(1924) 07 CAL CK 0061

Calcutta High Court

Case No: None

Rajani Kanta Bag		APPELLANT
	Vs	
Rajabala Dasi		RESPONDENT

Date of Decision: July 2, 1924

Acts Referred:

- Court Fees Act, 1870 - Article 17(6)
- Suits Valuation Act, 1887 - Section 8

Citation: (1925) ILR (Cal) 128

Hon'ble Judges: Greaves, J; Chakravarti, J

Bench: Division Bench

Judgement

Chakravarti, J.
Do you suggest that a suit for partition on establishment of title is not maintainable?

2. No. But I say that this is not a simple suit for partition. This is really a suit for declaration of title with consequential relief, viz., setting aside the previous decree for partition, cancelling the entries in the record of rights, etc. See Hara Gouri v. Dukhi (1910) 5 Ind. Cas. 582. Such a suit is one u/s 7, Sub-section (iv), Clause (c) of the Court Fees Act, and the jurisdiction is fixed by the amount at which the plaintiff values his claim for payment of court fees u/s 8 of the Suits Valuation Act. Further the question involved is one of error of law, rather than of jurisdiction and your Lordships cannot interfere u/s 115 of the Code of Civil Procedure. See Mathura Nath Sarkar v. Umesh Chandra Sarkar (1897) 1 U. W. N. 626. Then again there being no question of prejudice to the petitioner your Lordships ought not to interfere in the exercise of your discretion. It-does not really matter to the plaintiff whether he prosecutes his suit in the Court of the Munsif or of the Subordinate Judge especially as even the venue of Appeal is not changed, the value of the entire property being less than Rs. 5,000.

3. Babu Apurba Char an Mukherji, in reply. A suit for partition on establishment of title is maintainable See Lokenath Singh v. Dhakeswar Prosad (1914) 21 C. L. J. 253, 260. and Bidhata Rat v. Ram Chariter Rai (1907) 12 C. W. N. 37; 6 C. L. J. 651. Though this. Court does not ordinarily interfere with interlocutory orders, it has however ample powers and ought to-interfere in cases of this nature. Vide Rai Yatindra Nath Chaudhury v. Hari Charan Roy Chaudhuri (4) (1914) 20 C. L. J. 426.

Chakravarti J.

1. This Rule was obtained by the plaintiff calling on the defendants to show cause why an order of the Subordinate Judge of Howrah, dated the 5th of January 1924, affirmed in appeal by the District Judge on the 3rd March 1924, should not be set aside or any other order should not be passed by this Court as to this Court may seem fit. The facts out of which this application arises are these.

2. The plaintiff in the plaint filed by him alleged that he was entitled to a four annas share of the family properties along with some of the defendants. The plaintiff further alleged that he was in possession but that a cloud had been thrown upon his title on account of a certain suit previously instituted and also on account of an erroneous record in the record-of-rights. The plaintiff on establishment of his title prayed for partition of the family properties which he valued at Rs. 2,500. The plaintiff paid a court fee of Rs. 20 for partition and also paid ad valorem court fee upon the four annas share of the property under partition. It appears that the defendants objected to the trial of the suit by a Subordinate Judge on the ground that the value of the suit both for jurisdiction and for court fees was, u/s 8 of the Suits Valuation Act, triable by a Munsif and not by a Subordinate Judge. The learned Subordinate Judge gave effect to that contention of the defendants and directed that the plaint be returned to be filed in the proper Court. There was an appeal by the plaintiff but on appeal the order of the Subordinate Judge was upheld. Then the plaintiff moved this Court for revision of the order. It was contended by the learned Vakil for the petitioner that as this was a suit for partition the jurisdiction of the Court should be determined by the value of the entire property and not by the value of the share claimed in the suit. It is quite clear that ordinarily a suit for partition is triable by the Court which is competent to try a suit valued at the entire value of the property and not the subject-matter of the share which is to be partitioned. It is not necessary to quote many cases on this point. The case of Bidhata Rai v. Ram Chariter Bat (1907) 12 C. W. N. 37 ; 6 C. L. J 651., the case of Kirty Churn Mitter v. Aunath Nath Deb I. L. R.(1882) Cal. 757. and the case of Lala Bhugwal Sahay v. Rai Pashupati Nath Bose (1906) 10 C. W. N. 565. are authorities which show that it is the entire value of the property which determines jurisdiction and not of the share which the plaintiff claims in the property. Now if it were a simple suit for partition there could be no question that the suit is triable in the present case by the Subordinate Judge and more specially so, as the plaint, as it was presented by the plaintiff, contained a clear statement that the plaintiff was in possession of the property. But it appears in the

present case on the objection of the defendants a question was raised as to whether it was a simple suit for partition or whether it was a suit really for a declaration of the plaintiff''s title and also his rights to joint possession and then a suit for partition when such title and possession are established. The mere fact that in a suit for partition a question as to the title of the plaintiff is raised and it is necessary to determine such a question before a partition can be directed would make no difference to its being a partition suit. In the case of Mohendro Chandra Ganguli v. Ashutosh Ganguli I. L. R(1893) Cal 762, 765., it was held, to quote the words of their Lordships, "It may be that to "decide the question what property is in the possession of one member as a member of a joint family. "other questions will have to be tried, but if the plaintiff is entitled to have the property partitioned upon "a ten-rupee stamp, the fact that the enquiry will be "a long and difficult one does not affect the question "of the stamp that will have to be paid for it." But it seems to us that in the present case, the plaintiff had to establish his title and had to establish his right to joint possession, which was denied before he could seek partition of the property in suit. On that case the position would be as was laid down by their Lordships in the case of Kirty Churn Mitter v. Aunath Nath Deb (1882) I L. B. 8 Calc. 757. that the plaintiff would be bound to pay ad valorem court fee upon the value of the share that he claimed. Sir Richard Garth C. J., in delivering the judgment of the Court said as follows: "If the plaintiff''s suit had "been to recover possession of, or establish his title to, "the shares which he claims in the property, he must "have paid an ad valorem stamp fee upon the value of "that share. But, as I understand, he is already in "possession, of his share, and all that he wants is, to "obtain a partition, which is merely as explained by the "learned Judges in the case of Rajendro Lall Gossami v. "Shama Churn Lahori I. L. R (1879) Cal 188; 4 C. L. R. 417. to change the form of his "enjoyment of the property or in other words to "obtain a divided, instead of an undivided share." Here as I have already stated the suit as originally framed was one in which the plaintiff asserted that he was in possession of the property. Therefore, the plaint, as framed, was clearly one for partition and was unquestionably triable by the Subordinate Judge. It was on the defendant''s plea that the plaintiff was not in possession and that it was really an attempt to establish title and then to obtain possession by partition, that the plaintiff has paid court fee ad valorem on the value of his share. Therefore, it seems to us that so far as the court fees are concerned all that could possibly be demanded has been paid by the plaintiff. Then a question arises whether the case is to be tried by the Subordinate Judge or by the Munsif. In our opinion, the Munsif would have no jurisdiction to entertain the suit so far as the claim for partition is concerned. It has never been doubted that a plaintiff can, in a partition suit, if necessary, establish his title and his right to joint possession and then, if his title is good, demand in the same suit possession, not joint possession, but possession by partition. If this is so, the jurisdiction of the Court would be determined by the value of the entire property which is sought to be partitioned. It was contended by the learned Vakil showing cause as has also been held by the Courts below that where an ad valorom court-fee is paid under Schedule 2, Article

17, Clause 6 of the Court Fees Act the jurisdiction of the Court according to the Civil Suits Valuation Act, Section 8, would be the same as the valuation for the court fees. That undoubtedly would be so, where the suit is of a simple character and of the character contemplated by that article of the Court Fees Act. But where the suit is not a simple suit contemplated by that article but is a suit for partition then the article applicable would be 17, Clause 6. Therefore in a case like this, in our opinion Section 8 of the Civil Suits Valuation Act has no application. We think, therefore, that the learned Subordinate Judge erroneously refused jurisdiction to try the suit. The learned vakil for the opposite party argued that assuming that the Subordinate Judge and the District Judge were wrong it is not a case in which we should interfere in our revisional jurisdiction. We think that it is a fit case in which the Court not only ought but should interfere in revision. It may be conceded that ordinarily this Court does not interfere with interloctuory orders in a suit. But the, cases show that in a fit case this Court would interfere. In the case of Rai Yatindra Nath Chaudhury v. Rai Hari Charan Chaudhuri (1914) 20 C. L. J. 426. Mr. Justice Mookerjee in dealing with an objection similar to the one now raised by the learned vakil said as follows: "We may add that it was "faintly suggested on behalf of the opposite party that "this Court is not competent to grant relief, even if "satisfied that the order of the Subordinate Judge is "erroneous and unjust. We are not prepared to take "such a restricted view of the jurisdiction of this "Court to grant relief, in the exercise either of our "revisional powers or the power of superintendence "vested in this Court by the Indian High Courts Act, "1861. Instances are by no means rare where in "very exceptional cases this Court has interfered and "set matters right by the reversal of interlocutory "orders" and their Lordships referred to a number of cases in support of that view. But in the present case there is a further distinction in favour of our interference in these proceedings. It appears that the result of the decision of the learned Subordinate Judge resulted in his refusal to entertain and try the suit and although a preliminary question as to whether the Court has jurisdiction or not was a question which had to be determined by interpreting certain sections of the Court Fees Act and of the Civil Courts Jurisdiction Act still the result of that decision is either exercise or refusal of jurisdiction. In this view, I am supported by clear authority in the case of Shew Prosad Bungshidhur v. Sam Chander Hari-bux I. L. R.(1913) Cal 323, 341., where Mr. Justice Woodroffe in the course of his judgment at page 341 said as follows: "Reference has also been made on this point to a decision: "The Maharaja of Burdwan v. Apurba Krishna "Roy (1911) 15 C. W. N. 872. This was also a case of refusal to exercise "jurisdiction and all that the Court held was that "it was immaterial that such refusal was made upon "a misapprehension of the true effect of the statutory "provision on the subject. This appears to me to be "obvious. The decision rests on the well known "principle that a Judge cannot assume as a matter of "law that which in fact has no existence in law and "so give himself jurisdiction. He cannot by wrongly "determining a question give himself jurisdiction "and in the same way he cannot by a wrong determination of the meaning of the statute deprive "himself of the jurisdiction which properly belong "to him, and if he

refuses jurisdiction in such a case "the High Court may interfere whether the question "has been rightly or wrongly decided by him." This is exactly the case here. The Courts below, as I have already stated, upon an erroneous interpretation of the provision of the Court Fees Act and also Civil Courts Jurisdiction Act came to a wrong conclusion that the suit was not triable by the Subordinate Judge. We think, therefore, that this is a case in which this Court should interfere and accordingly we make this rule absolute with costs, set aside the orders of the Subordinate Judge as affirmed by the District Judge and direct that the case be tried by the Subordinate Judge in accordance with law.

Greaves J.

3. I agree.