

1948

Present : Dias and Basnayake JJ.

SOMASUNDERAM, Appellant, *and* MANICKAM, *et al.*,
Respondents.

S. C. 103—D. C. Point Pedro, 2,457.

*Partition—Pro-rata costs—Taxation of bill—Value of land—Actual value—
Section 21 of Partition Ordinance.*

For the purposes of taxation of bills of costs under section 21 of the Partition Ordinance, the value of the property is its actual value in the open market and not the value put upon it by the parties in their pleadings.

APPEAL from an order of the District Judge, Point Pedro.

C. Thiagalingam, with S. Mahadevan, for the plaintiff, appellant.

H. W. Thambiah, with S. Sharvananda, for the defendants, respondents.

Cur. adv. vult.

March 8, 1948. DIAS J.—

This is a partition action. In his plaint dated August, 1945, the plaintiff valued the subject matter of the action at Rs. 3,000. In their answer the defendants disputed this valuation. They asserted that the land was worth only Rs. 1,300. The value of the action was immaterial at the trial of the action, because, whether the corpus was worth Rs. 3,000 or only Rs. 1,300, the District Court in either event had jurisdiction to try the case.

The other contest between the parties was whether the house on the land belonged to the defendants, or to the plaintiff. This difference was amicably adjusted, and the action thereafter became an uncontested partition action. In this judgment the District Judge ordered the land to be sold. He ordered the plaintiff to pay to the defendants Rs. 42 as the costs of the contest raised by him. He also directed that "The plaintiff will be entitled to the costs of this action *pro rata*".

As the decree was one for sale and not for partition, the Commissioner was directed to value the land and forward his appraised value to the Court. In June, 1946, the Commissioner fixed the value at Rs. 1,790.25. There is nothing to show that the plaintiff raised any question as to the correctness of that valuation. In September, 1946, the land was sold under the final decree, and was purchased by the second defendant for Rs. 1,810. It is significant that the plaintiff did not make any attempt to purchase the land for more than Rs. 1,810.

The plaintiff sought to tax his bill of costs under Class IV of the second Schedule of the Civil Procedure Code, as for an action of the value of Rs. 3,000 and under Rs. 5,000. The Taxing Officer, however, taxed the bill under Class III treating the action as being one under Rs. 3,000 in value. The plaintiff took the matter up in review under section 214 of the Code to the District Judge, who is not the same officer who tried the main action. The District Judge by his order dated December 20, 1946, upheld the decision of the taxing officer. It is from that order that the present appeal is taken. It appears from the proceedings in the lower Court that the parties did not given section 21 of the Partition Ordinance the attention that it deserved. In appeal neither counsel focussed his attention on that section by which in our view the present dispute can be solved.

Section 21 of the Partition Ordinance enacts that—

"All bills of costs, whether between party and party or between proctor and client, in any action or proceeding for partition or sale in the District Court, where the value of the property is under three thousand rupees, shall be taxed by the Secretary of the Court according to the rates specified in Class I of Part I of the

Second Schedule to the Civil Procedure Code, anything in the Civil Procedure Code or any other Ordinance to the contrary notwithstanding."

The only portion of section 21 which requires interpretation for the purpose of this appeal are the words "in any action or proceeding for partition or sale in the District Court, where the value of the property is under three thousand rupees". There is nothing in this context which gives the words any special meaning. We therefore adopt the only safe rule in construing a statute where we have nothing except the bare words, that is to give them their natural meaning and hold that the value contemplated by the Legislature is in our opinion the actual value the property would fetch if sold in the open market and not any artificial value claimed by the parties in their pleadings. The material date for purpose of deciding the value is the date of the institution of proceedings and not the date of taxation. There is no evidence that the property was worth Rs. 3,000 at the date the action was instituted. The *onus* of proving that value was on the plaintiff. He had not discharged his *onus*. In the absence of any evidence that the land is worth Rs. 3,000 and that its value has declined since the institution of the action the only valuation before Court, viz., Rs. 1,810 should be adopted for the purposes of taxation.

Costs should therefore be taxed in this case according to the rates specified in Class I of Part I of the Second Schedule to the Civil Procedure Code.

The appeal is dismissed with costs.

BASNAYAKE J.—I agree.

Appeal dismissed.
