
(1990) 07 GAU CK 0023
In the Gauhati High Court
Case No : Civil Revision No. 26 of 1990

Bijoy Kumar Chakraborty	Vs	APPELLANT
State of Tripura & Another		RESPONDENT

Date of Decision : 16-07-1990

Acts Referred:

Citation : (1991) 1 GLR 13

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : K.N.Bhattacharjee, M.K.Dutta, P.Dutta, Advocates appearing for Parties

Judgement

1. This revision petition arises from an order of 16.5.90 of the District Judge Udaipur made in Misc. Appeal No 1 of 1990 dismissing the appeal from an order of the Munsiff Udaipur passed on 6.12.1989 in Misc. Case No 24 of 1989 arising out of Title Suit No 19 of 1989.
2. In Title Suit No 19 of 1989, the plaintiff filed an application for temporary injunction under Order 39, CPC. The learned Munsiff rejected the petition. The order was appealed to the District Judge. The learned District Judge dismissed the appeal. Hence this petition".
3. The reason for refusal of injunction by the courts below" that, under section 9, CPC the Civil Court has no jurisdiction to try the suit, as cognizance the suit is expressly barred by the provisions of the Tripura Public Premises (Eviction of Un authorized Occupants) Act, 1982. The Courts below have decided the question as to the jurisdiction of the Civil Court to try the suit in" an interlocutory matter.
4. The question which arises for consideration is whether a Civil Court can decide its jurisdiction to try a suit in an interlocutory proceeding. It settled that allegations made in the plaint decide the forum. The jurisdiction does not depend upon the defence taken in the written statement. If any authority is required, I may refer to Abdul I a Bin Ali vs. Galappa AIR 1985 SC 577. When a Court

decides that it has no jurisdiction to try a suit, any order passed in the suitor interlocutory proceeding is of no consequence, i.e. after coming to the conclusion that it had no jurisdiction to try the suit, it cannot decide any question affecting right or interest of any party either in the suit or interlocutory proceeding. That apart, if the Court decides its jurisdiction to try the suit in an interlocutory or collateral proceeding, it would affect the maintainability of the suit which was not before it legally for decision on the question of maintainability under section 9, CPC. Therefore, a collateral or interlocutory proceeding the Court cannot decide the question of jurisdiction to try a suit by the Civil Court. It is to be decided in the suit itself.

5. In view of the above discussion the courts below could not decide the question of jurisdiction to try the suit while refusing to grant interlocutory prohibitory injunction. Therefore, the orders of the courts below are liable to be set aside.

6. For the foregoing reasons, the order of the Court below is set aside and the case is sent back to the learned Munsiff Udaipur for decision on the question of jurisdiction to try the suit afresh untrammelled by the observations made by the learned District Judge within a period of one month from the receipt of this order. However, the petitioner Sri Bijoy Kumar Chakraborty shall not be evicted by force.

With the above observation and direction, the petition is allowed and disposed of
No cost.