
(1996) 06 MP CK 0009
In the Madhya Pradesh High Court
Case No : S.A. No. 404 of 1989

Harlal Gulla Kachhi and Another	Vs	APPELLANT
Kanchhedilal Kashiram Nema		RESPONDENT

Date of Decision : 25-06-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21, 99
Madhya Pradesh Civil Courts Act, 1958 — Section 6(1)
Suits Valuation Act, 1887 — Section 11

Citation : (1998) 1 MPLJ 115

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : Abhay Sapre, for the Appellant; U.N. Awasthy, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.

This is defendant's second appeal against the judgment and decree dated 29-7-1989, passed in Civil Appeal No. 63-A of 1988 confirming the decree passed by the trial Court.

The relevant facts necessary for the determination of this appeal are as follows :-

The respondent filed a Civil Suit No. 84-A of 1984 in the Court of Civil Judge, Class-I, against the appellant. This suit was for specific performance of the agreement dated 11-8-1994 whereby the appellants agreed to convey a building site of 15" x 40" abutting Khurai-Bina Road to the respondent. The consideration for the sale of the plot was Rs. 19,000/-. Subsequently, the respondent applied for amendment of his plaint claiming that he was entitled to claim Rs. 2,000/- by way of damages for removal of a shutter from the plot by the appellants and also claimed that a decree for demolition of roof on suit plot put by the appellants. The value of second relief was not disclosed. It appears that the trial Court allowed amendment in the plaint and the plaint was accordingly amended. The

respondent did not pay any court-fee on the additional reliefs claimed by him. The suit proceeded as such and a decree for specific performance alone was granted. The same was confirmed in the first appeal. The lower appellate Court has rejected the argument of the appellants that the trial Court did not have pecuniary jurisdiction to try the suit after the amendment in the plaint as the valuation of suit for the purposes of pecuniary jurisdiction went beyond its pecuniary jurisdiction of Rs. 20,000/-. The reasoning given by the lower appellate Court is that since the respondent did not pay any court-fee on the additional reliefs claimed by him, the respondent had impliedly abandoned the reliefs claimed by him and this fact was further proved by the fact that no issue was framed by trial Court on this point. After examining the merits of the case, the lower appellate Court affirmed the decree of the trial Court.

This appeal was admitted by this Court on the following substantial questions of law by order sheet dated 12-2-1990 :- .

- "i. Whether Civil Judge, Class-I, Khurai had the jurisdiction to try the suit? .
- ii. Whether the same Court Civil Judge, Class-I could have allowed the amendment by incorporating the relief in the plaint regarding shutter which was claimed by the plaintiff as belonged to him? .
- iii. Whether the judgment and decree passed by the Court below are according to law?"

The learned counsel for the appellant, Shri Abhay Sapre, has not challenged the decree passed by the lower appellate Court on merits but has confined his argument to jurisdictional aspects of the matter. The learned counsel for the appellant urged that in the State of Madhya Pradesh as per section 6(1)(a) of Madhya Pradesh Civil Courts Act, 1958, a Civil Judge Class-I could try a suit valued upto Rs. 20,000/-. The moment the valuation exceeded to Rs. 20,000/-, the Court had no pecuniary jurisdiction to try the suit. The learned counsel submitted that trial Court had no jurisdiction to grant any amendment as it was obvious that by adding a claim valued at Rs. 21,000/-, its pecuniary jurisdiction was exceeded. The trial Court should have returned the plaint along with the amendment application as its power to grant amendment were limited to the extent of its own pecuniary jurisdiction. The learned counsel for the appellants relied upon a decision of a Division Bench of erstwhile Nagpur High Court whose precedents are binding on this Court because it is the successor Court to Nagpur High Court. The Division Bench case is Lalji Ranchhoddas v. Narrottam Ranchhoddas, 1953 NU 321, AIR 1953 Nag. 273. The learned counsel for the appellants urged that the trial Court tried the suit beyond its pecuniary jurisdiction and, therefore, its decree was null and void. The learned counsel for the appellants argued that the lower appellate Court could not have conferred jurisdiction on trial Court merely because the court-fee was not paid and the issues on the amended reliefs were not framed and also because the trial Court did not pass any decree on the amended reliefs. .

The learned counsel for the respondent, Shri U. N. Awasthy, on the other hand, has filed an application for deleting the relief claimed in the plaint, as LA. No. 1613/96. The learned counsel for the respondent also supported the judgment of the lower appellate Court on the reasoning given by it. .

In the opinion of this Court, the argument raised by the counsel for the appellants can be disposed of even on the supposition that trial Court had wrongly granted a decree beyond its pecuniary jurisdiction. What happens in such a case? Section 11 of Suits Valuation Act, 1887 becomes operative. This section reads as under :- .

"11. Procedure where objection is taken on appeal or revision that a suit or appeal was not property valued for jurisdictional purposes. - (1) Notwithstanding anything in section 578 of the Code of Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a court of first instance or lower Appellate Court which had no jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an Appellate Court unless -

(a) the objection was taken in the court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower Appellate Court in the memorandum of appeal to that court, or .

(b) the Appellate Court is satisfied, for reasons to be recorded by it in writing that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits. (2) If the objection was taken in the manner mentioned in clause (a) of sub-section (i), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the court of first instance or lower Appellate Court.

(3) If the objection was taken in that manner and the Appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to as Appellate Court shall, so far as they can be made applicable, apply to a court exercising revisional jurisdiction u/s 622 of the CPC or other enactment for the time being in force.

(5) This section shall come into force on the first day of July, 1887."

This section thus restricts the jurisdiction of the Court hearing an appeal on merits to limit interference in a decree passed by Court without pecuniary jurisdiction only if it could be shown from record that prejudice on merits has

been caused to the party filing appeal. The Supreme Court, in off cited case of Kiran Singh and Others Vs. Chaman Paswan and Others, has already decided that mere change in forum would cause no prejudice. Dealing with the nature of prejudice, the Supreme Court held in paragraph 15 at page 344 as follows :-

"15. So far, the definition of "prejudice" has been negative in terms - that it cannot be mere change of forum or mere error in the decision on the merits. What then is positively prejudice for the purpose of section 11? That is a question which has agitated Courts in India ever since the enactment of the section. It has been suggested that if there was no proper hearing of the suit or appeal and that had resulted in injustice, that would be prejudice within section 11 of the Suits Valuation Act. Another instance of prejudice is when a suit which ought to have been filed as an original suit is filed as a result of under-valuation on the small cause side. The procedure for trial of suits in the Small Cause Court is summary; there are no provisions for discovery or inspection; evidence is not recorded "in extenso", and there is no right of appeal against its decision. The defendant thus loses the benefit of an elaborate procedure and a right of appeal which he would have had, if the suit had been filed on the original side. It can be said in such a case that the disposal of the suit by the Court of Small Causes has prejudicially affected the merits of the case.

No purpose, however, is served by attempting to enumerate exhaustively all possible cases of prejudice which might come u/s 11 of the Suits Valuation Act. The jurisdiction that is conferred on appellate Courts under that section is an equitable one, to be exercised when there has been an erroneous assumption of jurisdiction by a Subordinate Court as a result of over-valuation or under-valuation and a consequential failure of justice. It is neither possible nor even desirable to define such a jurisdiction closely, or confine it within stated bounds. It can only be prejudicated of it that it is in the nature of a revisional jurisdiction to be exercised with caution and for the ends of justice, whenever the facts and situations call for it. Whether there has been prejudice or not, is, accordingly, a matter to be determined on the facts of each case."

The Legislature has amended section 21 of CPC and has laid down the following conditions for refusing the objection on the ground of pecuniary jurisdiction as per section 21(2). Section 21(2) (ibid) is reproduced as follows :

"21(2) No objection as to competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

Thus, this amended section read with section 99 of the CPC strengthens the view taken earlier by the Supreme Court in Kiran Singh's case (supra). A decree even though it be null and void being beyond pecuniary jurisdiction of the Court which passed it, cannot be attacked on the ground of lack of jurisdiction unless the

conditions mentioned in section 21(2) of the CPC are fulfilled. The Supreme Court in Kiran Singh's case (supra), has held that "consequent failure of justice" is a term which would be at par with the words "causing prejudice" to a party as result of trial beyond jurisdiction. In this case, before me the appeal must fail on both the grounds that the counsel for the appellants was unable to point out that any objection was taken at the earliest stage in the trial Court and that any serious prejudice was caused to appellant when the trial Court tried the suit beyond its pecuniary jurisdiction. In fact, there was no consequent failure of justice. The learned counsel for the appellants almost conceded this point.

Recently, this Court applied principles of law laid down in Kiran Singh's case (supra), and referred to newly amended section 21(2) of the CPC in the case of Brihaspati Bai v. Mohanlal Chintaram Swarnkar, 1994 MPLJ 878. In that case the first appellate Court had directed the return of the plaint to the appellant as the suit was beyond pecuniary jurisdiction of trial Court without recording a finding if any prejudice was caused to the respondent in the trial. This Court set aside the order and remanded the case directing the lower appellate Court to find out if any prejudice was caused to the respondent before directing return of the plaint to the appellant.

For the reasons aforesaid, this appeal fails and is dismissed with costs. Counsel fee in this appeal is fixed at Rs. 300/- (Rupees three hundred)