1954

Manilal Mohanlal Shah and Others
v.
Sardar Sayed Ahmed Sayed Mahmad and Another.

circumvent the mandatory provisions of the Code and relieve the purchasers of their obligation to make the deposit. The appellants by misleading the Court want to benefit by the mistake to which they themselves contributed. They cannot be allowed to take advantage of their own wrong.

The appeal fails and is dismissed with costs.

Appeal dismissed.

1954

April 14.

KIRAN SINGH AND OTHERS

v.

CHAMAN PASWAN AND OTHERS.

[MUKHERJEA, VIVIAN BOSE, GHULAM HASAN and VENKATARAMA AYYAR JJ.]

Suits Valuation Act (VII of 1887), s. 11—Appeal under-valued and presented to a Court of inferior jurisdiction—Whether a decree passed by it on the merits is a nullity—Whether mere change of form or error in a decision on the merits, prejudice within the meaning of section 11 of the Suits Valuation Act—Whether a party who invokes a jurisdiction of a Court can complain of prejudice on the ground of over-valuation or under-valuation.

The policy underlying section 11 of the Suits Valuation Act, as also of sections 21 and 99 of the Code of Civil Procedure, is that when a case has been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless a failure of Justice has resulted. The policy of the Legislature has been to treat objections as to jurisdiction, both territorial and pecuniary, as technical and not open to consideration by an appellate Court, unless there has been prejudice on the merits.

Mere change of form is not prejudice within the meaning of section 11 of the Suits Valuation Act; nor a mere error in the decision on the merits of the case. It must be one directly attributable to over-valuation or under-valuation.

Whether there has been prejudice or not is a matter to be determined on the facts of each case. The jurisdiction under section 11 is an equitable one to be exercised, when there has been an erroneous assumption of jurisdiction by a Subordinate Court as a result of over-valuation or under-valuation and a consequential failure of justice. It is neither possible, nor desirable to define such jurisdiction closely or confine it within stated bounds.

1954

Kiran Singh and Others.
v.
Chaman Paswan and Others.

Venkatarama Ayyar J.

A party who has resorted to a forum of his own choice on his own valuation cannot himself be heard to complain of any prejudice.

Ramdeo Singh v. *Raj Narain* (I.L.R. 27 Patna 109) ; *Rajlakshmi Dasee* v. *Katyayani Dasee* (I.L.R. 38 Cal. 639) ; *Shidappa Venkatrao* v. *Rachappa Subrao* (I.L.R. 36 Bom. 628) ; *Rachappa Subrao Jadhav* v. *Shidappa Venkatrao Jadhav* (46 I.A. 24) ; *Kelu Achan* v. *Cheriya Parvathi Nethiar* (I.L.R. 46 Mad. 631) ; *Mool Chand* v. *Ram Kishan* (I.L.R. 55 All. 315) referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14 of 1953.

Appeal by special leave granted by the Supreme Court by its Order dated the 29th October, 1951, from the Judgment and Decree dated the 19th July, 1950, of the High Court of Judicature at Patna (Sinha and Rai JJ.) in appeal from Appellate Decree No. 1152 of 1946 from the Judgment and Decree dated the 24th day of May, 1946, of the Court of the 1st Additional District Judge in S. J. Title Appeal No. 1 of 1946 arising out of the Judgment and Decree dated the 27th November, 1945, of the First Court of Subordinate Judge at Monghyr in Title Suit No. 34 of 1944.

S. C. Issacs (*Ganeshwar Prasad* and *R. C. Prasad*, with him) for the appellants.

B. K. Saran and *M. M. Sinha* for respondents Nos. 1-9.

1954. April 14. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—This appeal raises a question on the construction of section 11 of the Suits Valuation Act. The appellants instituted the suit out of which his appeal arises, in the Court of the Subordinate Judge, Monghyr, for recovery of possession of 12 acres 51 cents of land situated in mauza Bardih, of which defendants Nos. 12 and 13, forming the second party, are the proprietors. The allegations in the plaint are that on 12th April, 1943, the plaintiffs were admitted by the second party as occupancy tenants on payment of a sum of Rs. 1,950 as salami and put into possession of the lands, and that thereafter, the first party consisting of defendants Nos. 1 to 11 trespassed on them and carried away the crops. The suit was

accordingly laid for ejecting defendants Nos. 1 to 11 and for mesne profits, past and future, and it was valued at Rs. 2,950, made up of Rs. 1,950 being the value of the relief for possession and Rs. 1,000, being the past mesne profits claimed.

Defendants Nos. 1 to 11 contested the suit. They pleaded that they had been in possession of the lands as tenants on *batai* system, sharing the produce with the landlord, from fasli 1336 and had acquired occupancy rights in the tenements, that the second party had no right to settle them on the plaintiffs, and that the latter acquired no rights under the settlement dated 12th April, 1943. Defendants Nos. 12 and 13 remained *ex parte*.

The Subordinate Judge held, relying on certain receipts marked as Exhibits A to A-114 which were in the handwriting of the patwaris of the second party and which ranged over the period from fasli 1336 to 1347, that defendants Nos. 1 to 11 had been in possession for over 12 years as cultivating tenants and had acquired occupancy rights, and that the settlement dated 12th April, 1943, conferred no rights on the plaintiffs. He accordingly dismissed the suit. The plaintiffs preferred an appeal against this decision to the Court of the District Judge, Monghyr, who agreed with the trial Court that the receipts, Exhibits A to A-114 were genuine, and that defendants Nos. 1 to 11 had acquired occupancy rights, and accordingly dismissed the appeal.

The plaintiffs took up the matter in second appeal to the High Court, Patna, S.A. No. 1152 of 1946, and there, for the first time, an objection was taken by the Stamp Reporter to the valuation in the plaint and after enquiry, the Court determined that the correct valuation of the suit was Rs. 9,980. The plaintiffs paid the additional Court-fees required of them, and then raised the contention that on the revised valuation, the appeal from the decree of the Subordinate Judge would lie not to the District Court but to the High Court, and that accordingly S. A. No. 1152 of 1946 should be heard as a first appeal, ignoring the judgment of the District Court. The learned Judges held, following the decision

1954

Kiran Singh and Others v. *Chaman Paswan and Others.*

Venkatarama Ayyar J.

of a Full Bench of that Court in *Ramdeo Singh* v. *Raj Narain* (1), that the appeal to the District Court was competent, and that its decision could be reversed only if the appellants could establish prejudice on the merits, and holding that on a consideration of the evidence no such prejudice had been shown, they dismissed the second appeal. The matter now comes before us on special leave.

It will be noticed that the proper Court to try the present action would be the Subordinate Court, Monghyr, whether, the valuation of the suit was Rs. 2,950 as given in the plaint, or Rs. 9,880 as determined by the High Court; but it will make a difference in the forum to which the appeal from its judgment would lie, whether the one valuation or the other is to be accepted as the deciding factor. On the plaint valuation, the appeal would lie to the District Court; on the valuation as determined by the High Court, it is that Court that would be competent to entertain the appeal. The contention of the appellants is that as on the valuation of the suit as ultimately determined, the District Court was not competent to entertain the appeal, the decree and judgment passed by that Court must be treated as a nullity, that the High Court should have accordingly heard S.A. No. 1152 of 1946 not as a second appeal with its limitations under section 100 of the Civil Procedure Code but as a first appeal against the judgment and decree of the Subordinate Judge, Monghyr, and that the appellants were entitled to a full hearing as well on questions of fact as of law. And alternatively, it is contended that even if the decree and judgment of the District Court on appeal are not to be treated as a nullity and the matter is to be dealt with under section 11 of the Suits Valuation Act, the appellants had suffered "prejudice" within the meaning of that section, in that their appeal against the judgment of the Subordinate Judge was heard not by the High Court but by a Court of inferior jurisdiction, *viz.*, the District Court of Monghyr, and that its decree was therefore liable to be set aside, and the appeal heard by the High Court on the merits, as a first appeal.

(1) I.L.R. 27 Patna 109; A.I.R. 1949 Patna 278

The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was *coram non judice,* and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on this position.

Section 11 enacts that notwithstanding anything in section 578 of the Code of Civil Procedure, an objection that a Court which had no jurisdiction over a suit or appeal had exercised it by reason of over-valuation or under-valuation, should not be entertained by an appellate Court, except as provided in the section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the section has come in—and deservedly—for considerable criticism; but amidst much that is obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a Court, which would have had no jurisdiction to hear a suit or appeal but for over-valuation or under-valuation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on over-valuation or under-valuation should be dealt with under that section and not otherwise. The reference to section 578, now section 99, of the Civil Procedure Code, in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in

1954

Kiran Singh and Others v. *Chaman Paswan and Others.*

Venkatarama Ayyar J.

appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the Courts which passed them lacked jurisdiction as a result of over-valuation or under-valuation. It is with a view to avoid this result that section 11 was enacted. It provides that objections to the jurisdiction of a Court based on over-valuation or under-valuation shall not be entertained by an appellate Court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on over-valuation or under-valuation can be raised otherwise than in accordance with it. With reference to objections relating to territorial jurisdiction, section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying sections 21 and 99 of the Civil Procedure Code and section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the Legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under section 11 of the Suits Valuation Act.

On behalf of the appellants *Rajlakshmi Dasee* v. *Katyayani Dasee*(1) and *Shidappa Venkatrao* v. *Rachappa Subrao*(2) which was affirmed by the Privy Council in *Rachappa Subrao Jadhav* v. *Shidappa Venkatrao Jadhav*(3) were relied on as supporting the contention

(1) I.L.R. 38 Cal. 639.
(2) I.L.R. 36 Bom. 628.
(3) 46 I.A. 24.

that if the appellate Court would have had no jurisdiction to entertain the appeal if the suit had been correctly valued, a decree passed by it must be treated as a nullity. In *Rajlakshmi Dasee* v. *Katyayani Dasee*(1), the facts were that one Katyayani Dasee instituted a suit to recover the estate of her husband Jogendra in the Court of the Subordinate Judge, Alipore, valuing the claim at Rs. 2,100, whereas the estate was worth more than a lakh of rupees. The suit was decreed, and the defendants preferred an appeal to the District Court, which was the proper Court to entertain the appeal on the plaint valuation. There, the parties, compromised the matter, and a consent decree was passed, recognising the title of the defendants to portions of the estate. Then, Rajlakshmi Dasee, the daughter of Jogendra, filed a suit for a declaration that the consent decree to which her mother was a party was not binding on the reversioners. One of the grounds urged by her was that the suit of Katyayani was deliberately under-valued, that if it had been correctly valued, it was the High Court that would have had the competence to entertain the appeal, and that the consent decree passed by the District Judge was accordingly a nullity. In agreeing with this contention, the High Court observed that a decree passed by a Court which had no jurisdiction was a nullity, and that even consent of the parties could not cure the defect. In that case, the question was raised by a person who was not a party to the action and in a collateral proceeding, and the Court observed :

"We are not now called upon to consider what the effect of such lack of jurisdiction would be upon the decree, in so far as the parties thereto were concerned. It is manifest that so far as a stranger to the decree is concerned, who is interested in the property affected by the decree, he can obviously ask for a declaration that the decree is a nullity, because made by a Court which had no jurisdiction over the subject-matter of the litigation."

On the facts, the question of the effect of section 11 of the Suits Valuation Act did not arise for determination, and was not considered.

(1) I.L.R. 38 Cal. 639.

1955

Kiran Singh and Others v. *Chaman Paswan and Others.*

Venkatarama Ayyar J.

In *Shidappa Venkatrao* v. *Rachappa Subrao*(1) the plaintiffs instituted a suit in the Court of the Subordinate Judge, First Class, for a declaration that he was the adopted son of one Venkatrao and for an injunction restraining the defendant from interfering with his possession of a house. The plaint valued the declaration at Rs. 130 and the injunction at Rs. 5, and the suit was valued for purposes of pleader's fee at Rs. 69,016-9-0 being the value of the estate. The suit was decreed by the Subordinate Judge, and against his decree the defendant preferred an appeal to the District Court, which allowed the appeal and dismissed the suit. The plaintiff took up the matter in second appeal to the High Court, and contended that on the valuation in the plaint the appeal against the decree of the Subordinate Judge lay to the High Court, and that the appeal to the District Court was incompetent. This contention was upheld, and the decree of the District Judge was set aside. It will be seen that the point in dispute was whether on the allegations in the plaint the value for purposes of jurisdiction was Rs. 135 or Rs. 69,016-9-0, and the decision was that it was the latter. No question of over-valuation or under-valuation arose, and no decision on the scope of section 11 of the Suits Valuation Act was given.

As a result of its decision, the High Court came to entertain the matter as a first appeal and affirmed the decree of the Subordinate Judge. The defendant then took up the matter in appeal to the Privy Council in *Rachappa Subrao Jadhav* v. *Shidappa Venkatrao Jadhav* (2), and there, his contention was that, in fact, on its true valuation the suit was triable by the Court of the Subordinate Judge of the Second Class, and that the District Court was the proper Court to entertain the appeal. The Privy Council held that this objection which was "the most technical of technicalities" was not taken in the Court of first instance, and that the Court would not be justified "in assisting an objection of that type," and that it was also untenable. Before concluding, it observed :

"The Court Fees Act was passed not to arm a litigant with a weapon of technicality against his

(1) I. L. R. 36 Bom 628. (2) 46 I A 24.

opponent but to secure revenue for the benefit of the State..... The defendant in this suit seeks to utilise the provisions of the Act not to safeguard the interests of the State, but to obstruct the plaintiff; he does not contend that the Court wrongly decided to the detriment of the revenue but that it dealt with the case without jurisdiction. In the circumstances this plea, advanced for the first time at the hearing of the appeal in the District Court, is misconceived, and was rightly rejected by the High Court."

Far from supporting the contention of the appellants that the decree passed in appeal by the District Court of Monghyr should be regarded as a nullity, these observations show that an objection of the kind now put forward being highly technical in character should not be entertained if not raised in the Court of first instance. We are therefore of opinion that the decree and judgment of the District Court, Monghyr, cannot be regarded as a nullity.

It is next contended that even treating the matter as governed by section 11 of the Suits Valuation Act, there was prejudice to the appellants, in that by reason of the under-valuation, their appeal was heard by a Court of inferior jurisdiction, while they were entitled to a hearing by the High Court on the facts. It was argued that the right of appeal was a valuable one, and that deprivation of the right of the appellants to appeal to the High Court on facts must therefore be held, without more, to constitute prejudice. This argument proceeds on a misconception. The right of appeal is no doubt a substantive right, and its deprivation is a serious prejudice; but the appellants have not been deprived of the right of appeal against the judgment of the Subordinate Court. The law does provide an appeal against that judgment to the District Court, and the plaintiffs have exercised that right. Indeed, the under-valuation has enlarged the appellants' right of appeal, because while they would have had only a right of one appeal and that to the High Court if the suit had been correctly valued, by reason of the under-valuation they obtained right to two appeals, one to the District Court and another to the High Court. The complaint of the

1954

Kiran Singh and Others v. *Chaman Paswan and Others.*

Venkatarama Ayyar J.

appellants really is not that they had been deprived of a right of appeal against the judgment of the Subordinate Court, which they have not been, but that an appeal on the facts against that judgment was heard by the District Court and not by the High Court. This objection therefore amounts to this that a change in the forum of appeal is by itself a matter of prejudice for the purpose of section 11 of the Suits Valuation Act.

The question, therefore, is, can a decree passed on appeal by a Court which had jurisdiction to entertain it only by reason of under-valuation be set aside on the ground that on a true valuation that Court was not competent to entertain the appeal ? Three High Courts have considered the matter in Full Benches, and have come to the conclusion that mere change of forum is not a prejudice within the meaning of section 11 of the Suits Valuation Act. Vide *Kelu Achan* v. *Cheriya Parvathi Nethiar*(1), *Mool Chand* v. *Ram Kishan*(2) and *Ramdeo Singh* v. *Raj Narain*(3). In our judgment, the opinion expressed in these decisions is correct. Indeed, it is impossible on the language of the section to come to a different conclusion. If the fact of an appeal being heard by a Subordinate Court or District Court where the appeal would have lain to the High Court if the correct valuation had been given is itself a matter of prejudice, then the decree passed by the Subordinate Court or the District Court must, without more, be liable to be set aside, and the words "unless the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits" would become wholly useless. These words clearly show that the decrees passed in such cases are liable to be interfered with in an appellate Court, not in all cases and as a matter of course, but only if prejudice such as is mentioned in the section results. And the prejudice envisaged by that section therefore must be something other than the appeal being heard in a different forum. A contrary conclusion will lead to the surprising result that the section was enacted with the object of curing

(1) I.L.R. 46 Mad. 631.

(2) I.L.R. 55 All. 315.

(3) I.L.R. 27 Patna 109; A.I.R. 1949 Patna 278.

defects of jurisdiction arising by reason of over-valuation, or under-valuation but that, in fact, this object has not been achieved. We are therefore clearly of opinion that the prejudice contemplated by the section is something different from the fact of the appeal having been heard in a forum which would not have been competent to hear it on a correct valuation of the suit as ultimately determined.

It is next argued that in the view that the decree of the lower appellate Court is liable to be reversed only on proof of prejudice on the merits, the second appellate Court must, for the purpose of ascertaining whether there was prejudice, hear the appeal fully on the facts, and that, in effect, it should be heard as a first appeal. Reliance is placed in support of this contention on the observations of two of the learned Judges in *Ramdeo Singh* v. *Raj Narain* (1). There, Sinha J. observed that though the second appeal could not be treated as a first appeal, prejudice could be established by going into the merits of the decision both on questions of fact and of law, and that that could be done under section 103 of the Civil Procedure Code. Meredith J. agreed that for determining whether there was prejudice or not, there must be an enquiry on the merits of the decisions on questions of fact; but he was of opinion that that could be done under section 11 of the Suits Valuation Act itself. Das J., however, declined to express any opinion on this point, as it did not arise at that stage. The complaint of the appellants is that the learned Judges who heard the second appeal, though they purported to follow the decision in *Ramdeo Singh* v. *Raj Narain* (1) did not, in fact, do so, and that there was no consideration of the evidence bearing on the questions of fact on which the parties were in dispute.

That brings us to the question as to what is meant by "prejudice" in section 11 of the Suits Valuation Act. Does it include errors in findings on questions of fact in issue between the parties? If it does, then it will be obligatory on the Court hearing the second appeal to examine the evidence in full and decide whether the

(1) I.L.R. 27 Patna 109; A.I.R. 1949 Patna 278.

1954

Kiran Singh and Others v. *Chaman Paswan and Others*

Venkatarama Ayyar J.

conclusions reached by the lower appellate Court are right. If it agrees with those findings, then it will affirm the judgment; if it does not, it will reverse it. That means that the Court of second appeal is virtually in the position of a Court of first appeal. The language of section 11 of the Suits Valuation Act is plainly against such a view. It provides that over-valuation or under-valuation must have prejudicially affected the disposal of the case on the merits. The prejudice on the merits must be directly attributable to over-valuation or under-valuation and an error in a finding of fact reached on a consideration of the evidence cannot possibly be said to have been caused by over-valuation or under-valuation. Mere errors in the conclusions on the points for determination would therefore be clearly precluded by the language of the section. It must further be noted that there is no provision in the Civil Procedure Code, which authorises a Court of second appeal to go into questions of fact on which the lower appellate Court has recorded findings and to reverse them. Section 103 was relied on in *Ramdeo Singh* v. *Raj Narain* (1) as conferring such a power. But that section applies only when the lower appellate Court has failed to record a finding on any issue, or when there had been irregularities or defects such as fall under section 100 of the Civil Procedure Code. If these conditions exist, the judgment under appeal is liable to be set aside in the exercise of the normal powers of a Court of second appeal without resort to section 11 of the Suits Valuation Act. If they do not exist, there is no other power under the Civil Procedure Code authorising the Court of second appeal to set aside findings of fact and to re-hear the appeal itself on those questions. We must accordingly hold that an appellate Court has no power under section 11 of the Suits Valuation Act to consider whether the findings of fact recorded by the lower appellate Court are correct, and that error in those findings cannot be held to be prejudice within the meaning of that section.

So far, the definition of "prejudice" has been negative in terms—that it cannot be mere change of forum

(1) I.L.R. 27 Patna 109.

or mere error in the decision on the merits. What then is positively prejudice for the purpose of section 11 ? That is a question which has agitated Courts in India ever since the enactment of the section. It has been suggested that if there was no proper hearing of the suit or appeal and that had resulted in injustice, that would be prejudice within section 11 of the Suits Valuation Act. Another instance of prejudice is when a suit which ought to have been filed as an original suit is filed as a result of under-valuation on the small cause side. The procedure for trial of suits in the Small Cause Court is summary ; there are no provisions for discovery or inspection ; evidence is not recorded *in extenso,* and there is no right of appeal against its decision. The defendant thus loses the benefit of an elaborate procedure and a right of appeal which he would have had, if the suit had been filed on the original side. It can be said in such a case that the disposal of the suit by the Court of Small Causes has prejudicially affected the merits of the case. No purpose, however, is served by attempting to enumerate exhaustively all possible cases of prejudice which might come under section 11 of the Suits Valuation Act. The jurisdiction that is conferred on appellate Courts under that section is an equitable one, to be exercised when there has been an erroneous assumption of jurisdiction by a Subordinate Court as a result of over-valuation or under-valuation and a consequential failure of justice. It is neither possible nor even desirable to define such a jurisdiction closely, or confine it within stated bounds. It can only be predicated of it that it is in the nature of a revisional jurisdiction to be exercised with caution and for the ends of justice, whenever the facts and situations call for it. Whether there has been prejudice or not is, accordingly, a matter to be determined on the facts of each case.

We have now to see whether the appellants have suffered any prejudice by reason of the under-valuation. They were the plaintiffs in the action. They valued the suit at Rs. 2,950. The defendants raised no objection to the jurisdiction of the Court at any time. Then the plaintiffs lost the suit after an elaborate

1954

Kiran Singh and Others
v.
Chaman Paswan and Others.

Venkatarama Ayyar J.

trial, it is they who appealed to the District Court as they were bound to, on their valuation. Even there, the defendants took no objection to the jurisdiction of the District Court to hear the appeal. When the decision went on the merits against the plaintiffs, they preferred S. A. No. 1152 of 1946 to the High Court of Patna, and if the Stamp Reporter had not raised the objection to the valuation and to the Court-fee paid, the plaintiffs would not have challenged the jurisdiction of the District Court to hear the appeal. It would be an unfortunate state of the law, if the plaintiffs who initiated proceedings in a Court of their own choice could subsequently turn round and question its jurisdiction on the ground of an error in valuation which was their own. If the law were that the decree of a Court which would have had no jurisdiction over the suit or appeal but for the over-valuation or under-valuation should be treated as a nullity, then of course, they would not be estopped from setting up want of jurisdiction in the Court by the fact of their having themselves invoked it. That, however, is not the position under section 11 of the Suits Valuation Act. Why then should the plaintiffs be allowed to resile from the position taken up by them to the prejudice of their opponents, who had acquiesced therein ?

There is considerable authority in the Indian Courts that clauses (a) and (b) of section 11 of the Suits Valuation Act should be read conjunctively, notwithstanding the use of the word "or." If that is the correct interpretation, the plaintiffs would be precluded from raising the objection about jurisdiction in an appellate Court. But even if the two provisions are to be construed disjunctively, and the parties held entitled under section 11 (1) (b) to raise the objection for the first time in the appellate Court, even then, the requirement as to prejudice has to be satisfied, and the party who has resorted to a forum of his own choice on his own valuation cannot himself be heard to complain of any prejudice. Prejudice can be a ground for relief only when it is due to the action of another party and not when it results from one's own act. Courts cannot recognise that as prejudice which flows from the action of the

1954

Kiran Singh and Others
v.
Chaman Paswan and Others.

Venkatarama Ayyar J.

very party who complains about it. Even apart from this, we are satisfied that no prejudice was caused to the appellants by their appeal having been heard by the District Court. There was a fair and full hearing of the appeal by that Court; it gave its decision on the merits on a consideration of the entire evidence in the case, and no injustice is shown to have resulted in its disposal of the matter. The decision of the learned Judges that there were no grounds for interference under section 11 of the Suits Valuation Act is correct.

In the result, the appeal fails and is dismmised with costs.

Appeal dismissed.

1954

April 15.

WUNTAKAL YALPI CHENABASAVANA GOWD

v.

RAO BAHADUR Y. MAHABALESHWARAPPA AND ANOTHER.

[BIJAN KUMAR MUKHERJEA, VIVIAN BOSE, GHULAM HASAN and T. L. VENKATARAMA AYYAR JJ.]

Co-sharers—Joint property—Adverse possession by a co-sharer against another co-sharer—Ouster—Principles applicable thereto.

Once it is held that a possession of a co-sharer has become adverse to the other co-sharer as a result of ouster, the mere assertion of his joint title by the dispossessed co-sharer would not interrupt the running of adverse possession. He must actually and effectively break up the exclusive possession of his co-sharer by re-entry upon the property or by resuming possession in such manner as it was possible to do. It may also check the running of time if the co-sharer who is in exclusive possession acknowledges the title of his co-owner or discontinues his exclusive possession of the property.

The fact that one co-sharer who had allowed himself to be dispossessed by another co-sharer as a result of ouster exhibited later on his animus to treat the property as the joint property of himself and his co-sharer cannot arrest the running of adverse possession in favour of the co-sharer. A mere mental act on the part of the person dispossessed unaccompanied by any change of possession cannot affect the continuity of adverse possession of the deseizor.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 89 of 1953.