(1919) 05 PAT CK 0017

Patna High Court

Case No: None

Satya Kinkar Sahana		APPELLANT
	Vs	
Raja Sri Sri Shiba Prasad Singh		RESPONDENT

Date of Decision: May 23, 1919

Acts Referred:

- Government of India Act, 1935 - Section 107
- SUITS VALUATION ACT, 1887 - Section 11

Citation: 52 Ind. Cas. 452

Hon'ble Judges: Mullick, J; Jwala Prasad, J

Bench: Division Bench

Judgement

Jwala Prasad, J.
The defendants Nos. 2 and 3 have come to this Court in second appeal.

2. As the value of the claim laid in the plaint was only Rs. 4,199, the defendants have also filed an application in Revision No. 61 of 1918, u/s 107 of the Government of India Act.

3. An attempt has been made in second appeal to question the finding of the learned Subordinate Judge that the land in suit is not included in the leasehold property of the defendants Nos. 2 and 3. This finding of the Subordinate Judge was not challenged in the lower Appellate Court and it is not open to the defendants to challenge it in second appeal. Even if it were open to them to attack that finding, there does not appear to be any doubt as to the correctness of the finding upon the evidence in the case. Village Dobaria has been shown in the revenue survey map as bearing No. 784 and lying to the east of Jherria Khas and north-east of Fatehpur. The Chuck Laya Kanali has been given a different number 783. In the pattas of the defendants Nos. 2 and 3 of 1303 the lands settled are stated to be in village Dibaria as bearing Survey No. 784. In the said patta it is also mentioned that the surface right of Laya Kanali did not belong to the Raja. The learned Subordinate Judge was,

therefore, right in holding that Laya Kanali was not at all settled with Gopeshwar Adhikari, the predecessor-in-interest of defendants Nos. 2 and 3. The contention of the defendants Nos. 2 and 3 must, therefore, fail,

4. The only question for determination is whether the defendants Nos. 2 and 3 are entitled to enforce the contract entered into by the plaintiff with the defendant No. 1. It appears that the defendants Nos. 2 and 3 were conscious all through that Laya Kanali did not belong to them at all, and was not included in their leases, and, whenever anybody asserted any right to it, they tried to purchase that right. They admit that Kola Dassi had no right to the underground and still they purchased that right from her by means of a kabala on 13th Asin 1314. When defendant No. 1 purchased the brahmottar right in the land claimed by Chamroo Pande and another and entered into an agreement to take settlement of the underground right from the plaintiff, the defendants Nos. 2 and 3 purchased those rights from defendant No. 1 by means of the kabala of 20th Asin 1318 They hotly contended in the Court of the Subordinate Judge that the plaintiff had no right to enter into any contract for settlement of Laya Kanali with the defendant No. 1. As a last resort they said that--

Should the Court consider that the land is not included in the 86 bighas plot...the Court might be pleased to hold that the defendant No. 1 having performed his part of the contract, dated the 30th Asin 1318, and having deposited with the plaintiff''s predecessor Rs. 1,009, the plaintiff is bound to execute a patta in terms of the said contract.

5. This alternative plea was not originally taken in a definite form in the written statement filed on the 20th August 1915 and was subsequently taken by supplementary Written statement on 15th September 1916, more than two years after the plaint was filed and one year after the written statement was filed. For the last four years after the alleged contract the defendants did not at all think of enforcing their right, if any, for the specific performance of the contract. The Court below is, therefore, right in holding that the defendants never meant to take possession of the land by virtue of the lease in question, and that they were guilty of great delay and laches. It must also be mentioned that they did not pay a shell as rent for the land during the years of their possession on the strength of the alleged purchase of the right of the defendant No. 1 for specific performance of the contract. It is again more than doubtful whether the defendants Nos. 2 and 3 can purchase the right for the specific performance of a contract which at the most would amount to only an actionable claim. The defendant No. 1 himself did not enforce it, and I doubt whether he had a right to transfer it. Even if the defendant No. 1 had a right to transfer it and the defendants Nos. 2 and 3 did purchase that right, the latter waived their right as is obvious from the pleas taken in the written statement of August 1915 and from their trying to hold adversely to the interest of the lessor which a lessee cannot be permitted to do. They, having abandoned their right, if any, to enforce the contract, cannot resist the suit of the plaintiff to obtain

khas possession. The conduct of the defendants Nos. 2 and 3 amount to a denial of the title of the plaintiff and the relationship of landlord and tenant. This, to my mind, amounts to an abandonment and forfeiture of the lessee''s right, if any, under the alleged agreement to lease the land in suit. The Court would certainly be chary to exercise the discretion of granting the specific performance of a contract in a case of this kind.

6. Again the right of the defendant No. 1 as held by the Court below, appears to be barred by lapse of time. The right of the defendants accrued on 14th October 1911, when the bonus was paid up. The plaintiff did no execute any lease in favour of defendant No. 1, and defendant No. 1 himself did not demand it. It will, therefore, be considered a refusal on the part of the plaintiff to give him the lease in question. The claim was definitely set up for the first time in 1916, though the Court below says that it was set up in 1915 when the first written statement was filed. Whatever date, whether 1915 or 1916, be taken as the date of the assertion of the claim, it was barred by the rule of three years'' limitation. The Court below is right in refusing to uphold the decree of the Subordinate Judge directing the plaintiff to execute a lease in favour of the defendants Nos. 2 and 3.

7. It is then contended that as the amount of damages found by the learned District Judge was Rs. 11,115-8-0, which is beyond his appellate ''jurisdiction, it was not competent for him to hear the appeal. u/s 21 of Act XII of 1887, the Bengal Civil Courts Act, an appeal from a decree or order of a Subordinate Judge lies to the District Judge when the value of the original suit does not exceed Rs. 5,000, and to the High Court in any other case. Under Order VII, Rule 2, the plaintiff in the present case put an approximate or tentative value of less than Rs. 5,000 in respect of the damages suffered by him and prayed for a decree for such amount as may be found due to him on enquiry by the Court on payment of additional Court-fee, should the amount exceed the approximate value. The defendant in the written statement alleged that the value of the property in suit was more than Rs. 1,000, and the plaintiff was bound to pay Court-fee upon proper valuation. Upon this an issue was raised (Issue No. 4 of the Court below): ''Is the suit properly valued?" The issue was not pressed by the defendant and was hence decided against the defendant. It is not clear from the written statement whether the objection as to valuation related to the value of the lands in suit, or to the amount of damages claimed, or to both. The issue also did not specify this. The suit was instituted on 20th May 1915. A Commissioner was appointed in this case who found that the quantity of coal extracted was 22,231 tons, which the District Judge valued at Rs. 11,115-8 8. The report of the Commissioner is dated 27th June 1917, The cause of action is stated in the plaint to have arisen in Asin 1320(1913). The amount of damages approximately mentioned in the plaint must, therefore, relate to the period of about two years from 1913 to March 1915. Two years more had elapsed when the Commissioner made the estimate of coal extracted by the defendants. Upon the Commissioner''s report it cannot, therefore, be ascertained as to what amount of damages accrued

before the institution of the suit and what amount thereafter up to the time of the Commissioner''s report. The Subordinate Judge had no occasion to determine the amount of damages suffered by the plaintiff, inasmuch as he dismissed the suit of the plaintiff entirely. Thus when the appeal was lodged by the plaintiff in the Court of the District Judge the amount of damages was not ascertained. To my mind the approximate value put in the plaint was, therefore, the value upon which the forum of appeal should be determined. There is a conflict of authorities as to the forum of appeal when mesne profits or damages are claimed in a suit for possession, the original valuation being less than Rs. 5,000 and the amount found due being in excess of that figure. In the Full Bench case of the ''Calcutta High Court, Ijjatulla v. Chandra Mohan 34 C. 954 : 6 C.L.T. 255 (F.B.) : 11 C.W.N. 1133, the amount of actual damages was already held in the Court of first instance to be much above Rs. 5,000. It was, therefore, held that the appeal from the decision of the Subordinate Judge could only lie to the High Court and not to the District Judge. In Mohini Mohan Das v. Satis Chandra Roy 17 C. 704 : 8 Ind. Dec. 1011, where a decree for possession and mesne profits was awarded and the amount of mesne profits was ascertained to be more than Rs. 5,000 before the appeal was preferred, it was held that if the appeal had been preferred before the ascertainment of the mesne profits it would have lain to the District Court, but after the ascertainment the appeal could only lie to the High Court. The principle of this ruling, to a great extent, should apply to the present case. The question is whether the amount of damages was at all ascertained before the appeal was lodged by the plaintiff in the District Court. It is contended that the Commissioner''s report of the 27th June 1917 should be taken as having ascertained the mesne profits. But the Commissioner had only found the quantity of coal extracted and did not come to the actual amount of damages suffered, nor as to the period during which the damages occurred. Besides, his report cannot be taken to be an ascertainment of the amount of damages. I- think that the ascertainment of the damages must be by the Court itself. This was not done in the present case by the Subordinate Judge and hence the value mentioned in the plaint remained intact. I, therefore, hold that if the Court of first instance dismisses a suit or awards a sum less than Rs. 5,000 and the Appellate Court comes to the conclusion that the sum exceeding that amount should be awarded, its jurisdiction to hear and dispose of the appeal is not taken away. The case of Madho Das v. Ramji Patak 16 A. 286 : A.W.N. (1894) 84 : 8 Ind. Dec.186 is an authority for the proposition. Besides, u/s 11 of the Suits Valuation Act the disposal of the appeal by the lower Appellate Court cannot be questioned as being without jurisdiction on the ground of the valuation being beyond the pecuniary limit of the jurisdiction of that Court, unless the disposal of the appeal on the merits was prejudicially affected. Nothing has been shown in this case to suggest that the disposal of the appeal by the lower Appellate Court was prejudicially affected by reason of the value of the suit being above Rs. 5,000 I, therefore, hold that the District Judge was competent to hear the appeal in this case.

8. The next question is whether he could give a decree to the plaintiff for a sum exceeding the pecuniary limit of his appellate jurisdiction, that is, exceeding Rs. 5,000. The District Judge has concurrent jurisdiction with the Subordinate Judge to try original suits of any valuation u/s 18 of the Bengal Civil Courts Act. His power to hear appeals is restricted to suits of the value of less than Rs. 5,000. The case of Golap Sundari Debi v. Indar Kumar Hazra 1 Ind. Cas. 86 : 13 C.W.N. 493 : 9 C.L.T. 367 : 5 M.L.T. 360 is an authority for the proposition that the Munsif could not give a decree for over Rs. 1,000, the limit of his jurisdiction, although on enquiry the amount found due was more than Rs. 8,000. But the Munsif in that case had no jurisdiction to try original suits without any limit. In the Allahabad case of Madho Das v. Ramji Patak 16 A. 286 : A.W.N. (1894) 84 : 8 Ind. Dec. 186 it was held that the District Judge could make a decree for over Rs. 5,000 in a case similar to the present one. It has already been shown that in the present case there is nothing to show that the amount of damages awarded by the District Judge was only for the period prior to the institution of the suit. I think that the District Judge was right in awarding the damages found by him due to the plaintiff on the date on which the Commissioner made his report, namely, the 27th June 1917.

9. The Second Appeal No. 442 of 1918 and the Civil Revision No. 61 of 19l8 should, therefore, be dismissed with costs. The stamp, if any, deposited by the defendants for the execution of the lease under the orders of the Subordinate Judge will be refunded to them on application being made to that Subordinate Judge.

Mullick, J.

10. In my opinion the District Judge had jurisdiction to entertain the appeal as the valuation of the suit did not exceed Rs. 5,000, and there was in spite of the report of the Commissioner, no finding by that Court to the contrary, Once having assumed jurisdiction legally, the District Judge had jurisdiction to make a decree for damages for a sum exceeding Rs. 5,000, his original jurisdiction being unlimited.