
(2015) 04 DEL CK 0045
In the Delhi High Court
Case No : CS (OS) 2192 of 2006

Ashok Rekhi

APPELLANT

Vs

Chanda Bhasin and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5, 116, 120, 14, 16

Citation : (2015) 04 DEL CK 0045

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : T.K. Ganju, Senior Advocate, Aquib Ali, Manik Ahluwalia and Abhishek Bhardwaj, for the Appellant

Final Decision : Dismissed

Judgement

Manmohan, J.—Present application has been filed under order 14 Rule 5 for framing of an additional issue. The additional issue sought to be framed is as under:-

"Whether this Court has no territorial jurisdiction to entertain the present suit in so far as the immovable property i.e. 2840 sq. ft. of land forming part of the Emily Cottage, Ayar Patta, Mallital, Nainital, Uttranchal as detailed in para No. 7 read with 11(c) of the plaint is concerned, being situated outside its territorial jurisdiction? OPD-5"

2. Mr. V.K. Gupta, learned senior counsel for defendant No. 5 submits that this Court has no territorial jurisdiction to entertain the present suit with regard to property situated in Nainital as it is located outside this Court's territorial jurisdiction. He submits that by virtue of Section 120 of the Code of Civil Procedure, Section 17 of CPC which vests extra-territorial jurisdiction in the Civil Courts is not applicable to the High Courts in exercise of their original civil jurisdiction. In support of his submission he relies upon the judgments of the Supreme Court in Jindal Vijayanagar Steel (JSW Steel Ltd.) Vs. Jindal Praxair

Oxygen Company Ltd., (2006) 3 ARBLR 340 : (2006) 134 CompCas 119 : (2006) 8 JT 230 : (2006) 8 SCALE 668 : (2006) 11 SCC 521 : (2006) 5 SCR 579 Supp and Food Corporation of India Vs. M/s. Evdomen Corporation, AIR 1999 SC 2352 : (1999) 2 ARBLR 220 : (1999) 1 JT 506 : (1999) 1 SCALE 503 : (1999) 2 SCC 446 : (1999) 2 UJ 899 : (1999) AIRSCW 2454 : (1999) 2 Supreme 121 .

3. Mr. T.K. Ganju, learned senior counsel for the plaintiff submits that the issue now sought to be raised has already been decided against the defendants by two coordinate Benches of this Court. In support of his submission he relies upon the judgment of this Court in Bishamber Dayal Vs. Ram Pershad, etc., (1981) ILR Delhi 272 and State Bank of India, Delhi Vs. O.P. Gupta and Others, AIR 1979 Delhi 201 .

4. In rejoinder, Mr. Gupta submits that the judgments of this Court are per incuriam as they are contrary to the plain language of Section 120 CPC.

5. Having heard learned senior counsel for the parties, this Court is of the view that the issue now sought to be framed is no longer res integra.

6. The two Supreme Court's judgment relied upon by Mr. Gupta deal with Section 120 of Code of Civil Procedure vis-a-vis clause 12 of the Bombay Letters Patent.

7. The relevant portion of Jindal Vijayanagar Steel (JSW Steel Ltd.) (supra) is reproduced hereinbelow:-

"19. According to Mr. Sundaram, the Bombay High Court has jurisdiction to entertain, try and dispose of the said arbitration petition for the following reasons:

(a) the High Court of Bombay is a Chartered Court under the Letters Patent;

(b) clause 12 of the Letters Patent prescribes the jurisdiction of a Chartered Court;

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22. It is submitted that by Section 120 CPC, various sections of the Code including Section 20 thereof, are made inapplicable to the Chartered High Courts like the Bombay High Court. Therefore, it is submitted that for determining the question of jurisdiction of the Bombay High Court as a Chartered Court, the provisions of Section 20 CPC are inapplicable and that only the provisions of clause 12 of the Letters Patent are applicable.....

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37. The above argument was countered by Mr. C.A. Sundaram under Section 120 CPC, 1908. The provisions of Sections 16, 17 and 20 CPC are inapplicable to Chartered High Courts exercising original civil jurisdiction under the Letters Patent. Section 120 CPC reads as follows:

"120. Provisions not applicable to High Court in original civil jurisdiction."(1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, Sections 16, 17 and 20."

38. Thus for the purpose of determining the original civil jurisdiction of the Bombay High Court, Section 20 CPC, 1908 has been specifically excluded and has no application. Only the provisions of clause 12 of the Letters Patent are required to be considered to determine the jurisdiction of the Hon"ble Bombay High Court.

39. Under clause 12 of the Letters Patent, the Bombay High Court would have jurisdiction to entertain and try an arbitration petition even if no cause of action has arisen within its jurisdiction, provided the respondent has an office at Mumbai.

40. This Court in Food Corporation of India Vs. M/s. Evdomen Corporation, AIR 1999 SC 2352 : (1999) 2 ARBLR 220 : (1999) 1 JT 506 : (1999) 1 SCALE 503 : (1999) 2 SCC 446 : (1999) 2 UJ 899 : (1999) AIRSCW 2454 : (1999) 2 Supreme 121 while considering the definition of "Court" under Section 2(c) of the 1940 Act has held that:

(i) jurisdiction of a Chartered High Court is to be determined by clause 12 of the Letters Patent;

(ii) by virtue of Section 120 CPC, 1908, the provisions of Section 20 CPC do not apply to Chartered High Courts (such as Bombay) exercising original civil jurisdiction;

(iii) that under clause 12 of the Letters Patent, the Bombay High Court would have jurisdiction over the subject-matter of arbitration if the respondent has an office in Mumbai, regardless of the fact that no cause of action may have arisen at Mumbai.

By such judgment this Hon"ble Court merely expressed the law as it stands and as is ex facie clear from the applicable statutes/provisions of law."

(emphasis supplied)

8. The same issue was also decided by the Supreme Court in the case of Food Corporation of India (supra). The relevant portion of the said judgment is reproduced hereinbelow:-

"8. However, under Section 120 of the Civil Procedure Code, Sections 16, 17 and 20 of the Civil Procedure Code do not apply to a High Court in the exercise of its original civil jurisdiction. Jurisdiction of the Bombay High Court to entertain a suit under its ordinary original civil jurisdiction is determined by Clause 12 of the Letters Patent of the Bombay High Court. Under Clause 12 of the Letters Patent a place where the defendant, or each of the defendants where they are more than one, at the commencement of the suit, carry on business would be a place where the Court would have jurisdiction. Therefore, under Clause 12 of the Letters

Patent of the Bombay High Court, the Bombay High Court would have jurisdiction over the subject-matter of the dispute in the present case because the appellant does carry on business in Bombay."

(emphasis supplied)

9. This Court is further in agreement with the learned senior counsel for the plaintiff that the argument raised in the present application has been decided by two coordinate Benches of this Court. The relevant portion of the judgment of State Bank of India, Delhi (Supra) is reproduced hereinbelow:-

"6..... The learned counsel for the plaintiff contended that under S. 120 of the Civil P.C. SS. 16, 17 and 20 of the Civil P.C. are not applicable to the High Courts in exercise of the original civil jurisdiction. The Division Bench of this Court in Suit No. 51 of 1968 in Re. State Bank of India v. Himalayan Exporters by judgement dated 20th Nov. 1970 has held that Section 120 of the Code cannot be read to exclude the applicability of SS. 16, 17, and 20 of the Code to this court in exercise of its original civil jurisdiction. It was observed that amendment introduced in the heading of Part IX and S. 116 of the Code by S. 14 of the Civil P.C. Amendment Act 2 of 1951 has the result of excluding the application of Sections 16, 17 and 20 of the Code to the three High Courts at Calcutta, Madras and Bombay which were the only High Courts at that time (1951) exercising ordinary original Civil jurisdiction. The amendment was never contemplated to cover the case of future High Courts. This High Court was established by the Delhi High Court Act 25 of 1966. Sections 16, 17 and 20 of the Civil P.C. in view of this Division Bench judgement are applicable to this Court in the exercise of its ordinary original civil jurisdiction....."

(emphasis supplied)

10. The relevant portion of Bishamber Dayal (Supra) judgment is reproduced hereinbelow:-

"52. There is no dispute that the properties situated in. village Subhana, District Rohtak, are joint Hindu Family properties of the parties. They are liable to be partitioned in equal share between them. In view of the provisions contained in section 17 of the Code of Civil Procedure, this Court has jurisdiction to grant relief with regard to these properties as well. It is clearly envisaged that where a suit is to obtain relief respecting, immovable property situate within the jurisdiction of different Courts, the suit can be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate. "The defendant has referred to section 120 of the Code of Civil Procedure, and pleaded that sections 16, 17 and 20 of the Code are not applicable to the High Court in the exercise of its original civil jurisdiction. This controversy, I find, came up for adjudication twice before this Court. One was in the case of State Bank of India v. Himalayan Exporters (Suit No. 51 of 1968, decided by a Division Bench on 20-11-1970) (7), and the other in State Bank of India, Delhi Vs. O.P. Gupta and Others, AIR 1979 Delhi 201 . It has been held that section 120 of the

Code cannot be read to exclude the applicability of sections 16, 17 and 20 of the Code to this Court in the exercise of its original civil jurisdiction instead that section 120 is applicable to the three High Courts at Calcutta, Madras and Bombay which were the only High Courts at that time exercising ordinary original civil jurisdiction, when the amendment was introduced in the heading of Part IX and section 116 of the Code by section 14 of the Civil P.O., Amendment Act 2 of 1951. The issue is, therefore, decided in the affirmative."

(emphasis supplied)

11. The two Coordinate Benches of this Court in turn rely upon the Division Bench judgment of this Court in *State Bank of India vs. Himalayan Exporters and Ors.* in CS(OS) 51/1968 decided on 20th November, 1970. The relevant portion of the Division Bench judgment in *State Bank of India vs. Himalayan Exporters and Ors.* (supra) is reproduced hereinbelow:-

"At the time when section 120 of the Code was amended in 1951 by deleting reference in Part IX of the Code to "Chartered High Courts", thereby making that part applicable to all the High Courts in the country, it in effect, meant applying the said part only to the three High Courts, at Calcutta, Madras and Bombay, as no other High Court in India at that time exercised ordinary original civil jurisdiction. When, as a result of the said amendment, section 120 of the Code excluded the applicability of sections 16, 17 and 20 to the High Courts, it meant the High Courts of Calcutta, Madras and Bombay alone. It must have been considered appropriate that any High Court which would be given ordinary original civil jurisdiction thereafter, will have to look for guidance in such matters, to the enactment conferring on it such jurisdiction. Section 120 was never expected to include within its scope, a High Court, like the Delhi High Court, which was established thereafter by an Act, which did not specifically make a provision analogous to clause 12 of the Letters Patent of the Calcutta, Madras and Bombay High Courts. Section 120, therefore, cannot be read to exclude the applicability of sections 16, 17 and 20 to the High Court of Delhi, as such a reading would lead to an absurdity; and the determination of jurisdiction of this court would become rather difficult, and a matter for speculation, which never could have been intended. In order, therefore, to avoid absurd result, it is necessary to construe section 120 of the Code as applying only to such courts, which exercised ordinary original civil jurisdiction at the time when the amendment in section 120 was introduced in the year 1951. And we are in respectful agreement with the views of Mr. Justice B.C. Misra to that extent, as expressed by him in *Biasdev's* case, referred to in an earlier part of this judgment.

The position that emerges from the above discussion is that the amendment introduced in Section 120 of the Code in 1951 excluding the applicability of sections 16, 17 and 20 of the Code to the High Courts, had the result of excluding the application of these sections to the three High Courts of Calcutta, Madras and Bombay, which were the only High Courts at that time (1951),

exercising ordinary original civil jurisdiction. The amendment was never contemplated to cover the case of a future High Court about which it was not known at that time, how its jurisdiction would be determined. When the Delhi High Court Act was enacted and by its section 5, ordinary original civil jurisdiction was conferred on this Court, it meant such original civil jurisdiction as was determined by sections 16, 17 and 20, for the expression "original civil jurisdiction" had by then acquired a specific and definite sense in law and which signified such jurisdiction as was determined by the said sections 16, 17 and 20 of the Code. The seeming conflict between this interpretation and the provisions of section 120 of the Code, disappears when it is borne in mind that according to the well known rule of interpretation a general provision must always give way to a specific provision. The same conclusion would be reached by applying the theory of nexus. For, the nexus which a given subject matter must have with the local limits of jurisdiction of this court, must be sufficient nexus; and the sufficiency would be only as determined by sections 16, 17 and 20 of the Code. The same result emerges when rule 19 of Chapter I of the Delhi High Court (Original Side) Rules, 1967 applies the provisions of the Code to all proceedings on the original side of this court without any exception. We are, therefore, of the view that sections 16, 17 and 20 of the Code are applicable to the Delhi High Court. The first part of the question posed to us, therefore, is answered in the affirmative. In view of this the second part of the question does not arise. In the special circumstances of the case, there shall be no order as to costs."

(emphasis supplied)

12. This Court is not impressed by the argument that the three judgments of this Court are per incuriam. This Court is also of the view that if the submission of the learned senior counsel for the defendant No. 5 is accepted it would lead to "strange consequences" inasmuch as Delhi District Courts would be able to deal with properties situated outside Delhi after invoking Sections 16, 17 and 20 of CPC, yet Delhi High Court would not be able to do so. Further, different courts dealing with a claim for partition with regard to shares of the same parties may reach a different conclusion with regard to properties owned by same ancestor.

Consequently, the present application is dismissed, but with no order as to costs.

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The defendant is permitted to file evidence by way of affidavit within a period of six weeks from today.

List the matter before Joint Registrar on 22nd May, 2015.

The date of 5th May, 2015 fixed before the Joint Registrar is cancelled. It is, however, made clear that in the event, the evidence by way of affidavit is not filed within the time prescribed, the right of the defendant to lead evidence would stand closed.