

(1978) 05 AHC CK 0060

In the Allahabad High Court

Case No : Civil Revision No. 1603 of 1974

Chandra Bhushan Khanna and Others

APPELLANT

Vs

Brij Nandan Singh and Another

RESPONDENT

Date of Decision : 25-05-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21, 9

Citation : AIR 1978 All 459 : (1978) AWC 513

Hon'ble Judges : K.N. Seth, J

Bench : Single Bench

Advocate : S.P. Gupta, for the Appellant; H.S. Joshi, for the Respondent

Final Decision : Allowed

Judgement

K.N. Seth, J.—This revision by the defendants is directed against the order of the learned Additional District Judge decreeing the plaintiff's claim for ejectment in a suit tried as a small cause court suit. The only question pressed for consideration is that the decree passed by the learned Judge is a nullity as the Small Cause Court Judge lacked inherent jurisdiction to try the suit,

2. The suit was originally filed in the court of Munsif, Moradabad, for ejectment of the defendants from the shop in dispute and for recovery of mesne profits and damages. The case set up by the plaintiff was that the shop in dispute was let out to Ram Ratan Lal Khanna, father of defendant applicants No. 1 to 4 and husband of defendant applicant No. 5, on 2-6-1946 for a period of two years. During the continuance of the tenancy, U. P. Act No. III of 1947 came into force and Ram Ratan Lal continued to remain in possession as a tenant of the shop. His tenancy was terminated by a notice dated 5-6-1969. Ram Ratan Lal died on 2-12-1969. It was asserted that since Ram Ratan Lal was only a statutory tenant at the time of his death, no tenancy right devolved on the defendants and they were liable to ejectment and damages for wrongful occupation of the shop. After enforcement of the Uttar Pradesh Civil Laws Amendment Act, 1972 (U. P. Act No. 37 of 1972) the suit was transferred to the Judge Small Causes Court. The trial

court decreed the suit for recovery of mesne profits and damages only. On revision by the plaintiff the learned Additional District Judge granted the relief for ejectment also.

3. The question whether the suit was cognisable by the Judge Small Causes Court depends on the nature of the suit as originally brought and has to be determined on the allegations made in the plaint. On the plaint allegations it is evident that the plaintiff treated the defendants as unauthorised occupants of the shop in question and reliefs for ejectment and recovery of mesne profits and damages were claimed only on that basis. The relevant part of Section 15 of the provincial Small Cause Courts Act, 1887, provides that a Court of Small Causes shall not take cognizance of the suit specified in the second Schedule as suits excepted from the cognizance of a Court of Small Causes. The Second Sch. enumerates the suits excepted from the cognizance of a court of small Causes. Article 4 of the Sch., as it originally stood, excepted a suit for the possession of immovable property or for the recovery of an interest in such property from the cognizance of a Court of Small Causes. By the Uttar Pradesh Civil Laws Amendment Act, 1972. Article 4 has been substituted by the following Article:--

"(4) a suit for the possession of immovable property or for the recovery of an interest in such property, but not including a suit by a lessor for the eviction of a lessee from a building after the determination of his lease, and for the recovery from him of compensation for the use and occupation of that building after such determination of lease.

Explanation-- For the purposes of this Article, the expression "building" means a residential or non-residential roofed structure, and includes any land (including any garden), garages and outhouses, appurtenant to such building, and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof."

4. The Article as it originally stood excepted the jurisdiction of the Court of Small Causes in respect of a suit for the possession of immovable property or for the recovery of an interest in such property. An exception has, however, now been carved out in respect of a suit by a lessor for the eviction of a lessee after the determination of his lease i.e. a suit for possession of immovable property or for the recovery of an interest in such property would be cognizable by a Judge of Small Causes if the suit is not on title but on the basis that a relationship of lessor and lessee existed between the plaintiff and the defendant and that relationship was terminated before the institution of the suit.

5. As noticed earlier, the nature of the suit has to be determined on the allegations made in the plaint. In the present case the plaintiff came to the court on the allegation that the relationship of lessor and lessee, which existed between the plaintiff and Ram Ratan Lal Khanna, was terminated by a valid notice before the latter's death. On the termination of his tenancy he could claim only the protection provided by U. P. Act No. 3 of 1947. On his death, however,

his heirs did not inherit any right or interest in the property as the statutory tenancy rights which Sri Khanna had after the termination of his contractual tenancy was not inheritable. There is no assertion in the plaint that the plaintiff and the defendants stood in the relationship of lessor and lessee at any stage. On the plaint allegation it is obvious that the suit was not cognizable by the Court of Small Causes as envisaged in Article 4 of the second Sch. The suit was rightly instituted in the court of Munsif and its transfer to the Court of Small Causes on the enforcement of U. P. Act No. 37 of 1972 was illegal. It is true that both the parties submitted to the illegal transfer of the suit to the Court of Small Causes and no objection to the jurisdiction of the court was raised either in the trial court or in the revisional court but since the Court of Small Causes lacked inherent jurisdiction to entertain the suit, the acquiescence or even consent of the parties could not confer jurisdiction on it. Acquiescence waiver or consent of the parties may be relevant in objections relating to the pecuniary or territorial jurisdiction of the court but these factors have no relevance where the court lacks inherent jurisdiction. The Privy Council in *Ledgard v. Bull* (1886) 13 Ind App 134) observed as follows:--

"When the Judge has no inherent jurisdiction, over the subject matter of a suit, the parties cannot by their mutual consent, convert it into a proper judicial process, But there are numerous authorities which establish that when, in a cause which the Judge is competent to try, the parties without objection join issue, and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction upon the grounds that there were irregularities in the initial procedure, which if objected to at the time, would have led to the dismissal of the suit."

Jurisdiction cannot be conferred on a court by consent, acquiescence or waiver where there is none nor can it be ousted where it is. Lack of inherent jurisdiction strikes at the very authority of the court to pass any decree, and renders the decree a nullity. Since: the Judge Small Causes lacked inherent jurisdiction to try the present suit, the decree passed by the courts below must be held to be a nullity.

6. Learned counsel for the plaintiff opposite party relying on certain observations in *Bhaiyalal Girdharilal Shrivastava Vs. Tikaram Udaichand Jain*, contended that the decree passed by the learned Additional District Judge could not be held to be a nullity and since no objection to the jurisdiction of the Court of Small Causes was raised at any earlier stage of the case the objection should not be entertained at this stage. The question before the Full Bench was whether the judgment rendered in a suit of small cause nature instituted and tried as a regular suit in contravention of the provisions of Section 16 of the Provincial Small Cause Courts Act was one without jurisdiction and nullity. The majority answered the question in the negative. The rule laid down in that case can be of no assistance to the plaintiff in the present case. The scheme of the Provincial Small Cause Courts Act is that out of the civil suits triable by regular courts all

suits of a civil nature, not excepted from the cognizance of a Court of Small Causes, of a certain valuation shall be cognizable by a Court of Small Causes and by no other court. Where Courts of Small Causes have not been established in any area, all civil suits for that area which could have been tried by a Court of Small Causes will have to be tried by an ordinary court of Munsif as a regular suit. It is, therefore, obvious that the court of Munsif does not lose initial jurisdiction of suits of a civil nature which may otherwise be cognizable by a Court of Small Causes. The regular civil court having jurisdiction over all disputes of a civil nature does not lack inherent jurisdiction to try suits of small cause nature but the converse is not correct. The Court of Small Causes is not competent to, try those suits which are excepted from its jurisdiction and if such suits are tried by such a court its decree would be a nullity on the ground that the court lacked inherent jurisdiction.

7. The observations made in *Manzurul Haq and Another Vs. Hakim Mohsin Ali*, are equally of no assistance to the plaintiff. In that case the question for consideration before the Court was whether the decision given by a Court of Small Causes in a suit for arrears of rent will operate as *res judicata* in a suit filed later in the court of Munsif for the recovery of arrears of rent for a different period and for ejectment. While dealing with this question the majority observed that the Court of small causes is a court of preferential jurisdiction "and not of exclusive jurisdiction" and that it cannot be said that the Civil Court lacks inherent jurisdiction to try suits of the nature specified in Section 15(2) of the Provincial Small Cause Courts Act. In this case the Court was not at all concerned with the question whether the decree passed by a Court of Small Causes in a suit which it was not competent to try could be held to be valid.

8. The rule laid down in *U. K. Seal v. A. B. A. Agamugan Chettyar* (AIR 1938 Rang 35) and *Suresh Chunder Maitra v. Kristo Rangisi Dasi* ILR (1894) 21 Cal 249 for the aforesaid reason, does not apply in the present case. In *Ram Lal v. Kabul Singh* ILR (1903) 25 All 135 this Court rejected the reference on the reasoning that the plea of want of jurisdiction could have been met by facts showing that the want alleged did not exist, and if the other side had had notice, it might have shown that the alleged act was an act of wanton mischief, or some similar kind which would have rebutted the plea of want of jurisdiction. In the case in hand it cannot possibly be disputed that on the plaint allegations the suit was not cognizable by the Court of Small Causes.

9. Learned counsel next contended that this Court would be justified in refusing to exercise its discretion in favour of the applicants on the grounds that the objection relating to the jurisdiction of the courts below was not raised at the initial stage and it has resulted in a prolonged litigation extending over eight years. Reference in this connection was made to *Bisheshwar Prasad Gautam Vs. Dr. R.K. Agarwal*, . The circumstances in which this Court refused to exercise discretion in that case were entirely different and the case cannot be a proper guide in the matter of exercise of discretion in the case of the present nature. In

the circumstances of the present case I feel that refusal to exercise my discretion would not be a sound exercise of judicial discretion in view of the fact that the decree passed by the court below is a nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings as laid down by the Supreme Court in *Kiran Singh and Others Vs. Chaman Paswan and Others*, .

10. I accordingly allow the revision, set aside the decree of the courts below and direct that the record be sent to the court of Munsif. Moradabad, who shall re-register the suit at its original number and try it afresh in accordance with law. Parties shall bear their own costs throughout.