

Ram Swaroop Vs Kali Charan and Another

Court: Allahabad High Court

Date of Decision: Jan. 4, 1995

Acts Referred: Civil Procedure Code, 1908 (CPC) " Order 7 Rule 10(1), Order 7 Rule 10A, 96
Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 27, 49

Hon'ble Judges: D.S. Sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.S. Sinha, J.

This second appeal, u/s 100 of the Code of Civil Procedure, 1908, hereinafter called the Code, is directed against the

decree and judgment of the IInd Addl. District Judge, Bulandshahar dated 18th September, 1979, passed in Civil Appeal No. 356 of 1978 Kali

Charan and Anr. v. Ram Swaroop, setting aside the decree and judgment dated 30th October, 1978 passed by the IInd Addl. Munsif,

Bulandshahar in Original Suit No. 222 of 1973.

2. The Plaintiff-appellant brought a suit for declaration that the Defendant-Respondent were "not grand-sons of Diviya i.e. Sobha was not the son

of Diviya" on the assertions that Diviya son of Jawahar has been married to one Smt. Budhiya and died on 10th August, 1890, leaving Sukhram as

his only son; that after the death of Diviya, Smt. Budhiya remarried with Nanhey and gave birth to Sobha from him in the year 1895; that since

Sukhram was then minor, the name of Smt. Budhiya was recorded as his guardian; that Sukhram alone was the heir of Diviya, and that after the

death of Sukhram the Plaintiff, being the only son, succeeded to his properties. According to the Plaintiff-appellant Sobha raised dispute relating to

properties left by Sukhram. And upon his death his sons, namely, the Defendant-Respondents, started asserting themselves to be co-sharers in the

property to Diviya relying upon the fact that Sobha, their father, had succeeded in getting his name recorded as co-tenant in the disputed

properties. The Plaintiff-appellant reiterated that the Defendant-Respondents were not entitled to inherit the property.

3. The suit of the Plaintiff-appellant was contested by the Defendant-Respondent on the plea that actually their father was son of Diviya; that upon

is death they succeeded him and became owners of the disputed properties to the extent of half, and that the name of Sobha was correctly

recorded in the relevant record. The Defendant-Respondents also pleaded that neither Sobha was son of Nanhey nor Budhiya had remarried

latter. The pleas regarding maintainability of the suit, insufficiency of the Court fees paid, jurisdiction of the Civil Court to entertain the suit, and bar

of Sections 27 and 49 of the U.P. Consolidation of Holdings Act, 1953 were also raised.

4. The trial Court framed only three issues, namely, whether the Defendant-Respondents were grandsons of Diviya, whether the suit was barred by

the provisions of Sections 49 and 27 of the Consolidation of Holdings Act, 1953, and whether the Court fees paid was insufficient. All the three

issues were decided in favour of the Plaintiff-appellant and his suit was decreed.

5. Aggrieved by the decree and judgment, the Defendant-Respondents preferred an appeal u/s 96 of the Code. The appellate Court has set aside

the decree and judgment of the trial Court on the findings that the trial Court lacked jurisdiction to entertain the suit of the Plaintiff-appellant in as

much as the suit was cognizable by the Revenue Court; that the Defendant-Respondents were sons of Diviya, and that the proceedings of the suit

were barred by the provisions of Section 49 of the Consolidation of Holdings Act, 1953. Hence this appeal.

6. Heard Sri Haidar Hussain, learned Counsel appearing for the Plaintiff-appellant and Sri B.D Mandhyan, learned Counsel representing the

Defendant-Respondents.

7. Learned Counsel for the Plaintiff-appellant submits that the impugned decree and judgment of the Lower Appellate Court setting aside the

decree and judgment of trial Court and dismissing the suit suffers from patent illegality inasmuch as upon conclusion and finding that the trial Court

lacked jurisdiction to entertain the suit only course open was to direct return of the plaint, after setting aside the decree and judgment in the suit,

and it could not adjudicate upon other issues on merit and dismiss the suit. On the other hand, Sri Mandhyan contends that the Lower Appellate

Court did not commit any illegality in deciding the controversy on merit and dismissing the suit notwithstanding the finding that the trial Court lacked

jurisdiction to entertain the suit.

8. Sub-rule (1) of Rule 10 of Order VII of the Code provides that subject to the provisions of Rule 10-A, the plaint shall at any stage of the suit be

returned to be presented to the Court in which the suit should have been instituted. The Explanation added to the aforesaid sub-rule declares that a

Court of appeal or revision may direct, after setting aside the decree passed in a suit, return of the plaint under this sub-rule. Sub-rule (1) of Rule

10 ordains the return of plaint for the presentation to the Court in which the suit should have been instituted if at any stage of the suit it is found that

it was instituted in a Court which lacked jurisdiction to entertain the same. The power of directing the plaint to be returned for presentation before

appropriate Court can be exercised by the Court of appeal or revision also if it finds that the trial Court lacked jurisdiction to entertain the suit.

Explanation to Sub-rule (1) of Rule 10 clearly provides that a Court of appeal or revision may direct, after setting aside the decree passed in a suit,

the return of the plaint under the said sub-rule. Obviously, once it is found by the Appellate Court that the trial Court lacked jurisdiction to entertain

the suit any further adjudication upon merit of other issues by it would be without jurisdiction and nullity.

9. The Lower Appellate Court has categorically found that the Revenue Court alone had jurisdiction to take cognizance of the suit and it was not

cognizable by the trial Court, namely, the Court of Munsiff. After this finding and conclusion, only course open to the Lower Appellate Court was

to direct after setting aside the decree and judgment of the trial Court, the return of the plaint for presentation to the Revenue Court. It acted

illegally in adjudicating upon other issues on merit and dismissing the suit. In taking this view the Court is fortified by the decision of the Hon^{ble}

Supreme Court of India rendered in the case of R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd., .

10. For the foregoing reasons, the submission of the learned Counsel for the Plaintiff-appellant is upheld and that of learned Counsel representing

the Defendants is rejected.

11. In the result, the appeal succeeds and is allowed. The impugned decree dated 18th September 1979 except to the extent it declares that the

Revenue Court alone has jurisdiction to take cognizance of the suit and it was not cognizable by the Court of Munsiff, is set aside. The matter is

remitted to the Lower Appellate Court for passing appropriate order in the light of and in conformity with the provisions of Rules 10 and 10-A of

the Code. There will be no order as to costs.