AIR 1925 Cal 1032

Calcutta High Court

Case No: None

Wajudi Pramanik		APPELLANT
	Vs	
Mahomed Balai Morul		RESPONDENT

Date of Decision: Feb. 27, 1924

Citation: AIR 1925 Cal 1032

Judgement

1. The suit out of which this appeal arises was one for rent valued at Re. 9-11-0 which the plaintiff claimed from the defendant as landlord in respect of 4-annas share of the property. The defence was first that the plaintiff was not entitled to maintain the suit in the absence of other persons interested in the 4-annas, share claimed by him, and secondly, because there had been no separate collection of the plaintiff"s share of the rent. The learned Munsif gave effect to both these pleas. He found that there wore other brothers and their heirs who were interested in the 4-annas share claimed by the plaintiff, and that there had been no separate collection of the plaintiff"s share of the rent. He accordingly dismissed the suit. There was an appeal by the plaintiff and the learned Subordinate Judge reversed that decision. The learned Judge was of opinion that the plaintiff and the pro forma defendants were the only persons interested in the 4-annas share and that the plaintiff had succeeded in showing by both oral and documentary evidence that the collection in the 4-annas share was separate. As a result of these findings he decreed the plaintiff"s suit. This second appeal has been preferred to this Court mainly on the ground that no appeal lay to the Court of first appeal inasmuch as the officer who tried the suit was specially empowered u/s 153-B, Bengal Tenancy Act. This allegation has not been controverted by the respondent; but two preliminary objections have been taken by him with reference to this appeal.

2. It is contended that as there was no appeal to the lower Appellate Court, according to the appellant"s own showing, a second appeal to this Court was incompetent. This point has been before this Court on many occasions, and it is now settled that if the Court of appeal below entertains an appeal which it has no jurisdiction to do, an appeal will lie from the decree of that Court: Gangadhar Karmokar v. Shekharbashini Dasya (1916) 24

C.L.J. 235 and Bondi Ram Mookerjee v. Purna Chandra Roy (1918) 45 Cal. 926. This view is also consonant with common-sense. If a Court assumes jurisdiction (I purposely avoid the expression " usurps jurisdiction ") over a matter over which it has no jurisdiction and passes a decree either in the suit or in appeal, and that decree is open to appeal under the ordinary law, no objection can be taken to an appeal from that decree on the ground that the Court below had no jurisdiction to try the matter; because an appeal may lie to a higher Court on the sole question of jurisdiction. The hold otherwise would mean that the judgment of a Court which has no jurisdiction would remain in force and have the same effect as that of a Court of competent jurisdiction. We are therefore of opinion that conceding that no appeal lay to the lower appellate Court in this case, a second appeal to this Court is maintainable on the ground that the order passed by the lower Appellate Court is without jurisdiction.

3. We then come to the more important question in the case, namely, whether an appeal lay from the decision of the Munsif; that is, whether the Munsif decided any question relating to title to land or to some interest in land as between parties having conflicting claims thereto or as to the amount of rent annually payable by the tenant. No question of title has been raised in this case by parties with conflicting claims. The point left, therefore, for consideration is whether the question of the amount of rent annually payable by a tenant was determined. As we have observed, there is no dispute with regard to the rent payable in respect of the entire holding, nor is there any question of the amount of rent payable to the plaintiff- it being established that the plaintiff has a right to the 4-annas share of the rent. The only objections to the plaintiff"s right to recover rent were that the plaintiff had other co-sharers and so the suit was bad for defect of parties and that there was no separate collection. None of these grounds, in our opinion, comes within the exception to the rule that in a suit for rent below a certain value no appeal lies. It is argued on the authority of the decisions in the cases of Narain Mahton v. Manofi Pattuk (1890) 17 Cal. 489 and Sudhanya Santra and Another Vs. Basanta Kumar Sircar and Another, , that the present case is covered by the principle laid down in those cases. We think that these cases are distinguishable from the present one. In the Full Bench case of Narain Mahton v. Manofi Pattuk (1890) 17 Cal. 489 , the plaintiff brought a suit for rent claiming a certain share in the property. The defendant stated that the plaintiff"s share was not what it was alleged to be but much less. The effect of the defence, was that the plaintiff was not entitled to recover the amount claimed by him as rent but that he was entitled to recover a sum less than the sum claimed by him. The Full Bench was of opinion that the question of the amount of rent annually payable by a tenant was in issue. The whole controversy turned upon the meaning of the expression " amount of rent annually payable." On one side, it was argued that the expression meant the amount of rent annually payable in respect of the entire tenancy. It was contended, on the other hand, that the expression referred to the amount of rent annually payable by the defendant to the plaintiff. To the same effect is the decision in the case of Sudhanya Santra and Another Vs. Basanta Kumar Sircar and Another, . In that case the plaintiff brought a suit for the entire rent on the allegation that he was entitled as landlord to the

extent of 6-annas 8-gandas share and in the rest he had acquired an ijara lease from the other co-sharers. The defendant admitted the extent of the plaintiff"s share as landlord but denied the existence of the ijara lease. It is clear, therefore, that the question raised in that case was whether the plaintiff was entitled to recover the entire rent or rent in respect of 6-annas 8-gandas share only. It was held that as it was a case for the determination of the question of the amount of rent annually payable to the plaintiff an: appeal lay to the lower appellate Court. These cases, therefore, are no authority for the proposition urged by the learned vakil for the respondent. If the decree of the First Court had decided that the plaintiff is not entitled to the 4-annas share claimed by him but to a smaller share, an appeal would probably have laid on the authority of the cases above cited. We accordingly hold that the appeal laid to the lower appellate Court was incompetent.

4. The second objection taken to hearing of this appeal is that the pro forma respondents were not made parties to the appeal. It appears that they were mentioned as parties in the memorandum of appeal, but no steps were taken by the appellant to secure their proper representation. We do not think that, in the peculiar circumstances of this case, this objection should be allowed to prevail. The suit was brought by the plaintiff alone impleading certain persons as pro forma defendants who, it is said, were the heirs of one Araj who was the only other person interested in the 4-annas share claimed by him. These defendants applied to be made plaintiffs but their application was rejected. The suit was dismissed and the plaintiff alone appealed. The pro forma defendants did not question the correctness of the order made by the Munsif refusing their application to be made plaintiffs. The appeal succeeded and the plaintiffs suit was decreed. The objection taken by the defendant in this Court is against the maintainability of the plaintiff"s appeal to the lower appellate Court. This is a question in which the pro forma defendants are not interested.

5. We may mention that the appellant has also filed an application u/s 115, C.P.C., and obtained a Rule thereon. As we hold that the lower appellate Court had no jurisdiction to entertain the appeal we can set aside the order of the lower appellate Court in the exercise of the jurisdiction vested in us under that section. But as we are of opinion that the second appeal lies to this Court from the decree of lower appellate Court, it is not necessary to consider this question further.

6. The result is that this appeal is allowed, the decree of the lower appellate Court set aside, and that of the Court of first instance restored with costs in all the Courts.