

(1954) 03 AHC CK 0010
In the Allahabad High Court
Case No : Second Appeal No. 2139 of 1953

Debi Sahai	Vs	APPELLANT
Ganga Sahai and Another		RESPONDENT

Date of Decision : 15-03-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 10, 15, 6, 9
Uttar Pradesh Panchayat Raj Act, 1947 — Section 64

Citation : AIR 1954 All 749

Hon'ble Judges : Agarwala, J

Bench : Single Bench

Advocate : Bhagwan Das Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a defendant's appeal arising out of a suit for recovery of a sum of money as the price of a tree which was alleged to have belonged to the plaintiffs and which had been taken away by the defendant-appellant with the intention of committing theft. The suit was filed in the Court of the Munsif. The price of the tree as fixed by the plaintiffs was Rs. 100/- only. The defendant objected that the suit was cognizable by the Panchayati Adalat under the U. P. Panchayat Raj Act. Thereupon the plaintiffs-respondents made an application for amendment of the plaint saying that the valuation of the tree was Rs. 110/- and an amendment may be made accordingly in the plaint. This application was contested by the defendant-appellant, and it was rejected by the Munsif. After the rejection of the application, the plaint was bound to be returned to the plaintiffs for presentation to the proper Court, and it was so returned.

2. After the plaint was returned to the plaintiffs-respondents, they themselves amended the valuation, of the suit in the original plaint by altering the figure of Rs. 100/- into Rs. 110/- and represented it to the Munsif. The plaint was registered as a suit. It is not clear whether the defendant raised the plea that the suit was not triable by the Munsif because it was triable by the Panchayati

Adalat. There was an issue, however, whether the suit was triable by the Munsif; and the judgment merely says that the issue had been decided in the affirmative on a previous date. We will, however, assume that the issue was raised as to whether that suit was not cognizable by the trial Court because it was triable by the Pancha yati Adalat.

3. The suit was decreed by the Munsif, and the plaintiffs were held entitled to Rs. 80/- from the defendant. The defendant appealed to the lower appellate court and raised two points before that Court. First, whether after the abolition of the zamindari the plaintiffs had any interest left in the tree, and second, whether the trial Court had any jurisdiction to try the suit. The Court below decided both the points against the defendant, and dismissed the appeal. Against this decree the defendant has come up in appeal to this Court, and the only point raised before me is whether the Munsif had jurisdiction to entertain the suit.

4. It is urged that once the plaint was returned for presentation to the proper Court, it was not open to the plaintiffs to represent the plaint after correcting the valuation themselves outside the Court. It is argued that if this were allowed to be done, it would be an abuse of the process of the Court. It has been suggested that the proper remedy for the plaintiffs was to appeal against the order directing the return of the plaint.

5. In my opinion the contention has no force. The Court's previous order that the plaint be returned for presentation to the proper Court was on the basis of the plaint as it stood before the Court. The suit was valued at Rs. 100/-. Under the U.P. Panchayat Raj Act the suit was cognizable by the Panchayati Adalat. The Munsif had, therefore, no jurisdiction to entertain the plaint as it was at that time. No appeal lay against the order on the application for amendment of the plaint. An appeal could only lie against the order directing that the plaint be returned for presentation to the proper Court.

This appeal would have failed because admittedly the plaint, as it stood at that time, was not cognizable by the Munsif. It may be open to question whether the Munsif had jurisdiction, on the plaint as it stood, to amend it. However that may be, assuming that the Munsif had jurisdiction to amend it, the fact remains that he dismissed the application for amendment. This was entirely a matter for his discretion, and in the appeal that might have been presented against the order directing the return of the plaint to the proper Court, the appellate Court was not bound to interfere with the order rejecting the application for amendment.

6. After the plaint had been returned to the plaintiffs there is no rule of law preventing them from altering the valuation mentioned in the plaint so as to bring it within the jurisdiction of the Munsif. In -- Deokinandan Pandey Vs. Ram Chandra Tewari and Others, --it was observed: "Assuming that the plaint, as originally filed, disclosed a suit not cognizable by the civil Court, and assuming also that the amendment would have made it cognizable by such a Court, it was open to the plaintiff to amend it as soon as it, was returned to him for

presentation to the proper Court and to represent it in the same Court which was bound to entertain it, as ex hypothesi the suit would have become one which the civil Court was competent to decide."

7. The plaint, as amended by them outside the Court, could be presented to the Court which would have taken cognizance of the plaint as so amended. As amended, the valuation was Rs. 110/-, and the plaint was not cognizable by the Panchayati Adalat. It was cognizable by the Munsif. The Munsif alone had jurisdiction to entertain it and he entertained it correctly.

8. There is no question of an abuse of the process of Court involved in the case, seeing that under the law the plaintiffs are not prevented from amending the plaint which had been returned to them and to represent it to the Court which would have jurisdiction to entertain the amended plaint.

9. It was urged that the Courts below found that the value of the trees was only Rs. 80/-, and that on this finding the suit was not cognizable by the Munsif but was cognizable by the Panchayati Adalat. This contention also has no force. The jurisdiction of a Court to entertain a suit is to be determined by the allegations made in the plaint and not by the result of the suit. The valuation fixed in the plaint, as amended, was Rs. 110/-. The suit was cognizable by the Munsif upon the plaint as it was presented. It was wholly immaterial that when the suit was tried the value of the tree was found to be Rs. 80/- and the suit was decreed for Rs. 80/- only.

10. There is no force in this appeal. It is dismissed under Order 41, Rule 11, Civil P. C.