

Rajani Kanta Bag Vs Rajabala Dasi

None

Court: Calcutta High Court

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 interlocutory 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.