
Godarshan Lal Chawla Sri Vs Saharanpur Development Authority

None

Court: Allahabad High Court

Date of Decision: Dec. 12, 2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 115#Uttar Pradesh Urban Planning and Development Act, 1973 â€” Section 27

Citation: (2009) 2 AWC 1810 : (2009) 106 RD 598

Hon'ble Judges: Sanjay Misra, J

Bench: Single Bench

Judgement

Sanjay Misra, J.

Heard Sri Ashutosh Srivastava learned Counsel for the revisionist.

2. This revision has been filed u/s 115 of the CPC against the order dated 15.11.2008 passed in Original Suit No. 521 of 2008 by the Civil Judge,

Senior Division, Saharanpur whereby while deciding issue No. 1 the Court has held that it does not have jurisdiction to entertain the suit and has

further recorded that in case the plaintiff revisionist wants to raise the issue before the appropriate authority the plaint can be returned to him.

3. At the outset learned Counsel for the petitioner has placed reliance upon a decision of the Hon"ble Supreme Court in Abdulla Bin Ali and

Others Vs. Galappa and Others, to state that the jurisdiction of the Court depends on the allegations made in the plaint and not on the written

statement. He has further referred to a decision of a learned single Judge of this Court in Umesh Chandra Saxena v. First Additional Civil Judge

(Senior Division) Allahabad 2002 ACJ 1510 : 2002 (5) AWC 4252 , for the same proposition by stating that the forum and jurisdiction of the suit

is not dependant upon the defence taken by the defendant but on the allegations made in the plaint. He has referred to Municipal Board, Faizabad

Vs. Edward Medical Hall, Faizabad and Others, , for the very same proposition. The law cited by learned Counsel for the revisionist cannot be

disputed that a suit brought u/s 9 of the CPC cannot be thrown out unless the allegations made in the plaint are such that the suit is not maintainable

before the civil court.

4. In the present case the trial court has not thrown out the suit of the plaintiff on the basis of the averments made in the written statement. It has

only considered the allegations made in the plaint. Reference to an objection taken regarding jurisdiction cannot be inferred to mean that the

plaintiff has been unsuited only on the basis of the averments made in the written statement. An issue as issue No. 1 was framed as to whether the

Court has jurisdiction to hear the suit. The trial court has not considered any application filed by the defendants under Order VII, C.P.C. or other

provisions objecting to the jurisdiction of the Court. It was only after the defendant has put in appearance and filed his written statement that issues

were framed on the propositions of fact and law where the parties were at variance. The trial court was deciding the issue No. 1 as a preliminary

issue and therefore, it cannot be held that the trial court could not consider the question of jurisdiction only because it was taken by the defendants

in the written statement primarily because while deciding an issue the case of the plaintiff as taken in the plaint and that of the defendant taken in his

written statement is to be considered. After issues are framed under Order XIV of the CPC the defendant has a right to canvass his defence

before the trial court. In the present case admittedly an issue has been decided, may be as a primary issue. There is no bar under the procedure

prescribed or any law that the Court cannot consider the written statement and the defence of the defendants while deciding an issue framed under

Order XIV of the Code of Civil Procedure. It is only when a question of jurisdiction is being decided that the plaint allegations are to be

considered. The plaint allegations, if they confer jurisdiction on the Court, have to be tested after the written statement has been filed and if found

to be incorrect or unfounded the suit can be dismissed. Therefore, there is a difference in the stages of consideration. The first is at the stage of

filing of the plaint/suit and the second is at the time of trial and final decision.

5. The submission made by learned Counsel for the revisionist is also that in the plaint or in the relief claimed therein he has not at all claimed any

relief against a notice u/s 27 of Act but the relief claimed is that the defendant should not interfere or demolish the premises in question otherwise

than in accordance with law or atleast till the premises in question is acquired in accordance with law. No doubt such a relief has not been claimed

in the plaint and the averments made in the plaint do not refer to the provisions of U.P. Urban Planning and Development Act nor it mentions any

notice u/s 27 of the Act therefore, the suit was entertained and the defendants were noticed. It was after the defendants were noticed and they filed

their written statement that they came with a plea that the demolition alleged to be a cause of action for bringing the suit was in pursuance of a

notice u/s 27 of the U.P. Urban Planning and Development Act. It was on this plea made by the defendant in the written statement and the

proposition of fact and law were at variance that the issue No. 1 was framed. After the issues are framed they have to be decided on the materials

from which they have been framed. In case an issue relating to jurisdiction of the Court arises or an issue of a bar to the suit created by any law is

framed it requires to be decided on the materials from which such issue has been framed. This is the second stage when the issue of jurisdiction is

considered. At this stage of the suit the law relating to the provisions of Order VII, Rule 10 to Rule 13, C.P.C., cannot be made applicable to say

that the objection to jurisdiction or bar created by any law can be considered only by ignoring the written statement and looking to the plaint

allegations alone. Order XIV, C.P.C., clearly provides that the Court shall after reading the plaint and the written statement frame and record the

issues and may examine witnesses or documents before framing issues.

6. The jurisdiction of the civil court to entertain a suit depends on the allegations made in the plaint. After trial if it is found that the allegations are

incorrect or unfounded the suit can be dismissed. Such dismissal would be upon decision on an issue framed under Order XIV, C.P.C. While

deciding an issue it would be within the competence of the Court to consider the cause of action in the plaint and the substantive relief sought by

the plaintiff. When the plaint seeks such relief as to confer jurisdiction on the Court to try the suit and upon trial such allegations regarding cause of

action made in the plaint are found to be incorrect and unfounded the suit can be dismissed. In the present case precisely the trial court has

considered issue No. 1 and found the allegations made in the plaint to be incorrect and unfounded and the cause of action for bringing the suit was

actually the notice u/s 27 of the U.P. Urban Planning and Development Act, 1973, which was never pleaded but was necessarily to be considered

at the trial after the stage of framing of issues.

7. Learned Counsel has also placed reliance upon a decision of a learned single Judge in Allahabad Development Authority and Another Vs. Ram

Prakash Pandey and Another, and has placed reliance on Paragraph 15 of the said judgment. In the aforesaid decision which was given in a

second appeal the Court found that Section 27 of the U.P. Urban Planning and Development Act provided for service of notice of demolition of a

building but there was no procedure prescribed therein nor there is any provision for producing evidence, therefore, the remedy provided u/s 27 of

the Act cannot be said to be an adequate remedy so as to infer that the jurisdiction of the civil court is barred. The aforesaid conclusion was given

by the learned single Judge in light of the law laid down by the Hon"ble Supreme Court in the case of Dhulabhai and Others Vs. The State of

Madhya Pradesh and Another, wherein it was laid down that where the statute gives a finality to the orders of the special Tribunals the civil court"s

jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit.

8. In the present case there is no denial regarding the existence of Section 27(2) of appeal in the U.P. Urban Planning and Development Act.

Section 28 further gives power to stop development and there is a forum of an appeal and it also provides that the orders passed by the said

appellate authority/Tribunal shall be final. No doubt against such order of the Tribunal a civil suit would lie because the Hon"ble Supreme Court

has clearly held that such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with

or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. Consequently the learned single Judge

while considering the issue in Allahabad Development Authority v. Sri Ram Prakash Pandey, has dealt with the provision of Section 27 of the Act

to hold that it does not provide adequate remedy to do what a civil court would normally do in suit. Such reasoning would relate to the bar

provided u/s 27(4) where jurisdiction of the civil court is sought to be taken away. While the law is settled that where adequate remedy is not

provided in the statute to do what a civil court would normally do in a suit the jurisdiction of the civil court is not barred. Therefore, when an appeal

is provided u/s 27(2) and the procedure provided the various sub-sections of Section 27 is not an adequate remedy the bar sought to be created,

of the jurisdiction of the civil court, u/s 27(4) of the Act cannot prevent a party from invoking the jurisdiction of the civil court against an order

passed in appeal maintained u/s 27(2) of the Act. The bar to jurisdiction of the Courts is provided in Section 27(4) of the Act against the decision

in an appeal and when there is no adequate remedy provided under the provisions to do what could normally be done by a civil court then a suit

u/s 9 of C.P.C. is maintainable. While applying the law laid down by the Hon"ble Apex Court Section 27(4) can only be read in relation to Section

27(2) and cannot be applied to the proceedings of Section 27(1) whereagainst if a civil suit is held to be maintainable then the statutory provision

of appeal becomes redundant. Harmonious interpretation is to be made of the statute and it cannot be read so as to make the very provision

unworthy of enforceability or worthy of being ignored.

9. The trial court while deciding the issue No. 1 has clearly recorded that the jurisdiction of the civil court is barred under the provisions of Section

27(4) of U.P. Urban Planning and Development Act, 1973 against a notice u/s 27 thereof. Jurisdiction of the civil court cannot be barred after an

appeal u/s 27(2) has been decided since the procedure provided therein is not an adequate remedy to do what a civil court could normally do in a

suit.

10. In view of the aforesaid circumstances no material irregularity or illegality can be found in the impugned order which requires any interference in

a revision filed u/s 115 of the Code of Civil Procedure.

11. The revision has no force it is accordingly rejected. No order is passed as to costs.