

(1952) 03 GAU CK 0009
In the Gauhati High Court
Case No : First Appeal No. 8 of 1950

Giridharilal Surana

APPELLANT

Vs

Mirzamal Agarwalla

RESPONDENT

Date of Decision : 03-03-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 18
Constitution of India, 1950 — Article 372

Citation : AIR 1952 Guw 95

Hon'ble Judges : T.V. Thadani, C.J; Ram Labhaya, J

Bench : Division Bench

Advocate : K.P. Bhattacharjee, for the Appellant; S.M. Lahiri, M.N. Roy and J.C. Goswami, for the Respondent

Final Decision : Allowed

Judgement

Ram Labhaya, J.—This order shall be read in continuation of this Court's order of remand dated 9-2-1951.

2. By the order of remand, the learned Subordinate Judge was directed to give a finding on the question whether the house in suit is situated within the limits of the territorial jurisdiction of the Subordinate Judge, Shillong. He has answered the question in the affirmative.

3. The Learned Counsel for the defendant-appellant has contended that the finding is opposed to incontrovertible evidence that was produced on behalf of the defendant-appellant. He points out that according to the statement of D.W. 2 relied on by the learned Subordinate Judge the house-in suit was situated within a locality commonly known as Goalpatty which is included in the "Shillong administered area." the correctness of this statement of fact is not disputed even now by the Learned Counsel for plaintiff-respondent. The situation of the house is known. It lies within the limits of the "Shillong Administered Areas." the question of jurisdiction thus resolves itself into. The simple question whether the learned Subordinate Judge who heard and disposed of the suit out of which the

appeal has arisen had jurisdiction in the "Shillong Administered Areas".

4. The Learned Counsel for defendant-appellant has referred us to Notification No. SK/40/48/83 dated 1st June 1949 by which the Khasi State (Application of laws) Order, 1949 promulgated by the Governor of Assam was notified. Section 2 (a) of this Order defines "Shillong Administered Areas". The order also enumerates all Acts that apply to the Khasi States or the "Shillong Administered Areas", which are part of the Khasi States. The Learned Counsel points out that the administration of justice in the Khasi States is regulated by the Khasi States (Administration of Justice) Order, 1950. The Order was promulgated by the Governor of Assam, in the exercise of the powers conferred on him by S. 4 of the Extra Provincial Jurisdiction Act, 1947 (XLVII (47) of 1947) as delegated to him by the Government of India in the Ministry of States.

Section 18 of the Order entrusts the administration of Civil Justice to the Deputy Commissioner, Additional Deputy Commissioner, Assistants to the Deputy Commissioner and the Courts of the Siems. The Subordinate Judge of Shillong has therefore no jurisdiction in the locality which is known as "Shillong Administered areas". The Order when read with Notification No. SK/140/49/9 dated 25th January, 1950 would show that by order of the Governor of Assam, references to the "Dominion Agent Khasi States", "Additional Dominion Agent, Khasi States," "Assistant to Dominion Agent, Khasi States" and the "Court of the Khasi State Federation" wherever they occurred in all enactments applicable to the Khasi States or the "Shillong Administered Areas" under the Extra-Provincial Jurisdiction Act, 1947, were to be construed as, referring respectively to the "Deputy Commissioner, Khasi and Jaintia Hills District", "Additional Deputy Commissioner, Khasi and Jaintia Hills District", "Assistant to the Deputy Commissioner, Khasi and Jaintia Hills District", and the "Court of the Deputy Commissioner, Khasi and Jaintia Hills District".

5. There can in these circumstances be no manner of doubt that the officers mentioned in S. 18 of the Khasi States (Administration of Justice) Order with their altered designations alone are charged with the duty of administering civil justice in the area in which the house in suit is situate.

6. The Constitution of India came into force on 26th January, 1950. The Sixth Schedule to the Constitution contains provisions for the administration of Tribal areas in Assam. These tribal areas include the Khasi and Jaintia Hills District. The provisions contained in Schedule Sixth of the Constitution of India have so far not been given effect to. By virtue of clause (1) of Article 372 of the Constitution of India the Khasi States (Administration of Justice) Order, 1950 still remains in force. It follows that the civil jurisdiction is still vested in the officers mentioned in S. 18 of the Order.

7. Mr. Lahiri, the learned Advocate for plaintiff-respondent has conceded that jurisdiction in the "Administered areas" of Shillong which includes the Goalapatty area where the house is situated, still vests in the officers mentioned in S. 18 of

the Khasi States (Administration of Justice) Order, 1950. The only contention he has raised is that his claim for rent was entertainable by the Subordinate Judge. His argument was that the agreement of lease relating to the house was made at Gauhati within the jurisdiction of the learned Subordinate Judge. This part of the claim he contends is separable from the rest of the claim and therefore even though the learned Subordinate Judge had no jurisdiction to pass any decree in respect of the house which was outside his jurisdiction, he could hear and decide the claim for the rent of the house.

8. This contention should not prevail. It assumes the applicability of the CPC to the area in question though the assumption is not justified. The CPC has not yet been made applicable to the area, though the Courts and officers who exercise jurisdiction by virtue of the provisions contained in the Khasi States (Administration of Justice) Order, have to be guided by the spirit of the Code without prejudice to the local customs and usages governing any party to the case. Granting, however for the purposes of argument that the Learned Counsel may rely on the provisions contained in the CPC for showing that part of the claim was within the jurisdiction of the learned Subordinate Judge, we are quite clear that his contention cannot prevail even under the Civil Procedure Code.

Section 16 of the Code provides that a suit for the recovery of immovable property with or without rent or profit shall be instituted in the Court where the property is situate. The general rule that the Court within the limits of whose jurisdiction a part of the cause of action arises can entertain the suit is not applicable to suit covered by S. 16, C.P.C. unless it can be shown that a particular case is covered by the proviso to the section on which Mr. Lahiri does not rely. The section forbids even claims for rent of immovable property being tried by a Court which has no jurisdiction over the immovable property in question.

The claim for rent therefore also could not have been entertained by the learned Subordinate Judge. He had no jurisdiction to try the suit. As held in the order of remand, the objection is not merely to the lack of territorial jurisdiction in the Court, the learned Subordinate Judge had not only no Jurisdiction in the area; the laws applicable to the "Administered areas" are different. It is thus a case which could have been tried only by officers exercising special powers under a local law. The decree of the Court therefore is entirely without jurisdiction and is liable to reversal.

9. Mr. Lahiri has also tried to support the decree of the Court below on the strength of the provisions contained in S. 18 of the C.P.C. This section has no application to the facts of the case. It was not alleged in the Court of 1st instance that it was not certain within the local limits of which Court the property in question was situate. The learned Subordinate Judge, therefore had no occasion to consider the question from this view point. He did not say that he felt satisfied about the alleged uncertainty as to the situation of the house and did not exercise jurisdiction on the basis of any such satisfaction as S. 18 requires. In

point of fact, no uncertainty exists about the situation of the property in question. We are also quite clear that the trial of the suit under the laws which do not apply to the "Shillong Administered Area" where the house is situate has resulted in a failure of justice. The decree thus is quite unsustainable. This appeal is allowed. The decree of the learned Subordinate Judge is set aside. The records of the case shall be sent back to the Court of the Subordinate Judge with the direction that he shall return the plaint for presentation to a Court of competent jurisdiction.

10. In view of the fact that the objection to jurisdiction which has prevailed with us was raised for the first time in this Court, we leave the parties to bear their own costs throughout.

Thadani, C.J.

11. I agree.