(1969) 12 MP CK 0002

Madhya Pradesh High Court

Case No: M.C.C. No. 257 of 1968

Ram Narain Agrawal	APPELLANT
Vs	
Shyamsundar Agrawal	RESPONDENT

Date of Decision: Dec. 20, 1969

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 46 Rule 7

Citation: (1972) JLJ 14

Hon'ble Judges: Bishambhar Dayal, C.J

Bench: Single Bench

Advocate: J.P. Sanghi, for the Appellant; P.D. Pathak, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bishambhar Dayal, C.J.
This is a reference under Order 46, Rule 7 of the CPC by the District Judge.

2. The facts which have given rise to this reference may shortly be stated first. Shyamsunder Agrawal filed a suit for the recovery of Rs. 599.79 against Ramnarayan Agrawal on the allegation that Ramnarayan Agrawal was in possession of a part of the house which was the joint property of both the parties and he was liable to pay him compensation for its use and occupation. The plaintiff was himself in possession of another portion of the house, for which he was also paying compensation for use and occupation. After deducting the amount due to the defendant from the plaintiff, the plaintiff claimed Rs. 587.79 from the defendant and Rs. 12 as costs of notice. This suit was filed in the Court of the First Additional District Judge exercising the powers of a Small Causes Court. An objection was taken before him that the case was not cognizable by the Court of Small Causes. The learned Additional District Judge rejected this objection by order dated 25th March 1968 and intended to proceed with the suit. Thereupon, an application under Order 46, Rule 7, Civil Procedure Code, was filed before the District Judge on 4th April 1968 for making a reference to

the High Court. The learned District Judge, by his order dated 28th June 1968, has come to the conclusion that the decision of the Additional District Judge was correct; but in view of the case reported in AIR 1932 70 (Nagpur) and other cases came to the conclusion that even though he had found the order of the Additional District Judge to be correct, yet he was bound to make a reference to the High Court in view of the language of Order 46, Rule 7 of the Civil Procedure Code. He has, therefore, referred the matter to this Court.

3. After hearing Learned Counsel for both the sides I am of opinion that the references was incompetent in the circumstances of this case and also that the Small Cause Court had jurisdiction to entertain the suit, and the orders both of the Additional District Judge and the opinion of the District Judge on this matter are also correct. I shall now give the reasons for coming to this conclusion.

4. Order 46, Rule 7 of the CPC runs as follows :

(1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

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From the above quotation of the rule, it is significant that the power of the District Judge to make a reference is discretionary if no party makes an application, but that it is obligatory in a case where one of the parties makes an application to that effect. But this power, whether as a matter of discretion or asa matter of obligation, can only be exercised if the conditions given in rule 7 are satisfied. The most important condition to be satisfied is that the District Court must have come to a conclusion that the order of the Court below with regard to the jurisdiction of the Small Causes Court is erroneous If the District Judge conies to the conclusion that the order of the Court below regarding the jurisdiction of the Small Causes Court is correct, then he has not been given the power to make a reference to the High Court. The opening words of Rule 7(1) ''where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested,'' lay down the condition precedent for the exercise of the power of reference by the District Court. The phrase ''and if required by a party shall'' are also subject to this precondition. If the intention of the legislature had been that this compulsory reference on the application of a party would have to be made by the District Court, whatever be its own opinion, the language would have been different. The language used in the rule cannot possibly

convey that meaning, which has been contended for by Learned Counsel for the defendant. This intention of the legislature is further supported by the subsequent provision in the same sub-rule (1)--''with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous''. This clearly indicates that along with the reference the District Court has to give reasons why it has formed an opinion that the opinion of the subordinate Court is wrong It has not to give any reason supporting the opinion of the Subordinate Judge if it thinks it to be right. This also indicates that the reference is to be made only when the District Court thinks the opinion of the Sub-ordinate Court to be wrong. The very object of the reference is to have a wrong order corrected.

5. In support of the proposition that the District Court is bound to make a reference whatever be its opinion with regard to the correctness of the order of the subordinate Court, cases were cited by Learned Counsel. The first case that may be considered in this connexion is AIR 1932 70 (Nagpur) . That was a case in which the plaintiff had first filed a suit in the Court of the Subordinate Judge The plaint was returned for presentation to the proper Court, holding that the suit was triable by a Court of Small Causes. The plaint was then presented in the Court of Small Causes. But the Judge of the Small Causes Court held that he had no jurisdiction to try the suit and returned the plaint. An application was then made to the District Judge for a reference under Order 46, Rule 7 of the Civil Procedure Code. The District Judges rejected the application on the ground that the order of the Court of Small Causes was revisable and therefore the proper procedure to be followed was to go up in revision to the High Court. Against that order a revision came up in the High Court, and it was considered by a learned Single Judge. In those circumstances, it was stated by the learned Judge that the District Judge failed to exercise his jurisdiction and the High Court could therefore, interfere in the mailer. It was also observed that under Order 46, Rule 7, the District Court was bound, if required by a party, to submit the record to the High Court with a statemeat of its reasons to make the reference. This observation cannot be read to mean that the District Judge was bound to make a reference whatever be his opinion with regard to the correctness of the. order passed by the Court below. The learned Judge merely meant to say that the District Judge could not reject the application on the ground that a revision lay against the order of the Small Causes Court. This case, therefore, does not support the proposition.

6. Reliance was placed on Simson v. McMaster ILR 13 Mad. 344. The judgment is very short, and the facts are not very clear from the report. But the decision of Handley, J., makes it clear That in that case the Subordinate Judge had refused to entertain the suit on the Small Causes Court side and this order was wrong. The District Judge, therefore, made a reference to the High Court, and the learned Judge of the High Court agreed with the District Judge on both the points. That was, therefore, a case in which the District Judge had formed the opinion that the order of the Court below was wrong and had therefore, made a reference, and in those

circumstances it was said that the District Judge was bound to make a reference.

7. The last case on which reliance was placed was Suresh Chunder Maitra v. Kristo Rangini Dasi ILR 21 Cal 249. In that case the suit had been tried in the Court of the Munsif on the regular side and an appeal against it had been decided by the District Judge without the question of jurisdiction of the regular Court being raised in either of the two Courts; and all that was decided by the High Court was that the question not having been raised up to the stage of the District Judge, section 646-B of the Civil Procedure Code, which is equal to Order 46, Rule 7 of the present Code, was not applicable. That ca6e also, therefore, does not support the proposition.

8. On the other band, Madan Gopal v. Bhagwan Das ILR 11 All. 304, clearly lays down :

"Before a District Court can make a reference u/s 646,B of the Civil Procedure Code, it must be of opinion that the subordinate Court has erroneously held upon the point of jurisdiction in regard to the particular suit before it, and that therefore, the matter is one in which the interference of the High Court should be sought."

9. The same view has been taken by the Bombay High Court in Prabhakar Bhaskar Vs. Kashiram Vithoba and Another, . It has been observed by the learned Judge :

"The power to make the reference is statutorily conferred and the express condition for its exercise is that a Court subordinate to the District Court shall have failed to exercise a jurisdiction vested in it by law or to have exercised a jurisdiction not so vested ''by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable''."

It has been further observed that unless such a finding has been given Rule 7 of order 46 would be inapplicable.

10. In view of the above authorities and the clear language of the section, there is no doubt that the District Judge having come to the conclusion that the order of the Additional District Judge with regard to the jurisdiction of the Small Causes Court was correct, he had no jurisdiction to make a reference to this Court under Order 46, Rule 7 of the Civil Procedure Code.

11. Coming to the point of jurisdiction itself, it may be noted that the suit was for a specific amount of money claimed by the plaintiff. Such a suit was cognizable by a Court of Small Causes, unless it came within any of the articles of the Second Schedule to the Provincial Small Causes Courts Act. Reliance was placed on Art. 41 of that Schedule. But Art. 41 would be

applicable only to a case where the plaintiff has had to pay some amount on account of the joint liability of himself and the defendants and sues for a contribution in that respect. This is not a case of that type and cannot be covered by Art. 41.

12. Then Art. 31 was relied upon, which relates to a suit for accounts. In the present case, the plaintiff claims a specified sum and does not ask for any account, and the amount which can be decreed to him does not, upon his own allegations, depend upon accounts being taken, nor does he pray for any accounts being taken. This is not, therefore, a suit for accounts.

13. Reliance was also placed on Article 8, which relates to recovery of rent, other than house rent. The argument was that the word ''rent'' in this Article includes compensation for use and occupation. I am unable to agree with that contention. If suits for compensation were to be included, there was no difficulty for the legislature to have mentioned it in the Article.

14. Lastly, Article 11 was also mentioned. This relates to enforcement of a right or interest in immovable property. The present suit is a suit for money and not for enforcement of any right in immovable property. I am therefore, satisfied that the opinion of the Court below regarding the jurisdiction of the Small Causes Court to entertain the suit is correct. No interference is, therefore called for by this Court on that account also.

15. The result, therefore, is that the reference is rejected. Parties, however, shall bear their own costs of this reference.