
AIR 1957 MP 71

Madhya Pradesh High Court (Gwalior Bench)

Case No: Sm. C. Rev. No. 5 of 1955

Govinddas

APPELLANT

Vs

Parmeshwaridas

RESPONDENT

Date of Decision: April 6, 1957

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 21, 47, 6, 9

Citation: AIR 1957 MP 71

Hon'ble Judges: Hidayatullah, C.J; Dixit, J; A.H. Khan, J

Bench: Full Bench

Advocate: Bhagwandas and Motilal Gupta, for the Appellant; Bhagwati Prasad Singhal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. This revision arises out of a suit filed as far back as 1941 in the Court of the City Sub-Judge, Lashkar. The suit involved a small claim of Rs. 360/-. It was at first filed, as stated above in the Court of the City Sub-Judge, Lashkar, on 12th November 1941. During the pendency of the suit, Act No. 4 of 1942 was passed creating Small cause Courts in the former State of Gwalior with a maximum jurisdiction of Rs. 200/-. The suit, however, continued to be before the Sub-Judge, Lashkar, and it does not appear that it made much progress. In 1949, Ordinance No. 36 of 1949 was promulgated in the State of Madhya Bharat which created a Small Cause Court at Gwalior with a jurisdiction of Rs. 500/-. The Sub-Judge, Lashkar, who seems to have kept this case pending on his file all these years, transferred it to the Small Cause Court for disposal and in due course a decree was passed on 25th July 1951 decreeing the claim of the plaintiff. Against the decision an appeal was taken by the present applicant before the District Judge, Gwalior. He contended, inter alia, that when the suit was filed he had a right of appeal which could not be taken away and the appeal was therefore competent. He also contended that the

Small Cause Court at Gwalior had no jurisdiction to decide the case, inasmuch as the case was wrongly transferred to that Court.

2. It appears that the second point was not decided, but the first was. The learned District Judge shortly stated held that under the Small Cause Courts Act no appeal lay and the appeal was therefore incompetent. On revision to the Madhya Bharat High Court, Chaturvedi J. declined to interfere and the revision-application was dismissed.

3. It appears that more than one execution was taken out in respect of the decree, The first execution was taken out in 1952; its number is 574. In that execution proceeding on a notice being issued to him the judgment-debtor appeared and raised the contention that the decree passed against him was a nullity because it was passed by a Court possessing no jurisdiction in the suit. The decree-holder, it appears, allowed that execution to go by default, and no decision on the objection was made. Later, an execution application was filed, and the matter which is before us arises out of that execution application. In that execution also the Judgment-debtor raised the contention that the Small Cause Court had no Jurisdiction to try the case and that the decree was a nullity. The executing court decided the point against him and hence this application for revision. This case has been referred to a Pull Bench along with another [Bhaskarrao Vs. Lilavatibai](#), which we shall decide separately.

4. The short point involved in this case is whether the decree passed originally by the Court of Small Causes at Gwalior is a valid decree in the eye of the law, and whether it can be enforced against the Judgment-debtor and also whether no objection can be heard at this stage. This involves the consideration of the transfer of the case from the Sub-Judge, Lashkar, to the Small Cause Court, Gwalior. The matter was before the Madhya Bharat High Court in a Full Bench case reported in Dwarka Das v. Pannalal, MPLJ 1932 HCR 74 (B). It was there laid down by the Pull Bench that the Ordinance was not meant to apply to such cases and that the suits pending before the Civil Courts were not affected by the Ordinance and were not meant to be transferred. It is plain, therefore that the decision of the Madhya Bharat High Court has already laid down that the transfer of the case was irregular. In fact, there was no need for the transfer at all, and the Sub-Judge, Gwalior, should have gone on with the case and tried it to a finish.

5. The result, therefore, is that the Small Cause Court, which did decide the case, was not vested with the Jurisdiction to hear and decide it. It is well settled that the consent of parties cannot confer jurisdiction on the Court, and an objection to jurisdiction can be taken at any stage in the proceeding. (See *Ledgard v. Bull* 13 I A 134 (PC) (C), *Meenakshi Naidoo v. Subramaniya Sastri* 14 I A 160 (PC) (D) and *Ramlal v. Kisanchandra* AIR 1924 P. C, 95 (E).) No doubt, the judgment-debtor did nothing to rectify the error committed by the Small Cause Court, but he did all that he was advised to do, namely, taken an appeal to the District Judge on the basis of the doctrine that a right of appeal is a substantive one and cannot be taken away except by a clear provision or by necessary intendment of the law. He failed therein and he brought the matter to the

High Court and also failed.

6. No doubt, the Judgment-debtor could have taken a revision straight to the High Court u/s 13 of the Madhya Bharat Small Cause Courts Act, which he did not. But that would have involved an admission that the procedure adopted by the Sub-Judge, Gwalior, was correct. The Judgment-debtor stood on his rights that an appeal was available to him in the suit which could not be transferred to the Small Cause Court by the Subordinate Judge. However, the matter is agai(sic) because an objection as to inherent Jurisdiction can be taken even in execution. This was laid down by the Supreme Court in [Kiran Singh and Others Vs. Chaman Paswan and Others](#). It is also a well established rule of law that a nullity remains a nullity and can be so declared at any stage. In the execution application the decree which was sought to be enforced was the decree of the Small Cause Court. The dismissal of the appeal and the revision arising from that appeal on the previous occasion did not substitute a decree of the High Court in place of the decree of the Small Cause Court. The decree which is sought to be executed is therefore the original decree which was passed by the Court without Jurisdiction. If it is a nullity, that can be so declared at any stage of the proceedings.

7. In view of the fact that the suit could not be transferred to the Small Cause Court and that it had to be tried on the regular side on the original cause of action before the court where it was instituted, we think that the proceedings from the date of the transfer were illegal and that the decree which has been passed is a nullity. In view of this, we allow the application for revision, but in the circumstances of the case, there shall be no order about costs.

8. In allowing the application we direct that the suit should now be taken up by the Sub-judge (now Civil Judge, first class) Lashkar, on his file and he should deal with it from the stage at which the impugned transfer took place. Since this suit was filed as far back as 1941 and has been pending in the Court for 16 years, we further direct the Civil Judge to give it the highest priority possible and to hear it from day to day and dispose it of as early as possible.

9. We wish to record our indebtedness to Shri Shivdayal, Advocate, who appeared at our request as an amicus curiae and assisted the Court with his arguments.