

(1968) 08 AHC CK 0003
In the Allahabad High Court
Case No : Civil Rev. No. 1346 of 1965

Khacheru Singh

APPELLANT

Vs

Banarsi Dass

RESPONDENT

Date of Decision : 01-08-1968

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 89(4)

Citation : (1968) 38 AWR 793

Hon'ble Judges : J.N. Takru, J

Bench : Single Bench

Advocate : V.P. Goel, for the Appellant; Naresh Chandra Rajvanshi for opp. party, for the Respondent

Final Decision : Allowed

Judgement

J.N. Takru, J.—This revision by the Plaintiff is directed against the appellate judgment and decree of the Second Civil Judge, Meerut dismissing his suit.

2. It appears that the Applicant filed a suit against the opposite party in the Nyaya Panchayat for recovery of Rs. 300/- with interest at the rate of 2% per month from him. The opposite party contested the suit and denied the taking of the loan in question. The Nyaya Panchayat decreed the suit. Thereupon the opposite party preferred a revision to the Munsif Haveli. The Munsif Haveli set aside the decree of the Nyaya Panchayat and transferred the case for disposal to the Second Additional Munsif. The learned Second Additional Munsif decreed the suit. The opposite party went up in appeal to the lower appellate court with the result stated in the opening paragraph of this judgment.

3. On behalf of the Applicant the sole ground on which this revision was pressed was that as the instant suit was of a Small Cause Court nature and the second Additional Munsif to whom it was transferred for disposal did not possess Small Cause Court powers he had no jurisdiction u/s 89(4) of the UP Panchayat Raj Act to try the suit. After hearing the Learned Counsel for the parties I am satisfied

that this contention is well founded.

4. Now Section 89(1) invests the Munsif with the power to call for the record of any case which has been decided by a Nyaya Panchayat and if it appears to him, that injustice or material irregularity has occurred he may make such order as he thinks fit. Section 89(2) then gives the Munsif the power to quash the decree or order passed by the Nyaya Panchayat and to remand the case to it for retrial or try the case himself or transfer, it to another court or officer competent to try it. In the instant case the learned Munsif Haveli after quashing the decree of the Nyaya Panchayat, transferred the case to the court of the 2nd Additional Munsif. The question that arises for determination therefore is whether the latter court can be held to be a court competent to try the suit, for if not, it would have no jurisdiction to do so. As the present suit is indisputably of a Small Cause Court nature, the first thing to be seen is whether the 2nd Additional Munsif could try a suit of that nature and valuation. As there was nothing on the record to show whether Sri Shashi Bhushan Sinha, the 2nd Additional Munsif, who decided this case had Small Cause Court powers of the requisite pecuniary extent, I called for a report from the office on both those points. The report of the office shows that in December, 1964 when Sri Shashi Bushan Sinha, decided this case, he had Small Cause Court powers upto the pecuniary extent of Rs. 100/- only. It is, therefore, clear that he was not an officer and his court was not a court, competent to try a suit of a Small Cause Court nature of a pecuniary valuation exceeding Rs. 100/- . Sri Shashi Bhushan Sinha therefore had no jurisdiction to try the suit to question. I am fortified in my view by the observations of the Division Bench of this Court in Karimullah v. Sri Ram and Peary 1964 AWR 441. Although the facts of that case are converse to those of the present case, the rules laid down therein applies with full force to this case as well. In that case the Munsif after recalling the case, which was based on a pronote and receipt and was for the recovery of Rs. 456.25 from the Nyaya Panchayat transferred it for disposal to the Civil Judge who was empowered to try suits of Small Cause Court nature upto Rs. 500/- . The Civil Judge returned the suit to the Munsif holding that he had no jurisdiction to transfer it for trial to him. The learned Munsif again sent that suit to him and when he again refused to try it, the former referred the matter to this Court. this Court held that,

Whatever be the interpretation of the first clause which gives to the Munsif the option to try the cases himself that interpretation can in no way affect the power given to the Munsif to transfer the suits to some other competent court, the Judge Small Cause Court (Civil Judge) being the competent court for these suits, the order of transfer was valid and correct.

5. I have underlined (herein in italics) the material portions of this quotation which, in my opinion, go to show that the competent court in a case of a suit of a Small Cause Court nature is either the court of the Judge Small Causes or any other court empowered to try suits of that nature and pecuniary valuation.

6. On this view of the matter Sri Shashi Bhushan Sinha to whom the suit was

transferred had no jurisdiction to try it.

7. The Learned Counsel for the opposite party, however, sought to support the judgment and decree in question on the ground that as the learned Civil Judge had done substantial justice between the parties, this Court might not interfere with them in revision and in support of this contention he relied upon Raghuraj Singh Vs. Sham Dei and Another, . I am, however, unable to agree with this contention, firstly because if the learned Civil Judge had regarded the judgment and decree of the trial court as a judgment and decree of a Small Cause Court then his powers to interfere with the findings of the trial court would not have extended to his interfering with them on question of fact as has been done by him very freely. In that case the findings of the trial court would have been final and the learned Civil Judge could have interfered with them only if any error of law was involved in them. Thus a contention, based upon substantial justice can have no application to the present case though the position might have been different, if the trial court has also dismissed suit. But as that is not the situation in this case it is unnecessary to pursue this matter any further.

8. Thus for the reasons stated above this revision succeeds and is allowed. The revision having been allowed the record of the case shall be sent down to the learned Munsif Haveli at an early date so that he may exercise his jurisdiction u/s 89(2)(c) or (d) in the light of the observations made above. There shall however be no order as to costs.