorandum again. That memorandum has not been filed in this Court. On the other hand, the present revision has been filed challenging the finding of the Senior Subordinate Judge holding that it has no jurisdiction.

Learned counsel for the plaintiff-petitioner urges that the suit as framed was one for a declaration and consequential relief and therefore properly fell under section 7(iv) (c) of the Court fees Act and was not a suit for a mere declaration falling under Article 17 of the Second Schedule to the Court-fees. In this respect, he refers to two decisions of the Bombay High Court—*Bhimsangji Chhatrasangji, v. Dolatsangji Hamersangji* (1), and *Hafizulla v. Wakf Committee, Kolaba* (2). In the first case a Bench of the Bombay High Court held that a suit in which the plaintiff sought “a declaration that he was the owner of the Toda Giras Hak annuity of Rs. 500 received by Bai Surajkuvar as her heir and as such entitled to recover the same” was a suit which fell under section 7(iv)(c), and, as the value for purposes of court-fee was fixed at Rs. 500, the jurisdictional value was also treated to be the same. In *Hafizulla’s case* (2), the head-note is as follows:—

“In order that a suit should fall within section 7(iv)(c) the consequential relief prayed for by the plaintiff need not necessarily be a relief other than a declaratory relief. Hence, a suit for a declaration that certain *darga* and other properties belonging to the *darga* are not *wakf* within the meaning of the Mussalman Wakf Act of 1923 and hence are not liable to registration under the Bombay Amendment Act 18 (XVIII) of 1935, falls

(1) A.I.R. 1925 Bom. 282 (1).
 (2) A.I.R. 1946 Bom. 167.

under section 7, sub-clause (iv) (c) and not Schedule 2, Article 17 (iii) because the second declaration is not an independent declaration but merely one which is consequential upon the first.”

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No ruling to the contrary was cited. From the above it appears that if in a suit main declaration is sought and another declaration, which springs from the main declaration, is also sought, the second declaration would amount to a consequential relief. The declaration sought in the present case is similar to the one claimed by the plaintiff in *Bhimsangji Chhatrasangji v. Dolatsangji Hamersangji* (1). Thus it is clear that the suit did, in fact, fall under section 7(iv) (c) and was wrongly valued for purposes of court-fee under Article 17, Schedule 2, Court-fees Act.

It is well settled that if in a suit properly falling under section 7(iv) (c) one value is given for purposes of court-fee and another different value for purposes of jurisdiction, then it is the value for purposes of court-fee which has also to be taken for purposes of jurisdiction and different value mentioned for purposes of jurisdiction has to be ignored. [See *Sukh Raj v. Kanhaya Lal and others* (3), and *Bansilal v. Bhikubai* (4)]. In the present case, however, only one value is given, namely, that for purposes of jurisdiction. No value is given for purposes of court-fee because the plaintiff had treated the suit as one for a declaration for which only fixed court-fee was paid. In this respect, however, reference is made to a Full Bench decision of the Lahore High Court consisting of five Judges, *Karam Ilahi v. Muhammad Bashir* (5). The relevant portion of the head-note is as follows:—

“Even where the relief is originally stamped under Article 17 of Schedule II, Court-fees

(3) 2 P.R. 1915.

(4) A.I.R. 1948 Bom. 8.

(5) A.I.R. 1949 Lah. 116.

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Act, without any value for purposes of court-fees having been stated under section 7(iv) (c) of that Act, but the Court holds that the suit falls under the latter provision, the Court is bound to permit the plaintiff to put for purposes of court-fees his own value on the relief and cannot compel him to adopt for such purposes the value stated by him in the plaint for purposes of jurisdiction.”

This fully covers the present case and thus having come to the conclusion that the plaint actually falls under section 7(iv) (c), the plaintiff cannot be compelled to adopt the jurisdiction value as the value for purposes of court-fee and he has to be given the option to fix his own value. This in a way he has already done because, as detailed above, in the memorandum of appeal he has indicated this value to be Rs. 195 on which proper court-fee payable was Rs. 19.50 nP. which had already been paid by him.

This now brings us to another question raised on behalf of the respondent, namely, whether the amendment of section 7(iv) (c) is applicable to the present case. According to this amendment, in a suit for a declaration with consequential relief value for purposes of court-fee can be fixed by the plaintiff himself. So far there is no difficulty. There is a proviso added to the effect that in such a case the value fixed “shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section”. Clause (v) of section 7 deals only with the method of calculation of value in case the suit relates to land, gardens or houses and does not deal with a case of cash. Argument of the learned counsel for the petitioner is that this proviso applies only to suits relating to property of which method of calculation of

value is given in clause (v) and not to other suits. Though it does look a bit strange that a suit seeking a declaration and consequential relief in respect of a house must necessarily be valued in accordance with the value of the property and if it relates to the same amount of cash the plaintiff should be at liberty to fix the amount at any figure, yet the wording of the proviso leads to no other interpretation. The learned counsel for the respondent could not urge any argument to the contrary. In view of the above, therefore, this proviso, which has been brought in by the amendment, has no application to the present case.

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The result of the above discussion is that the suit in question fell under section 7(iv) (c) of the Court-fees Act. It was originally wrongly treated as a suit for mere declaration. No value for purposes of court-fee was fixed. The petitioner, being the plaintiff, must be given an opportunity to fix such a value, and in fact he has already fixed that value at Rs. 195 and he cannot be compelled to fix it, at any higher value, and consequently the value for purposes of jurisdiction for the purpose of the suit as well as the appeal must be treated to be Rs. 195. The appeal is, therefore, triable by the learned Senior Subordinate Judge and was rightly presented in the Court of the Senior Subordinate Judge. The orders of the learned Second Additional District Judge as well as the Senior Subordinate Judge, are, therefore, set aside. The petitioner is directed to re-present the memorandum of appeal in the Court of the Senior Subordinate Judge within one month from today. There would be no order as to costs.

Parties will appear before that Court on the 26th August, 1963.

R.S.