
(1972) 12 AHC CK 0046
In the Allahabad High Court
Case No : C.R. No. 180 of 1970

Ganga Singh

APPELLANT

Vs

Dharam Pal

RESPONDENT

Date of Decision : 21-12-1972

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 89, 89(2)(d)

Citation : (1973) 43 AWR 234

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : Bhawani Prasad, for the Appellant; Lalta Prasad for opp. party., for the Respondent

Final Decision : Dismissed

Judgement

Hari Swarup, J.—This revision has been filed against the appellate order arising out of a suit originally filed before a Nyaya Panchayat. The Plaintiff had filed a suit for the recovery of a sum of Rs. 500/- from the Plaintiff. The Nyaya Panchayat decreed the suit. Against that a revision was filed and the Munsif Etah by his order dated 16-11-1968 allowed the revision and transferred the case from Nyaya Panchayat Songra to the court of Addl. Munsif, Etah, for disposal according to law. Subsequently, he himself being the Munsif Etah tried the suit. The learned Munsif held that the Plaintiff had failed to prove its case and the "Bahi" which he had relied upon was a document manufactured only for the purposes of the case. He, accordingly, dismissed the Plaintiff's suit and directed a notice to issue to the Plaintiff to show cause as to why he be not prosecuted for producing Bahi in evidence knowing that to be false and fabricated. Against this decree and the order of the Munsif the Plaintiff filed an appeal. Appeal was, also dismissed. Now the Plaintiff has come up in revision.

2. Learned counsel for the Applicant contended that the Munsif had no jurisdiction to decide he suit as an original suit after taking evidence in the matter. He further contended that the order directing the issue of notice to the

Plaintiff to show cause as to why he be not prosecuted is not expedient in the circumstances of the case.

3. Coming to the first point, Section 89(2)(d) read with Clause (a) shows that the Munsif had power after quashing the decree to try the case himself or transfer it to another court. This was done by an order dated 2-3-1968. That order has become final. The Munsif had thus jurisdiction to try the case himself. Trial of a case means the taking of evidence and deciding it after hearing arguments of the parties. Trial of a case cannot mean mere decision on the evidence that may have been recorded by another authority in the present case by the Nyaya Panchayat. When the Munsif is given, power to try the case himself it means he should try the case as a suit instituted in his court. That is the effect of quashing the decree of the Nyaya Panchayat and withdrawal of the case to himself for trial.

4. Learned Counsel then contended that the appeal was not maintainable as the decree had been passed by the Munsif as persona designate and not as a court. In the case of Tika Ram v. Naubat 1970 AWR 237 a Division Bench of this Court has held that to Section 89 of the U.P. Panchayat Raj Act the Munsif while trying a suit acts as a civil court and the order finally passed by him is a decree appealable within the meaning of the CPC and hence appealable. The decree passed in appeal has not been shown to suffer from any error of jurisdiction so as to make it amenable to consideration on merits in the revisional jurisdiction of this Court.

5. As regards the issue of the notice to show cause why the Plaintiff be not prosecuted, learned Counsel contended that no such power is given under the U.P. Panchayat Raj Act to the Munsif. This contention again is based on the presumption that the Munsif acts not as a court but as a persona designate. In view of the case of Tika Ram (Supra) it has to be held that the Munsif while trying the suit acts as a Civil Court. If he acts as a Civil Court he has jurisdiction to take proceedings where false or fabricated evidence is deliberately led.

6. As regards the propriety or expediency of taking action the point had been canvassed before the appellate court. The appellate court has considered the matter in detail and after considering the material has recorded a finding to the following effect:

I also feel that the Plaintiff manufactured the Bahi in suit intending to use it in support of his case. Therefore, it is expedient that the man be prosecuted for intentionally fabricating false evidence for the purposes of being used in the suit in support of his claim.

7. The Civil Judge had jurisdiction to arrive at this finding. He has done so on the material available to him. It depends upon appreciation of evidence and suffers from no error of jurisdiction. It cannot thus be interfered with in revision,

8. In the result the revision fails and is dismissed. In the circumstances of the case, parties are directed to bear their own costs.