
(1981) 02 DEL CK 0025

Delhi High Court

Case No: Criminal Revision Appeal No. 219 of 1980

Jai Raj

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision: Feb. 19, 1981

Citation: (1981) 19 DLT 398 : (1981) RLR 572

Hon'ble Judges: G.R. Luthra, J

Bench: Single Bench

Advocate: D.R. Sehgal and D.C. Mathur, for the Appellant;

Judgement

G.R. Luthra, J.

(1) The present petition u/s 397 and 482 of the Code of Criminal Procedure is directed against an order dated July 17, 1980 of Shri S. G. Jain, Additional Sessions Judge, Delhi.

(2) Jai Raj petitioner brought a suit for recovery of possession of house on field No. 70/1, of Village Mangolpur Kalan, Delhi before the Circle Panchayat (Adalat) situated at Poothkalan in the Union Territory of Delhi. Before that PaiKhayat Chand Ram produced a will purporting to be from Sint. Phool Kaur, who is mother of Jai Raj petitioner and maternal grand mother of Chand Ram to the effect that she had bequeathed the aforesaid property to Chand Ram respondent No. 2. That Panchayat held the will to be forged one. It further held that the petitioner was entitled to the possession of the property and accordingly passed a decree for recovery of possession in favor of the petitioner and against respondent No. 2.

(3) Feeling aggrieved respondent No. 2 filed an appeal against the judgment and decree aforesaid dated November 16, 1978, of the Circle Panchayat in the court of Senior Sub-Judge, Delhi. Vide judgment dated August 6, 1979 Senior Sub-Judge held that Panchayat had no jurisdiction to entertain any suit regarding title of immovable property and that too in inspect of any property valuing more than Rs. 200.00 . Accordingly judgment and decree passed by Panchayat was set aside.

(4) Petitioner filed a complaint in the court of Smt. Urmila Rani, Metropolitan Magistrate Delhi for prosecuting and sentencing Chand Ram for having committed offences of forgery punishable u/s 467 and 468 Indian Penal Code and also having committed offence punishable u/s 420 Indian Penal Code. An objection was raised before the said Metropolitan Magistrate by Chand Ram that cognizance of the said complaint could not be taken unless and until complaint was made by the Circle Panchayat. In support of his contention Chand Ram relied upon Section 195 of the Code of Criminal Procedure which inter alia says that no court shall take cognizance of an offence described in Section 463 or punishable u/s 471 Section 475 or Section 476 of the Code when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court except on a complaint in writing of that court or some other court to which that court is subordinate. That objection was over-ruled by learned Magistrate. Chand Ram filed a revision petition in the court of Session Delhi which was entrusted to and decided by Shri S.C. Jain, Additional Sessions Judge, Delhi. Vide impugned order the learned Additional Sessions Judge Delhi held that Circle Panchayat was a court within the meaning of the Code and that it was only the Panchayat who could have filed a complaint in view of Section 195 of the Code.

(5) The learned counsel for the petitioner rightly contends that Circle Panchayat was not a court for the purpose of taking cognizance of the suit for recovery of possession of immovable property of a value more than Rs. 200.00 , that Therefore, provision of Section 195 of the Code were not attracted. Actually Panchayat is a court only for purposes of those matters which are within its jurisdiction. When Panchayat lacks jurisdiction to entertain a particular matter, it is just a collection of persons for that matter and its proceedings are nothing more than waste paper and no value can be attached to it.

(6) In the same manner the word "Judicial proceedings" is occurring in Section 33 of Evidence Act which provision under certain circumstances makes a statement of witness recorded in judicial proceedings admissible in subsequent judicial proceedings was interpreted by Lahore High Court in Boota Singh v. Emperor 1926 (27) Cri LJ 1168 in which following was held :-

"A proceeding before a Judge or a Magistrate who had no jurisdiction is not a "judicial proceeding" within the meaning of s. 33 of the Evidence Act and Therefore, the evidence of a witness given in such a proceeding is not admissible under the said section in a subsequent trial by a competent court."

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The aforesaid contention of the petitioner was not considered by the learned Sessions Judge although it went to the very root of the problem. Therefore, judgment of the learned Additional Sessions Judge cannot be maintained. I, Therefore, set aside judgment of the learned Additional Sessions Judge and restore that of Smt. Urmila Rani Metropolitan Magistrate, Delhi. The learned Metropolitan Magistrate shall proceed with the cognizance

of the complain of Jai Raj petitioner. Petitioner has been directed to appear before the court of learned Metropolitan Magistrate concerned on March 23,1981. A copy of this order be sent to the Chief Metropolitan Magistrate, ! Delhi who shall forward the same to the court concerned.