

(1987) 12 GAU CK 0008

In the Gauhati High Court

Case No : Civil Revision No. 329 of 1986

Dhaneswar Das

APPELLANT

Vs

Arun Kumar Buragohain

RESPONDENT

Date of Decision : 03-12-1987

Acts Referred:

Citation : (1988) 1 GLJ 151

Hon'ble Judges : K.N.Saikia, C.J.

Bench : Single Bench

Advocate : T.N.Phukan, S.Medhi, B.Devi, Advocates appearing for Parties

Judgement

1. The defendants petitioners impugn the appellate order of the Assistant District Judge No. 1, Gauhati dated 28.11.86 passed in Misc. Appeal No. 26/86 remanding the case back to the Court below for framing a preliminary issue on the question of jurisdiction on the basis of the pleadings of the parties in the suit for fresh decision on the question of jurisdiction, and setting aside the order of the learned Munsiff dated 23.9.86 passed in Misc. (J) Case No. 47/86 arising out of Title Suit No.140/86.

2. The respondents, as plaintiffs, instituted Title Suit No. 140/86 challenging two orders dated 4.8.86 and 5.8.86 stopping their promotion. Therein they filed application No. 6317/86 which was registered as Misc. (J) Case No. 47/86 praying for injunction against the respondents 9 and 10 herein restraining them from giving effect to those orders dated 4,8.86 and 5.8.86. The learned Munsiff first passed an ex parte ad interim injunction. After the parties appeared the injunction matter was heard and the learned Munsiff found that as the subject matter related to Government service it would fall within the jurisdiction of the Assam Administrative Tribunal and that he had no jurisdiction to try and adjudicate the matter. Accordingly the ad interim injunction was vacated. The Court further ordered :

?The case record be sent to the State Administrative Tribunal for disposal. The

parties concerned are directed to take step there which is the proper and competent authority?.

The plaintiffs took an appeal from that order to the Assistant District Judge No. 1 who by his order dated 28.11.86 in Misc. Appeal No. 26/86 took the view that the ends of justice would be better served if the case was remanded back to the Court below for framing a preliminary issue on the question of jurisdiction on the basis of the pleadings of the parties in the suit. It was further directed that the trial Court, after framing the preliminary issue, i.e. "Whether the civil Court has jurisdiction to try the suit f shall afford reasonable opportunities to the parties. The appeal was accordingly allowed and the case was remanded back for fresh decision on the question of jurisdiction. The order dated 23.9.86 in Misc. (J) Case No.47/86 arising out of Title Suit No.140/86, was set aside. Hence this petition.

3. Mr.T.N. Phukan, the learned counsel for the petitioner, submits that the trial Court by order dated 23.9.86 having held that the Court had no jurisdiction in the service matter and having ordered that the case records be sent to the State Administrative Tribunal for disposal, the learned appellate Court erred in law in sending the case back to the trial Court with the direction to frame a preliminary issue on the question of jurisdiction ; inasmuch as the entire suit having been sent to the Tribunal there was no suit pending before the trial Court.?

4. Mr. S. Medhi, the learned counsel for the respondents, submits that the injunction Court having found that the Civil Court had no jurisdiction could not have dealt with the civil suit and could not have sent the civil suit to the Administrative Tribunal. The injunction Court was not in seisin of the suit itself but only of the injunction matter in the Misc. Judicial Case. Even assuming, Mr. Medhi submits, that the learned Munsiff purported to send the suit itself to the Administrative Tribunal it was within the jurisdiction of the appellate Court to rectify that error and remand the matter to the trial Court to proceed according, to law and as the question of jurisdiction was involved he was within his competence to direct that an issue be framed.

5. Mr. Phukan states that in the suit the defendants already filed written statement taking objection to the jurisdiction and it could have been decided by the trial Court itself had the Munsiff in the injunction order not sent the suit to the Assam Administrative Tribunal.

6. I find force in the submission of Mr. Medhi. It is common knowledge that (the Court in seisin of the injunction matter has no jurisdiction to dispose of the suit itself. If the learned Munsiff, while deciding the Misc. Judicial Case found that the trial Court's jurisdiction was doubtful it would have been open to him to deal with the matter while discussing prima facie case. But it was not within his jurisdiction to dispose of the suit itself either by deciding it either way or by remanding it to any other Court. His jurisdiction was confined to the injunction matter only. On perusal of the order of the learned Munsiff I do not find any clear language to imply that the suit itself was remanded to the Administrative

Tribunal. Mr. Phukan strenuously argued that the case record could not have meant anything else than the record of the suit itself in the context of the discussion made by the learned Munsiff. It is difficult to accept this submission. Be that as it may, even if that was done it was open for the appellate Court to remove that error and set aside that part of the direction, which the learned appellate Court has rightly done in this case. The learned appellate Court is also correct in posing the issue of jurisdiction which could be decided only by the learned trial Court. As such the appellate judgment cannot be said to have suffered from any infirmity meriting interference or making that liable to be interfered within this civil revision. No error, of jurisdiction has been pointed out except submitting that the case having been sent to the Administrative Tribunal the learned appellate Court had no suit before him to remand to the trial Court. In so far as this submission is concerned, it must be observed that as the learned Munsiff could not be said to have been in seisin of the suit itself. Similarly in the miscellaneous appeal against that order the appellate Court also could not be said to have been in seisin of the suit itself. However, sitting in appeal the appellate Court could rectify the errors committed by the trial Court. Therefore, even if the trial Court meant that the entire suit be sent to the Administrative Tribunal that must be regarded as without jurisdiction and the appellate Court could surely set it right.

7. Mr. Phukan next submits that the trial Court itself having no jurisdiction how could it now decide that issue. The answer is obvious. (The trial Court having been in seisin of the suit and the defendants"" having filed written statement it is the Court itself that has jurisdiction to decide whether it has jurisdiction or not. The trial Court, therefore, has jurisdiction to decide whether it has jurisdiction or not to decide the suit in its seisin. The impugned appellate order cannot, therefore, be interfered with This civil revision is accordingly found to be without merit and it is rejected, The parties are however, left to bear their own costs?)

8. Mr. Phukan prays that the suit should be decided expeditiously. I agree. As the suit was instituted in 1986 and has not proceeded far, let the learned trial Court frame the issue as directed and decide it as expeditiously as possible, preferably within a period of two months from today, with the cooperation of the parties.

Sd/

Chief Justice