

APPELLATE CIVIL

Before Prem Chand Pandit and Gopal Singh, JJ.

MAHANT SHIV NATH,—Appellant

versus

PUNJAB WAKF BOARD, AMBALA CANTT.,—Respondent.

Regular First Appeal No. 28 of 1968.

September 28, 1971

Code of Civil Procedure (Act No. V of 1908)—Order 6 rule 17 and Order 23 rule 1—Punjab Courts Act (VI of 1918)—Section 39—Suit for possession of property and for rendition of accounts—Valuation for purposes of jurisdiction of both the reliefs separately fixed in the plaint making the total value above Rs. 10,000—Relief for rendition of accounts withdrawn—Jurisdictional value of the suit—Whether automatically reduced to the one fixed for relief of possession—Plaint qua jurisdictional value—Whether deemed to be amended making the value at Rs. 10,000 which is of relief for possession—Appeal against the decree passed in the suit—Whether lies to the District Judge and not to the High Court.

Held, that where in a suit for possession of the property and for rendition of accounts, the valuation for purposes of jurisdiction regarding both the reliefs is separately fixed in the plaint making the total value above Rs. 10,000, and the relief for rendition of accounts is withdrawn, the value of the suit for purposes of jurisdiction is automatically reduced to the one fixed for relief of possession in the plaint, which is Rs. 10,000. Since the relief for rendition of accounts is abandoned, this obviously amounts to the amendment of the plaint qua the valuation of the suit for the purposes of jurisdiction mentioned in the plaint. Appeal against any decree passed in such a suit will lie to the District Judge and not to the High Court.

Regular First Appeal from the order of the court of Shri R. P. Gaiind, Sub-Judge 1st Class, Amritsar, dated the 30th November, 1967, Ordering that the suit of the plaintiff succeeds and the same is decreed with regard to the relief for the possession of the property in suit and the suit with regard to the relief of rendition of accounts is dismissed as withdrawn and there is no chance of any recovery of costs from the defendant and the plaintiff's counsel concedes the same.

R. C. Dogra, and S. D. Sharma, Advocates, for the appellant.

Man Mohan Singh Liberhan, Advocate, for the respondent.

JUDGMENT

PANDIT, J.—(1) Two preliminary objections have been raised by the learned counsel for the respondent in this case. The first is that proper court-fee has not been paid on the appeal and the second is that the appeal should have been filed before the learned District Judge, Amritsar, and not in this Court, the jurisdictional value of the suit being Rs. 10,000.

(2) Taking the second objection first, it will be noticed that in the suit, the plaintiff—Punjab Waqf Board, Ambala Cantonment, had sought two reliefs. They wanted a decree for accounts and also for possession of the property in suit. For the purpose of jurisdiction, they valued the relief for accounts at Rs. 200 and the value for possession was fixed at Rs. 10,000. Thus the total value for jurisdiction was Rs. 10,200. During the pendency of the suit, when the case was ripe for arguments, the plaintiff's counsel made a statement that his client had "withdrawn the suit relating to accounts". Issue No. 5 had, however, already been framed in the case and it was—"Whether the defendant is liable to render accounts?" In the judgment under appeal, under issue No. 5, the finding given by the learned trial Judge was—"In view of the withdrawal of the suit for accounts, this issue has become redundant." The learned Judge then decreed the suit for possession of the property, but dismissed it for the rendition of accounts as having been withdrawn. Against this decree, the present appeal was filed in this Court by Mahant Shiv Nath, defendant.

(3) Learned counsel for the respondent contends that the jurisdictional value of the suit, after the withdrawal of the relief for rendition of accounts, had been reduced to Rs. 10,000 and that being so, the appeal should have been filed in the Court of the District Judge, Amritsar. It is common ground that if the jurisdictional value of the suit does not exceed Rs. 10,000, the appeal has to be instituted in the Court of the District Judge and not this Court.

(4) Learned counsel for the appellant, on the other hand, submits that once the jurisdictional value of the suit had been fixed at Rs. 10,200, it could not be reduced later on, except by an amendment of the plaint, and that being so, the appeal had been correctly filed in this Court, the plaint having admittedly not been amended. He further argues that there is a lot of difference between giving up one of the reliefs claimed by amending the plaint and withdrawing or

abandoning a part of one's claim under Order 23, rule 1, Civil Procedure Code. In the former case, it would be taken as if that relief was not in the plaint from its very inception and there was, therefore, no trial between the parties regarding it. In the latter case, however, if a plaintiff withdraws or abandons a part of his claim without the permission of the Court to institute a fresh suit in respect of that part of the claim, then he would be precluded from filing another suit in respect of that claim in future. In the instant case, the relief for the rendition of accounts was not given up after amending the plaint, but the plaintiff's counsel merely made a statement that he withdrew the suit relating to accounts, with the result that the trial Judge dismissed the suit with regard to that relief by observing that—"the suit with regard to the relief of rendition of accounts is dismissed as withdrawn." As no permission of the Court was taken by the plaintiff for the withdrawal of this relief with liberty to bring a fresh suit with regard to the same relief, the plaintiff will be debarred from instituting another suit with respect to this relief in future. If this Court came to the conclusion that by withdrawing the suit relating to accounts, the plaint had automatically been amended in that respect, so argues the counsel, then the plaintiff would be entitled to bring another suit with regard to this relief in future as well. Counsel, therefore, submits that this Court should not hold that the plaint had automatically been amended and thus allow the plaintiff to bring another suit with regard to this relief in future, when the trial Judge had, in his judgment, specifically held that the suit was dismissed with regard to the relief of rendition of accounts as having been withdrawn.

(5) We have heard the counsel for the parties at some length, because admittedly there is no direct authority of any Court on this point. The contention of the learned counsel for the appellant *prima facie* appears plausible, because the fact remains that the plaint had not actually been amended with regard to the relief for rendition of accounts. Besides, there is undoubtedly a difference between the consequences of an amendment of a plaint and a withdrawal of the suit with regard to a part of the claim. As the plaint had, as a matter of fact, not been amended, especially with regard to para 8 thereof, where the value of the suit for the purpose of jurisdiction had been given, any counsel could have *bona fide* advised his client to file the appeal in this Court, the jurisdictional value mentioned therein being more than Rs. 10,000. But the question for consideration is that in the circumstances of this case, which was the

Mahant Shiv Nath v. Punjab Wakf Board, Ambala Cantt. (Pandit, J.)

proper forum for filing an appeal. It is true that in the instant case there has been no amendment of the plaint and the trial Judge has, in his judgment, dismissed the suit with regard to the relief of rendition of accounts and subsequently the point may arise whether in face of this decision, the plaintiff can bring another suit with regard to the same relief; but this consideration, in my opinion, is irrelevant for determining the question before us. It may afford a ground to the counsel to advise the client to institute the appeal in this Court, but there are certain admitted facts in this case which, in my opinion, would lead to the conclusion that the plaint should be deemed to have been amended with regard to the jurisdictional value of the suit. There is no doubt that the plaintiff themselves during the pendency of the suit, had given up the relief for rendition of accounts, as would be clear from the statement of their counsel made on 29th November, 1967. It is also undisputed that the value for purposes of jurisdiction regarding the relief for accounts had been separately fixed at Rs. 200 by the plaintiff. Since that relief had been abandoned, the value for jurisdiction of the suit with regard to the possession of property was, therefore, in my view, automatically reduced to Rs. 10,000. This would obviously amount to the amendment of the plaint regarding the valuation of the suit for the purposes of jurisdiction, as if on the oral prayer having been made by the plaintiff. Besides, it is significant to mention that in the decree-sheet also, the value for jurisdiction had been mentioned as Rs. 10,000.

(6) Under these circumstances, we are of the opinion that the appeal in this case should have been filed in the Court of the learned District Judge, Amritsar. We, therefore, direct that the memorandum of appeal be returned to the appellant for presentation to the proper Court.

(7) As regards the objection with regard to court-fee, the same also can be taken and decided by the learned District Judge, who will be hearing the appeal.

(8) There will be no order as to costs.

GOPAL SINGH, J.—I agree.

B. S. G.