

(1953) 05 PAT CK 0001
In the Patna High Court
Case No : Civil Revision No. 335 of 1953

Bhuwaneshwari Kuer

APPELLANT

Vs

Raghubansh Mani Prasad Narayan Singh and Others

RESPONDENT

Date of Decision : 12-05-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 115, 15

Citation : AIR 1954 Patna 34 : (1953) 1 BLJR 467

Hon'ble Judges : Ramaswami, J;Jamuar, J

Bench : Division Bench

Advocate : Mahabir Prasad, Dilkishore Prasad Singh, S.P. Jamuar, B.D. Singh and M.M. Gajadhar, for the Appellant; Lal Narain Sinha and Lalit Mohan Sharma, for the Respondent

Judgement

1. The question which arises in this case is whether the Additional District Judge of Patna acted with material irregularity in the exercise of his jurisdiction in refusing to return a plaint under the provisions of Order 7, Rule 10, Civil P. C.

2. The suit was instituted by opposite party 1 Raghubansh Mani Prasad Narayan Singh on 20-9-1946 in the Court of the District Judge of Patna. The relief claimed was mainly for taking of accounts from trustees in respect of certain trust properties and for other ancillary reliefs. After the suit was instituted there were proceedings taken by the plaintiff under Order 39, Rule 1, Civil P. C. for restraining the defendants appointed under the deed from) acting as trustees. The matter was heard on merits and on 11-2-1947 the prayer for injunction was refused. An appeal was preferred to the High Court on behalf of the plaintiff against this order. On 23-11-1949, the appeal was heard by the High Court. As the suit had been pending for long the High Court ordered that the suit should be heard before June 1950. In view of this direction of the High Court the appeal was not pressed by the plaintiff. It appears that at a subsequent stage the matter in dispute was referred by an application of the parties to Rai J. for arbitration. The arbitrator heard the parties and perused the documents

produced on their behalf but later on the arbitrator returned the papers to the Court stating that he was unable to complete the arbitration in view of the attitude adopted by the parties. It appears that the plaintiff made an application for appointing a receiver before the District Judge. An objection was raised by the defendant but evidently the parties agreed that the suit itself should be taken up for hearing at an early date.

At this stage the defendant raised the point that the suit ought to have been instituted before the Subordinate Judge and under the provisions of Order 7, Rule 10, Civil P. C., it was the duty of the, Additional District Judge to return the plaint to the plaintiff for being presented before a competent Court. The learned Additional District Judge considered that the provisions of Order 7, Rule 10, Civil P. C. were not imperative and it was a matter of discretion dependent on the facts of each particular case. The learned Additional District Judge took note of the fact that the defendant did not press the objection under Order 7, Rule 10 at an earlier stage in the case. He also considered that to return the plaint at this stage would be highly unjust and improper in view of the order of the High Court dated 23-11-1949, that the suit should be heard by the end of June, 1950, at the latest. He further observed that the parties would be put to great harassment if the plaint was returned at the present stage, on the contrary, there was no prejudice caused to the defendant if the suit was heard in the Court of the Additional District Judge. For all these reasons the learned Additional District Judge refused to return the plaint under the provisions of Order 7, Rule 10, Civil P. C.

3. The submission of the Advocate-General on behalf of the petitioner in this case is that the provisions of Order 7, Rule 10 were imperative and that as soon as learned Additional District Judge came to the conclusion that the Subordinate Judge had jurisdiction to try the suit he ought to have made an order for return of the plaint for being presented to a competent Court. The question turns upon the construction of the language used in Order 7, Rule 10, Civil P. C. and also of the other important provisions enacted in Section 15, Civil P. C., and Section 18, Bengal and Assam Civil Courts Act. Order 7, Rule 10 is in the following terms :

"The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted."

Section 15, Civil P. C. enacts :

"Every suit shall be instituted in the Court of the lowest grade competent to try it."

There is nothing in the language of S. 15 or Order 7, Rule 10 to suggest that the jurisdiction of the Court of the higher grade is ousted. The question of the jurisdiction of the Court of the District Judge is governed not by Section 15 or by Order 7, Rule 10 but by Section 18, Bengal and Assam Civil Courts Act which states :

"Save as otherwise provided by any enactment for the time being in. force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of Section 15. Civil P. C. to all original suits for the time being cognizable by Civil Courts."

It was conceded by the Advocate-General that Section 15 read with Order 7, Rule 10 did not oust the jurisdiction of the Court of the District Judge in trying the suit but the argument of the Advocate-General is that Section 15 and Order 7, Rule 10, impose a bar on the exercise of the jurisdiction of the District Judge in the present case. We are unable to accept this argument It is true that Section 15 is couched in an. imperative form

""Every suit "shall" be instituted in the Court of the lowest grade competent to try it".

But "the section is enacted for the protection of the Courts and the intention of the Legislature is that the Courts of the higher grade should not be overcrowded with judicial work. The word "shall" is, in our opinion, imperative on the suitor and it is not imperative on the Court of the higher grade. The reason is that the object of the statute is the protection of the Courts from overcrowding of judicial work and hence the benefit may be waived by the Court of the higher grade which is not bound to take advantage of it. If Section 15 is construed in the background of the object and scope for which it was enacted, it is clear enough that there is no obligation imposed by the section on the Court of the higher grade to return the plaint for being presented to the Court of the lower grade. It is on the other hand a matter of discretion for the Court of the higher grade either to retain the suit in its own Court or to return it to the plaintiff for being presented before the Court of the lower grade.

But the submission of the Advocate-General is that even if Section 15 does not impose an obligation on the Court, such an obligation is imposed by the language of Order 7, Rule 10 which states that

"the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted."

The submission of the Advocate-General is that Section 15 imposed a duty on the suitor while Order 7, Rule 10 imposed a duty on the Court in the matter of return of plaint. He pointed out in this connection that the language of Order 7, Rule 10 is in imperative form. But there are difficulties in accepting the argument presented by the Advocate-General on behalf of the petitioner. In the first place, Order 7, Rule 10 is merely a machinery for carrying out the object enacted in a substantive body of the Civil Procedure Code. It is obvious therefore that Order 7, Rule 10 must be read in conjunction with the provisions of Section 15 enacted in the body of the Code. For the reasons we have already expressed we think that Order 7, Rule 10 grants a power to the Court of higher grade to return or not to return the plaint for being presented before a Court of lower grade. The power granted by Order 7, Rule 10 is a matter of discretion to be exercised in

accordance with legal principles but there is no duty created by Order 7, Rule 10 imposed on the Court of the higher grade to return the plaint for being presented before the Court of lower grade irrespective of the circumstances of each case. In the view we take as to the construction of Order 7, Rule 10 there is a discretion in the Court of the higher grade to return a plaint to the plaintiff for being presented before the Court of the lower grade and this discretion must be exercised by the Court of the higher grade in accordance with legal principles after considering the facts of the case in hand.

4. The view that we have taken is supported by a Full Bench decision of the Allahabad High Court in -- "Nidhi Lall v. Mazhar Hussain" 7 All 230 (A). It was held by Petheram C. J. in that case that the object of Sections 19 and 20, Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge and Munsif concurrent jurisdiction up to Rs. 1,000 and that Section 15, Civil P. C. was a proviso to Sections 19 and 20. The learned Chief Justice further held that the proviso was for the benefit of the Court of the higher grade, and it was not bound to take advantage of it. At p. 234 Petheram C. J. states :

"The jurisdiction of the Munsif extends to all like suits the value of the subject-matter in dispute in which does not exceed Rs. 1,000. That is to say, up to Rs. 1000 the Munsif and the District Judge or Subordinate Judge have concurrent jurisdiction. Then comes Section 6, which must be read in as a proviso. The section which has been substituted is practically the same. The word "shall" is, in my opinion, imperative on the suitor. The word is used for the purpose of protecting the Courts, The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it. The object of the Legislature is, that the Court of the higher grade shall not be overcrowded with suits. Whenever an Act confers a benefit, the donee may exercise the same or not at his pleasure. The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it. If it does not wish to try the suit, it may refuse to entertain it. If it wishes to retain the suit in its Court, it may do so; it is not bound to refuse to entertain it. Consequently, I am of opinion that the Subordinate Judge had jurisdiction in the present case."

As regards the construction of Section 57(a), Civil P. C. it was also specifically dealt with by Mahmood J. In this connection it is necessary to state that Section 57(a), Civil P. C. of 1882 corresponds to Order 7, Rule 10 Civil P. C. of 1908. It was held by Mahmood J. as a matter of construction that Section 57(a) was merely procedural and did not affect the jurisdiction of the Court and that it simply repeated in another form the rule contained in Section 15. On behalf of the opposite party Mr. Lalnarain Sinha referred to -- Sahabati Gopini Vs. Mangturan Agarwalla, . The actual decision of this case implicitly proceeds upon the principle that Section 15 as also Order 7, Rule 10 are merely matters of procedure and though the provisions are enacted in imperative form there was a discretion vested in the Court of higher grade in the matter of returning the plaint for being presented before the Court of lower grade. In the Calcutta case a

suit was instituted in the Subordinate Judge's Court at Darjeeling. Both parties put in their pleadings; issues were settled and evidence was gone into on both sides. Thereafter the defendant proceeded to argue the case. While the argument was going on an objection was taken that the suit should have been instituted in the Munsif's Court. The learned Subordinate Judge went into the matter and came to the conclusion that the plaint should be returned at that stage to the plaintiff for being presented to the Court of the Munsif at Siliguri.

An appeal was taken against this order to the High Court. It was held by the Division Bench that the order of the Subordinate Judge should be set aside and he should be directed to bring the hearing of the suit to a conclusion and deliver judgment. The same principle underlies the judgment of Mukherjee J. in -- Mohini Mohan Das and Others Vs. Kunjabehari Das and Others, . The learned Judge referred with approval to the decision in 7 All 230 (A)", and proceeded to state as follows:

"Taking the law as laid down above to be correct, the position would be that it was in the discretion of the Subordinate Judge in the present case either to retain the suit in his tile or to return the plaint for presentation to the Court of the lowest grade. We cannot say that in choosing to exercise the discretion in one particular way and not in THE other the learned Subordinate Judge did. exercise a jurisdiction which was not rested in him by law or exercised it in an irregular and improper manner. In exceptional cases, where the hearing of the suit is practically completed and before delivering the judgment the Court returns the plaint to be presented to another Court possibly we might be justified in interfering in the interest of justice, but the present case does not seem to be one of that description."

5. In view of the principle laid down by these authorities it is clear that Section 15, Civil P. C. and Order 7, Rule 10, Civil P. C. are not imperative in their character and that the learned Additional District Judge had a discretion in the present case either to return the plaint or (sic) to return the plaint for being presented to the Court of the Subordinate Judge. It is imposible to accept the argument put forth on behalf of the petitioner that the learned additional District Judge has committed any illegality in the exercise of his jurisdiction.

6. Even if we are wrong in the view that we have taken as to the construction of Section 15 and Order 7 Rule 10, this application must fail on the ground that the petitioner has not shown that the learned Additional District Judge has acted with material irregularity in the exercise of his jurisdiction. The Advocate-General properly conceded that if the suit was retained and tried by the Court of the Additional Judge there will be no prejudice or injury caused to the petitioner. On the other hand, the hearing of the suit would be considerably delayed and there will be harassment accused to the plaintiff if after a delay of six years the Additional District Judge made an order for return of the plaint to be presented to a competent Court. It is difficult to hold therefore, that there is a material irregularity in the exercise of the jurisdiction on the part of the learned Additional

District Judge, and there is no case made out for interference by the High Court in exercise of its revisional jurisdiction.

7. For the reasons we have expressed we think that the rule should be discharged and this application should be dismissed with costs: hearing fee three gold mohars.