

(1975) 09 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 84 of 1970

Arjun Ho and Others

APPELLANT

Vs

The Commissioner, Chotanagpur Division and Others

RESPONDENT

Date of Decision : 10-09-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21
Constitution of India, 1950 — Article 14, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : AIR 1976 Patna 149

Hon'ble Judges : Shambhu Prasad Singh, J; S. Ali Ahmad, J

Bench : Division Bench

Advocate : Sanat Kumar Chattopadhyaya, for the Appellant; S.N. Jha, S.C. II, B.P. Pandey, J.C. to S.C. II, Naresh Kumar Sinha, (D.R. Guardian, for minor No. 7), for the Respondent

Final Decision : Dismissed

Judgement

1. This writ application has been filed for quashing orders contained in Annexures 1 and 3 to it. Annexure 1 is an order of Additional Deputy Commissioner, Singhbhum (respondent No. 2) decreeing Kolhan Title Suit No. 43 of 1966 filed by respondents Nos. 3 to 7 in terms of the award of the panches to whom the dispute had been referred. Annexure 3 is the order of the Commissioner of Chotanagpur (respondent No. 1) dismissing the appeal of the petitioners from the aforesaid Judgment of respondent No. 2.

2. The entire ordersheet of the suit has been filed as Annexure 4 along with the rejoinder filed by the petitioners to the counter-affidavit of respondent No. 2. As it appears from the ordersheet, the suit was for declaration of plaintiffs' title to the lands described in Schedule "C" to the plaint and for confirmation of the same or in the alternative, for partition of the lands described in Schedule "B" half and half by metes and bounds. The suit was valued at Rs. 3,000/- for the purposes of jurisdiction, but only a consolidated Court-fee of Rs. 22.50 was paid.

It was filed before respondent No. 2 on 5th of September, 1966. After the plaint was filed the Additional Deputy Commissioner passed the following order :--

"In view of Commissioner"s order in K. M. Appeal 37/66, the suit is adjourned sine die."

It appears that later on, as directed in Memo No. 1348/L dated 10th of September, 1967, the suit was transferred from the Court of the Additional Deputy Commissioner to the Court of Kolhan Superintendent and the records were received by the latter on 19th of June, 1967. On the same date he registered and admitted the plaint and issued summons to the parties to appear before him on a date fixed for the purpose. On 2nd of April, 1968, the suit was dismissed for default, but on the very date, when the parties appeared and the plaintiffs explained the absence, it was restored. The ordersheet dated 3rd of June, 1968 shows that parties prayed to refer the case to the Panchayat for arbitration. The plaintiffs suggested the name of one of the Panches, the defendants of the other and the third name that of the convener was suggested by the Kolhan Superintendent himself. However, the records could not be sent to the Panches as copies of plaint and written statement were not there and the parties were directed to file copies by 18th of June, 1968. On 18th of June, 1968 both parties were absent and the suit was dismissed for default. On the same date a petition for restoration of the suit was filed and notice was issued to the defendant to show cause against restoration by 22nd of July, 1968. The ordersheet of 22nd July, 1968 reads as follows :--

"Plaintiff present. The A. D. C. has to hear such suits now. Send the records to him. Parties to appear there on 20-8-1968."

On 20th of August, 1968, the Magistrate who was incharge of the work of the Additional Deputy Commissioner received the records and issued notice to the defendants to show cause against restoration. On 25th of September, 1968, the Additional Deputy Commissioner heard the petition for restoration and restored the suit. He again asked the parties to file copies of plaint and written statement for sending them to the Panches. On 9th of October, 1968, after the copies of the plaint and written statement were filed, the Additional Deputy Commissioner ordered for sending them to the convener Panch. The award of the Panches was received on 16th of January, 1969. Time was allowed to parties till 11th of March, 1969 for filing objection, if any. The defendants filed an objection on 11th of March, 1969. It was taken up for hearing on 15th of July, 1969. The Additional Deputy Commissioner overruled the objection and accepted the award of the Panches. He also ordered for passing of a decree in terms of the award. It is this order which has been made Annexure 1 to the writ application.

3. Suits filed for Kolhan area in the district of Singhbhum are governed by a set of rules known as Wilkinson"s Rules. According to Rule 20 of these Rules, after a suit is filed the subject-matter may be referred to Panches for arbitration. Mr. S. K. Chattopadhyaya appearing on behalf of the petitioners has in the first place

challenged the vires of these Rules and submitted that as these rules describe a procedure different from procedure followed for suits in other parts of the State, they are ultra vires. The vires of these rules was considered in *Dulichand Khirwal Vs. The State of Bihar and Others*, and again in *Chaturbhuj V. Ahya v. The Deputy Commissioner, Singhbhum*. 1970 PLJR 281 and the Rules were held to be intra vires. Nothing substantial has been placed before us to show that these decisions which are binding upon us are not correct. In the circumstances the contention must be overruled.

4. Mr. Chattopadhyaya has next challenged the vires of the Kolhan Civil Justice (Regulating and Validating) Act, 1966. It appears that under the Wilkinson's Rules the suits were to be heard by the Munsifs or Assistant to the Governor General's Agent, but really they were heard by Kolhan Superintendent or Deputy Commissioner of Singhbhum or an officer authorised by the Deputy Commissioner of Singhbhum. Realising that the hearing of suits by the Kolhan Superintendent or the Deputy Commissioner of Singhbhum or an officer authorised by him was irregular the said Act was passed for validating certain past actions in Kolhan area as well as to regulate the administration of civil justice in that area in future. Though Mr. Chattopadhyaya has challenged the vires of this Act, he has not been able to give any valid reason in support of his contention. This contention of learned counsel for the petitioners, therefore, has also got no substance.

5. Mr. Chattopadhyaya has next argued that when the suit was filed before the Additional Deputy Commissioner he had no jurisdiction to entertain it, nor the Kolhan Superintendent had jurisdiction to entertain the suit as the valuation thereof was Rs. 3,000/-, much above Rs. 300/- the pecuniary limit of the jurisdiction of Kolhan Superintendent. In the circumstances, he contends that all subsequent steps taken in the suit are nullity and without jurisdiction. He has also placed reliance on the decision of a Full Bench of this Court in *Shyam Nandan Sahay and Others Vs. Dhanpati Kuer and Others*, and submitted that according to this decision, the suit if it could not be entertained by the Court before which it was filed, it could not be transferred to another Court and such order of transfer would be illegal. In our opinion, this decision is not of any real help to the petitioners, for, in the instant case, admittedly the Additional Deputy Commissioner had jurisdiction to dispose of the suit on 15th of July, 1969 when he accepted the award and ordered for passing the decree in terms of the award. According to the petitioners, the Additional Deputy Commissioner, Singhbhum, was authorised by the Deputy Commissioner to hear such suits on 28th of December, 1968. According to the respondents, he was authorised by the Deputy Commissioner before 20th of August, 1968. In the writ application itself the petitioners have not made any statement as to the date on which the Additional Deputy Commissioner was authorised by the Deputy Commissioner to hear such suits. It has merely been vaguely stated that he had no jurisdiction to hear the suit. In paragraph 3 of the counter-affidavit filed on behalf of respondent No. 2 it has been categorically stated that the Additional Deputy Commissioner was

authorised by the Deputy Commissioner to hear such suits before 20th of August, 1968. In rejoinder to the counter-affidavit the petitioners have not denied that statement but said in paragraph 7--

"That as would be clear from the records of C. W. J. C. 654 of 1967 decided on 19-12-1969 : 1970 PLJR 108 the authorisation u/s 2 of the Act, by the Deputy Commissioner, in favour of the Addl. Deputy Commissioner was made on the 28th December, 1968."

This averment in the rejoinder is not sufficient for holding that the Additional Deputy Commissioner was not authorised before 20th of August, 1968 as stated in the counter-affidavit of respondent No. 2. The possibility of several Additional Deputy Commissioners being authorised to hear such suits by orders of the Deputy Commissioner on different dates cannot be ruled out and the petitioners cannot rely on an assertion in the aforesaid Judgment in C. W. J. C. 654 of 1967 to show that the Additional Deputy Commissioner who has passed the decree in the present suit was not authorised by the Deputy Commissioner to hear such suits before 28th of December, 1968. Even the order-sheet of the suit filed by the petitioners themselves as Annexure 4 supports the case of the respondent that the Additional Deputy Commissioner was authorised to hear such suits before 20th of August, 1968, for, the order passed by the Kolhan Superintendent on 22nd of July, 1968 shows--

"The A. D. C. has to hear such suits now. Send the records to him."

This indicates that the Additional Deputy Commissioner had been authorised by the Deputy Commissioner to hear such suits before 22nd of July, 1968. After the records were received by the Additional Deputy Commissioner on 20th of August, 1968 on which date he had jurisdiction to entertain and hear the suit, the parties including the petitioners acquiesced in his jurisdiction. They never objected to his hearing the suit on the ground that when the suit was initially filed before him or before the Kolhan Superintendent they had no power to entertain it. In the circumstances of the case the suit shall be deemed to have been properly filed before the Additional Deputy Commissioner on 20th of August, 1968 when the records were received by him on transfer and on which date he had jurisdiction to entertain the suit.

6. In Shyam Nandan Sahay and Others Vs. Dhanpati Kuer and Others, a suit which was valued at Rs. 825/- was filed before Mun-sif 1st Court of Muzaffarpur who had pecuniary jurisdiction to try suits up to the value of Rs. 2,000/-. The defendants filed written statements contesting the suit on various grounds including one of valuation. According to them, the Mun-sif 1st Court had no jurisdiction to try the suit. The suit was transferred by the District Judge, Muzaffarpur to the Court of the Execution Munsif who had pecuniary jurisdiction to try suits up to the value of Rs. 4,000/-. The Execution Munsif held that total value of the suit was Rs. 3,947/8/-. The defendants filed an application before the executing Court stating that it had no power to entertain the plaint and the

transfer of the suit by the District Judge from the 1st Court of Munsif to him was not legal and that could not validate the filing of the plaint. It was prayed that the plaint be returned to the plaintiffs for filing it before proper Court. The Execution Munsif overruled the contention and against that order the defendants came to this Court in Civil Revision. That civil revision application was dismissed by this Court but some observations were made stating that had, on the valuation stated in the plaint itself, the 1st Munsif no jurisdiction to entertain the suit, then the order of transfer would have been invalid. Learned Counsel for the petitioners in the present case before us has relied on those observations. It is remarkable that in that case the defendants moved this Court at once after the Execution Munsif overruled their contention and they did not acquiesce in his jurisdiction, but, as already stated, in the present case, the petitioners never objected to the jurisdiction of the Additional Deputy Commissioner after the case was transferred to him and submitted to his jurisdiction. They took the chance and only after the order has gone against them both before that Court and the appellate Court they have come to this Court. On the basis of the aforesaid observations in the Full Bench decision in Shyam Nandan Sahay's case, the petitioners cannot be allowed to challenge the jurisdiction of the Additional Deputy Commissioner.

7. It has been submitted by Mr. Chattopadhyaya that the order of reference to the Panches being by Kolhan Superintendent who had no jurisdiction to try the suit, the award by the Panches was invalid and no decree could be passed on the basis of that award. True it is that on 3rd June, 1968 the Kolhan Superintendent passed an order for referring the case to Panches but really the case was not referred to by him and the records were not sent to the Panches by him. The records were sent to the Panches really by the Additional Deputy Commissioner on 9th of October, 1968 and as found earlier, the Additional Deputy Commissioner had been authorised to hear such suits before that date. Really the reference to Panches was by the Additional Deputy Commissioner and on a date when he had jurisdiction to hear the suit. The reference, therefore, cannot be held to be illegal. If the reference is not illegal, the award has to be held to be valid and the validity of the decree passed on the basis of that award cannot be challenged.

8. Mr. Chattopadhyaya has next urged that the reference to the Panches was invalid as it was in violation of the provisions of Rule 20 of Wilkinson's Rules. According to Rule 20, the Panches are to be selected by the Governor General's Agent or his assistants. In the present case, as it appears from the order-sheet, each party selected one Panch and the third was selected by the Kolhan Superintendent. Mr. Chattopadhyaya, therefore, submits that the selection of the Panches was in violation of Rule 20. But Rule 20 itself further lays down that the selection has not to be made by the Governor General's Agent or his Assistant until the plaintiff, defendant and witnesses have been assembled and the plaintiff and defendant have been permitted to challenge any member of the Panchayat and on giving sufficient reasons for the challenge other person or persons shall

be selected to supply his or their place. The rule, therefore, itself shows that the plaintiff and defendant are to be heard in the matter. So if they were consulted by the Kolhan Superintendent before the Panches were nominated and they themselves selected one Panch each, and did not object to the third Panch being selected by the Kolhan Superintendent, the nomination of the Panches was not made in such a way as to be held illegal and in violation of Rule 20 of the Wilkinson's Rules. When the Additional Deputy Commissioner sent the records of the case to those Panches he shall be deemed to have nominated them and Rule 20 cannot be said to be violated even on that account. We do not, therefore, think that the award in the present case can be held to be invalid on the ground of violation of Rule 20 of the Wilkinson's Rules. While exercising writ jurisdiction we cannot forget that the parties including the petitioners submitted to the jurisdiction of the Panches, appeared before them and placed their cases before them and the petitioners are challenging the validity of the award only after it has gone against them.

9. Mr. Chattopadhyaya has lastly submitted that there was an order u/s 145 of the Code of Criminal Procedure declaring the petitioners to be in possession of the property in dispute and the Panches could not give an award giving possession of half of the property to the plaintiffs. We are not able to appreciate this contention. Such contingency may arise in each and every suit which is filed after an order u/s 145 of the Code of Criminal Procedure is passed and it cannot be said that in such cases a reference to arbitration and subsequent award, if the award involves question of possession, is invalid.

10. In the result, we find no merit in the application and it is accordingly dismissed, but, in the circumstances of the case, without costs.

11. Before parting with the judgment we wish to record our appreciation of the fact that Mr. Chattopadhyaya was fully ready with the facts of the case and he placed it as well as any other person could have done.