

(1957) 08 PAT CK 0018
In the Patna High Court
Case No : Misc. Judicial Case No. 707 of 1956

Jaleshar Pandey

APPELLANT

Vs

Lagan Pandey and Others

RESPONDENT

Date of Decision : 14-08-1957

Acts Referred:

Bihar Panchayat Raj Act, 1947 — Section 65
Civil Procedure Code, 1908 (CPC) — Section 21, 9
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1958 Patna 105 : (1957) 5 BLJR 669

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Lala Rajendra Prasad, for the Appellant; A.G., Rameshwar Prasad Sinha and Saptami Jha, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner, Jaleshar Pandey, seeks a writ under Article 226 of the Constitution for quashing the proceedings and the decree made by the Gram Cutcherry in Title Suit No. 1 of 1955 and also for quashing the order of the Full Bench of the Gram Cutcherry made on appeal.

2. The ground for the application is that the suit was with respect to the construction of a house in survey plot No. 534/1209 and the plaintiffs-opposite party had asked for a declaration of their title and recovery of possession of the land. The submission of learned Counsel for the petitioner is that the Gram Cutcherry had no jurisdiction under the Bihar Panchayat Raj Act to hear a suit of this description and, therefore, the proceedings before the Gram Cutcherry are ultra vires and without jurisdiction. The argument is based upon Section 65 of the Bihar Panchayat Raj Act, which states as follows:

"65. Notwithstanding anything contained in the Bengal, Agra and Assam Civil Courts Act, 1887, the Provincial Small Cause Courts Act, 1887, and the Code of Civil Procedure, 1908, and subject to the provisions of this Act, a bench of the

Gram Cutcherry shall have jurisdiction to hear and determine the following classes of suits when the value of the suit does not exceed one hundred rupees, namely.

- (a) suits for money due on contracts ;
- (b) suits for the recovery of movable property of the value of such property ;
- (c) suits for the recovery of rent ; and
- (d) suits for compensation for wrongfully taking or injuring movable property, or for damaged property caused by cattle trespass :

Provided that a bench which is specially empowered by notification in this behalf by the Government may hear and determine such suits when the value of the suit exceeds one hundred rupees, hut does not exceed two hundred rupees:

Provided further that the parties to a suit of the above description may by a written agreement refer the suit to the bench for decision irrespective of the value of the suit, and the bench shall, subject to such rules as may be prescribed as to Court-fees and other matters, have jurisdiction to hear and determine the said suit under this Act:

Provided further that a bench of the Gram Cutcherry shall by a written agreement of the parties have jurisdiction concurrent with that of the Civil Court to hear and determine a suit of any description irrespective of the value of the suit, subject to such rules as may be prescribed as to Court-fees and other matters."

In our opinion, this argument is well-founded and must be accepted as correct. It should be remembered that the Gram Cutcherry is a tribunal of limited jurisdiction and has been created by statute and the power of the Gram Cutcherry is derived from the statute and must be confined to the terms of that statute. In other words, the Gram Cutcherry is a creature of the statute, and in exercise of its powers the Gram Cutcherry cannot trespass beyond the bounds prescribed by the statute.

It was argued by the Advocate General on behalf of the opposite party that the objection as to jurisdiction was not taken by the petitioner before the Gram Cutcherry at the time the suit was heard. But acquiescence of the petitioner cannot confer jurisdiction upon the Gram Cutcherry, if, under the terms of the statute, the Gram Cutcherry has no jurisdiction to entertain a particular action or matter. The general rule is that consent cannot give jurisdiction and the want of jurisdiction is not a matter which can be waived. The legal position has been very clearly put by the Judicial Committee in *Ledgard v. Bull* 13 Ind. App. 134 (PC) (A), at Pp. 144 and 145 as follows.

"The Defendant pleads that there was no jurisdiction in respect that the suit was instituted before a Court incompetent to entertain it, and that the order of transference was also incompetently made. The District Judge was perfectly

competent to entertain and try the suit, if it were competently brought, and their Lordships do not doubt that in such a case, a Defendant may be barred, by his own conduct, from objection to irregularities in the institution of the suit.

When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him. But there are numerous authorities which establish that when, in a cause which the Judge is competent to try, the parties without objection join issue, and go to trial upon the merits, the Defendant cannot subsequently dispute his jurisdiction upon the grounds that there were irregularities in the initial procedure, which, if objected to at the time, would have led to the dismissal of the suit".

3. On behalf of the opposite party, the Advocate General referred to the case of A.J. King v. Secretary of State for India ILR 35 Cal 394 (B) where it was held by a single Judge of the Calcutta High Court that failure to obtain leave under the Letters Patent was a matter which could be waived and did not take away the jurisdiction of the High Court to hear the appeal. But the authority of this case is doubtful in view of the decision of the Bombay High Court in Devidatt Ramniranjandas Vs. Shriram Narayandas, , where it was held that the words of Clause 12 of the Letters Patent were quite clear and imperative and made the obtaining of leave a condition precedent to the entertainment by the Court of a suit to which that clause applied, and the condition was not one which it was competent for a Court to ignore . or for the parties to waive.

It was pointed out by Beaumont C. J. in that case that the decision of the Calcutta High Court in ILR 35 Cal 394 (B), was not consistent with the view taken by Sir Richard Couch in Hadjee Ismail Hadjee Hub-beeb v. Hadjee Mahomed Hadjee Joosub 13 Beng LR 91 (D), by Sir Basil Scott in Abdul Kadir v. Doolanbibu ILR 37 Bom. 563 (E), and by Telang J. in Rampurtab Samruthroy v. Prem-sukh Chandamal ILR 15 Bom 93 (F).

4. For the reasons we have already given, we hold that the Gram Cutcherry had no jurisdiction to hear Title Suit No. 1 of 1955 in view of the provisions" of Section 65 of the Bihar Gram Panchayat Raj Act. It follows that the proceedings before the Gram Cutcherry and the decree granted by it in the suit as also the proceedings in appeal taken before the Full Bench should be quashed, by a writ in the nature of certiorari.

5. This application is, accordingly, allowed with costs hearing fee Rs. 50/-.