
(1995) 06 AHC CK 0002
In the Allahabad High Court
Case No : C.M.W.P. No. 4223 of 1994

Gopal Ram

APPELLANT

Vs

Mohan Ram and Others

RESPONDENT

Date of Decision : 26-06-1995

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 11, 21

Citation : (1995) 06 AHC CK 0002

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : Vijai Manohar Sahal, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The parties have exchanged affidavits and, therefore, the writ petition is being disposed of finally at the admission stage with the consent of the parties.

2. Mohan Ram, Respondent No. 1, filed Original Suit No. 329 of 1986 in the Court of Munsif, Azamgarh. In the written statement filed by the Petitioner Gopal Ram (Defendant), a plea was raised that the suit had been undervalued and the court fee paid was Insufficient. The learned Munsif, Azamgarh, decided the issue on 8.11.89 and held that the valuation of the property in dispute was Rs. 25,000. Since the learned Munsif had no pecuniary jurisdiction to hear and decide suits of the valuation of Rs. 25,000, he passed an order dated 4.10.90 directing that the plaint be returned to the Plaintiff for presentation to the proper Court. The State Government, however, issued a notification dated 17.11.88 exercising power u/s 11 of U.P. Land Revenue Act and Section 21 of U.P. General Copal Ram v. Mohan Ram and others Clauses Act cheating a new district of Mau w.e.f. 19.11.88. The property in dispute fell within the territorial limits of newly created district, Mau. Thereafter, the Plaintiff Mohan Ram presented the plaint before the Civil Judge, Mau where it was registered as Suit No. 60/91. The Defendant Gopal Ram filed an objection before the Civil Judge, Mau, that he had no jurisdiction to hear and

decide the suit and the same should have been filed In the Court of Civil Judge, Azamgarh. This objection was repelled by the Civil Judge, Mau, vide order dated 11.5.93 and the revision against the said order was also dismissed by the District Judge, Mau, on 14.12.93. The present petition has been filed for quashing of the aforesaid orders dated 11.5.93 and 14.12.93.

3. Sri V.M. Sahai, learned Counsel for the Petitioner has submitted that as the suit had been Initially filed in the Court of Munsif, Azamgarh, in view of the notification Issued by the State Government on 17.11.88, it was the Court of Civil Judge, Azamgarh alone who had the jurisdiction to hear and decide the suit and the Court of Civil Judge, Mau had no jurisdiction to entertain the suit. Shri S.A. Ansari, learned Counsel for the Plaintiff has, however, submitted that presentation of plaint in the Court of Civil Judge, Mau, after its return by the Munsif, Azamgarh, will, in law, amount to a fresh presentation of plaint and, therefore, in terms of the notification issued by the State Government, the Court of Civil Judge. Azamgarh had no Jurisdiction to hear the suit and the plaint had rightly been presented in the Court of Civil Judge, Mau.

4. The relevant portion of the notification issued by the State Government on 17.11.88 reads as follows:

Nothing in this notification shall affect any legal proceeding already commenced or pending in any Court of law which has hitherto exercised jurisdiction in the said areas.

The question to be considered is that when a Court orders return of a plaint, on account of want of jurisdiction, and the plaint is thereafter presented to any Court, is it a fresh presentation of plaint or not? This question has been considered by several Courts while dealing with the question of limitation and it has been held that where a suit has been instituted in a Court having no Jurisdiction and it Is found necessary to raise a second suit In a Court of proper jurisdiction, the second suit cannot be regarded as a continuation of first even though the subject-matter and the parties to the suit are identical. (See R.S. Navalkar Vs. Mrs. Sarojani Naidu, ; Bimala Prosad Mukerji Vs. Lal Moni Devi and Others, and Gangamoni Devi Vs. Kumud Chandra Mazumdar and Others, . This principle will equally apply to cases where a plaint is returned Under Order VII, Rule 10, Code of CPC and Is represented in the proper Court. In Sri Amar Chand Inani Vs. The Union of India (UOI), , it was held that when a plaint was returned for presentation to the proper Court, the suit can led to be instituted in the proper Court only when the plaint was presented In the Court. It is, therefore, clear that the presentation of the plaint before the Civil Judge, Mau, was not continuation of the suit which had been filed in the Court of Munsif, Azamgarh. Since the order for return of the plaint itself was passed on 4.10.90 and the plaint was presented afresh in the Court of Civil Judge, Mau subsequent thereto which was long after the State Government had issued notification on 17.11.1988 creating new district of Mau, it cannot be held that any legal proceeding had already commenced or were pending In any court at Azamgarh.

Therefore, the Court at Azamgarh had no Jurisdiction to hear and decide the dispute and the plaint had rightly been presented before the Civil Judge, Mau. The objection raised by the Petitioner (Defendant) was clearly frivolous and the same had rightly been rejected by both the Courts below.

5. For the reasons given above, the writ petition lacks merit and is hereby dismissed. The interim order is vacated. In view of the vexatious objection raised by the Plaintiff, the proceedings In the suit have remained stayed for several years, therefore, I award Rs. 500 as costs to the contesting Respondents.