

Messrs Khushi the "requirement" in section 66(1) was completed  
 Ram Raghu- by the posting of the application. They have in  
 nath Sahai, this manner extended the meaning of the phrase  
 Jullundur "mutatis mutandis" in rule 36 so as to exclude  
 City altogether the application of sub-rule (2) of rule 7  
 v. to applications under section 66(1) of the Act. It  
 The Commis- does not, however, seem to me that by any stretch  
 sioner of of imagination the use of the phrase "mutatis  
 Income-tax, mutandis" is capable of being so extended as to  
 Punjab, exclude altogether the provision in the rules,  
 Pepsu, regarding what constitutes the date of institution  
 Himachal when either an appeal or an application under  
 Pradesh, and section 66(1) is filed through the post, and with  
 Bilaspur, due respect I consider that the view taken by these  
 Simla learned Judges in this matter is incorrect. This  
 ——— view of mine is also shared by Hidayatullah and  
 Falshaw, J. Kaushalendra Rao, JJ., in the case of *Motilal-  
 Hiralal Shisodia firm v. Commissioner of Income-  
 tax, C. P. and Berar* (1), in which they also have  
 expressly dissented from the view of Ray, C. J.,  
 and Panigrahi, J. I thus consider that the peti-  
 tioner's application under section 66(1) was rightly  
 dismissed as barred by time by the Tribunal and  
 would accordingly dismiss the present petition  
 with costs which I assess at Rs. 200.

Kapur, J.

KAPUR, J. I am of the same opinion and there  
 is nothing useful that I can add.

#### APPELLATE CIVIL

Before Falshaw and Kapur, JJ.

MURARI LAL,—Plaintiff-Appellant

versus

CHET RAM AND OTHERS,—Defendants-Respondents.

Regular Second Appeal No. 822 of 1948

*Punjab Courts Act (VI of 1918)—Section 39—Forum of  
 appeal—What determines—Suit for redemption—Amount  
 found due more than Rs. 5,000—Jurisdictional value of  
 the suit less than Rs. 5,000—Appeal filed in the Court of the  
 District Judge—Competency of—.*

In the suit for redemption the Sub-Judge passed a  
 decree on payment of Rs. 5,767-15-3. Both the plaintiff

(1) I.L.R. 1950 Nag. 816

and the defendant appealed against the decree in the Court of the District Judge stating the jurisdictional value as Rs. 3,000. The District Judge increased the amount payable by Rs. 3,420. Second Appeal was filed in the High Court in which jurisdictional value was stated as Rs. 9,187-15-3.

*Held*, that the forum of appeal is governed not by the original jurisdictional value of the suit, but by the amount which is found by the Court to be due. In the absence of any legislative enactment or statutory rule the valuation of a suit depends upon the value of the subject matter which in a redemption suit is the amount which the mortgagor should, before recovering the mortgaged property, pay to the mortgagee, and this depends upon the adjudication by the Court and not on the valuation given by the plaintiff which can be regarded as only a tentative valuation and is subject to the decision of the Court.

*Held*, that the rules framed under the Suits Valuation Act, govern the value for the purposes of the suit. For the purposes of appeal the rule laid down in *Jaswant Ram's* case will still apply. In any case where the amount of the jurisdictional value in appeal is over Rs. 5,000 the appeal under the Punjab Courts Act lies to the High Court and not to the District Judge's Court.

*Held further*, that if the course of appeal was determined by the original value as contended for by the respondents, the amount of Rs. 3,420 could not be added by the District Judge because of the limitation placed by the rule in *Ganga Ram's* case. The decree passed by the District Judges was, therefore, without jurisdiction.

*Jaswant Ram v. Moti Ram* (1), *Ganga Ram v. Hakim Rai* (2), and *Kalu Ram v. Hanwant Ram* (3), relied on.

*Second appeal from the decree of Shri Maharaj Kishore, District Judge, Hissar at Gurgaon, dated the 22nd July 1948, modifying that of Shri P. N. Thukral, Sub-Judge, 1st Class, Gurgaon, dated the 19th April, 1948 (granting the plaintiff a preliminary decree on payment of Rs. 5,769-15-3 within six months and further ordering that if the amount is not paid, the suit shall stand dismissed and leaving the parties to bear their own costs) to the extent of increasing the amount found on the mortgage by the trial Court from Rs. 5,767-15-3 by a sum of Rs. 3,420 and leaving the parties to bear their own costs.*

TEK CHAND, for Appellant.

F. C. MITTAL, for Respondents.

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(1) I.L.R. 7 Lah. 570 (F.B.)

(2) I.L.R. 15 Lah. 512

(3) I.L.R. 15 Lah. 151.

Murari Lal

v.

Chet Ram  
and others

Kapur, J.

## JUDGMENT

KAPUR, J. This is a plaintiff's appeal against an appellate decree of District Judge Maharaj Kishore, dated 22nd of July 1948, increasing the amount found on the mortgage by the Subordinate Judge, from Rs. 5,767-15-3 by a sum of Rs. 3,420.

It is not necessary to go into the facts of the present case but a few dates may be necessary in order to understand this case. Babu Ram mortgaged the property in suit to Loka Mal for Rs. 2,000 on the 11th July 1907. The legal representative of Babu Ram sold his rights in the equity of redemption to the plaintiff who has brought a suit for redemption. The Subordinate Judge, 1st Class, decreed the suit on payment of Rs. 5,767-15-3. Both sides appealed to the District Judge, the plaintiff for reduction of the amount of the mortgage money and the defendants for its increase, and the learned District Judge, as I have said, increased it by Rs. 3,420.

In the appeals that were filed in the Court of the District Judge, both parties valued them for purposes of jurisdiction at Rs. 3,000. Therefore, in accordance with that the appeals would lie to the District Judge, but actually the amount on the payment of which the property could be redeemed was over Rs. 5,000. In the appeal which was filed in this Court the jurisdictional value has been shown to be Rs. 9,187-15-3 and the value for purposes of court-fee has been shown to be Rs. 6,687-15-3.

Now, the forum of appeal is governed not by the original jurisdictional value of the suit but by the amount which is found by the Court to be due. As long ago as 1926 in *Jaswant Ram v. Moti Ram* (1), it was held that in the absence of any legislative enactment or statutory rule the valuation of a suit depends upon the value of the subject-matter which in a redemption suit is the amount which the mortgagor should, before recovering the mortgaged property, pay to the mortgagee, and this depends upon the adjudication by the Court

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(1) I.L.R. 7 Lah. 570 (F.B.)

and not on the valuation given by the plaintiff which can be regarded as only a tentative valuation and is subject to the decision of the Court.

Murari Lal  
v.  
Chet Ram  
and others

—  
Kapur, J.

It is submitted on behalf of the respondents in the present case that now statutory rules have been made under the Suits Valuation Act. But those govern the value for the purposes of the suit. For the purposes of appeal the rule laid down in *Jaswant Ram's* case (1) will still apply. In any case where the amount of the jurisdictional value in appeal is over Rs. 5,000 the appeal under the Punjab Courts Act lies to the High Court and not to the District Judge's Court. The same seems to be clear from the rule laid down in *Ganga Ram v. Hakim Rai* (2), where it was held that the District Judge when he comes to the conclusion that the amount which would be due on taking of the accounts would be more than Rs. 5,000 cannot pass a decree, and the rule laid down in *Kalu Ram v. Hanwant Ram* (3) was followed. In the present case as value of the appeal for purposes of jurisdiction was more than Rs. 5,000, the appeal did not lie to the District Judge.

Even if the course of appeal was determined by the original value as contended for by the respondents, the amount of Rs. 3,420 could not be added by the District Judge because of the limitation placed by the rule in *Ganga Ram's* case.

In my opinion, therefore, the decree passed by the learned District Judge is without jurisdiction and must, therefore, be set aside. I would, therefore, allow this appeal, set aside the decree of the District Judge and restore that of the trial Court. In the circumstances of this case the parties will bear their own costs in this Court and in the District Judge's court. The mortgage amount should be paid within six months.

FALSHAW, J.—I agree.

Falshaw, J.

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(1) I.L.R. 7 Lah. 570 (F.B.)

(2) I.L.R. 15 Lah. 512

(3) I.L.R. 15 Lah. 151