
(2005) 03 AHC CK 0281
In the Allahabad High Court
Case No : F.A.F.O. No. 407 of 2003

Lallu alias Chandrika Prasad and Others	APPELLANT
Vs	
Lakshmi Narain and Others	RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 10A, 24, 24(1), 24(2)

Citation : (2006) 1 AWC 428

Hon'ble Judges : O.P. Srivastava, J

Bench : Single Bench

Advocate : P.V. Chaudhary and A.S. Chaudhary, for the Appellant; Ravi Shanker Pandey, for the Respondent

Final Decision : Allowed

Judgement

O. P. Srivastava, J.—This appeal stems out of a suit for possession over the property details whereof are given in para 1 of the plaint and for permanent injunction restraining the defendants/respondents from demolishing or causing any damage to the said property.

2. The suit was valued at Rs. 240. The suit was contested by the defendants who inter alia took the plea of undervaluation of the suit and insufficiency of the court fee. Learned trial court framed preliminary issues regarding undervaluation. The value of the suit was determined at Rs. 30,000 as against Rs. 240. The plaint was directed to be amended accordingly and letter written to the District Judge for transfer of the suit to the court having pecuniary jurisdiction as the valuation of the suit had exceeded the pecuniary jurisdiction of the Court where it was instituted.

3. On the letter written in pursuance of the order of the Court, the District Judge transferred the said case to the Court of Civil Judge (Senior Division) where the case proceeded further after framing of the other issues. The first Additional Civil Judge (Senior Division) before whom the case came up for hearing decreed the

suit on 18.9.2002.

4. The defendants preferred first appeal before the learned District Judge which came up for hearing before the learned Special/Additional District Judge, Raebareilly. Learned Additional District Judge was of the view that plaint ought to have been returned for presentation before competent court as provided under Order VII, Rule 10 of the Code of Civil Procedure. He was further of the view that after presentation of the plaint, the de novo proceedings ought to have started in the court of Civil Judge (Senior Division). He, therefore, allowed the appeal and setting aside the judgment and decree of the learned trial court remanded the matter to the learned trial court for return of the plaint under Order VII, Rule 10 of the Code of Civil Procedure. It is against this judgment and order of remanding the case, the plaintiffs-appellants have come up before this Court.

5. At the time of hearing of the case, learned counsel for the appellants alone appeared and made his submission. None appeared from the side of the respondents.

6. After hearing the learned Counsel for the appellants and having gone through the judgment of learned first appellate court, I am of the view that learned first appellate court totally lost sight of Sub-section (5) of Section 24 of the CPC which resulted in rendering erroneous judgment.

7. The suit initially valued at Rs. 240 was rightly instituted in the court of Munsif, Raebareilly. It was on the basis of plea raised from the other side, the Court after framing preliminary issues and considering the respective submissions of the learned Counsel for the parties arrived at the conclusion that suit ought to have been valued at Rs. 30,000. He, therefore, while holding likewise directed that letter be sent to the District Judge for transfer of the case to the Court of competent jurisdiction for the simple reason that because of exceeding of the valuation, the suit went out of the pecuniary jurisdiction of the Munsif, Raebareilly. The Order VII, Rule 10 provides for the return of the plaint at any stage for presentation before the Court in which the suit should have been instituted. The relevant portion of Order VII, Rule 10 of the CPC is extracted hereinbelow :

Return of plant.--Subject to the provisions of Rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

8. The present suit as per valuation was rightly instituted in the Court of Munsif, Raebareilly. The suit as framed and filed before the Munsif court was not cognizable by any other Court. Therefore, the suit was rightly presented and proceeded in the Court of Munsif, Raebareilly. It was after the plea of defendants was taken in regard to the valuation of the suit, learned trial court instead of framing all the issues preferred to frame a preliminary issue regarding valuation. Since the suit was rightly instituted in his Court it could consider and decide the plea of valuation raised before him. In my opinion, learned first appellate court

was fully competent, in the above circumstances, to have considered and decided the said issue. The valuation of the suit after decision of the preliminary issue and amendment of valuation clause became Rs. 30,000. Therefore, it was at this stage that suit can be said to be beyond the pecuniary jurisdiction of the Court where it was instituted. Thus, no error was committed by trial court till the decision of the preliminary issue and amendment of the valuation clause.

9. In Sub-section (5) of Section 24 of the CPC which was added by way of amendment in February, 1977 (Act No. 104 of 1976, w.e.f. 1.2.1977), it has been provided that a suit or proceeding may be transferred from a Court which has no jurisdiction to try it. Therefore, after enhancement of the pecuniary jurisdiction since the suit which was rightly instituted with the valuation described in it in the Court of Munsif could be transferred for having become beyond the pecuniary jurisdiction of the Court to the Court having competent jurisdiction. In these circumstances, neither the learned trial court nor the District Judge committed any error respectively in writing the letter and transferring the case from the trial court to the court of competent jurisdiction. Since the learned Additional District Judge failed to look at Sub-section (5) of Section 24 of the Code of Civil Procedure, he fell in error in coming to the conclusion that transfer was not valid. District Judge was fully competent to transfer the case from the Court before which it became beyond pecuniary jurisdiction to the court of competent jurisdiction.

10. Learned appellate court has further held that the proceedings ought to have been initiated before learned Civil Judge (Senior Division) de novo. This view of the learned first appellate court is also erroneous because of Sub-section (2) of Section 24 of the Code of Civil Procedure, extracted herebelow :

24. General power of transfer and withdrawal.--(1)

(2) Where any suit or proceeding has been transferred or withdrawn under Sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

11. Section 24 deals with the general power of District Judge. The above provision is clearly indicative of the fact that where any case is transferred by the District Judge from one Court to another transferee court may subject to the special directions in the order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn. The purpose of addition of such Sub-section (5) in Section 24 appears to be become convenience of the parties and to avoid delay in disposal of the case. This provision has been added to avoid the return of the case in every situation and again presentation before another Court of competent jurisdiction so as to initiate the de novo proceeding, thereby put in the entire exercise done before previous Court as futile.

12. Once the provision for transfer from one Court having no jurisdiction to the

court of competent jurisdiction has been conferred on the District Judge/High Court u/s 24 of the Code of Civil Procedure, it can reasonably be presumed that by analogy Sub-section (2) of Section 24 shall apply to such suit also which has been transferred by exercise of power under Sub-section (5) of Section 24. Therefore, I am of the view that if any case is transferred under Sub-section (5) of Section 24 on the ground that Court before it was pending has lost its jurisdiction to try the case, the transferee court will have power in absence of any special directions either to retry the case or proceed from the point at which it was transferred. Therefore, the learned Civil Judge (Senior Division) to whom the case was transferred by the District Judge did not commit any error in law "if it proceeded further from the stage till which the proceedings in the earlier court were held. It was not necessary for the transferee court to have proceeded de novo, i.e., as if suit was presented before it. The learned transferee Court was fully competent to proceed from the stage till which proceedings had taken place in the earlier Court and could consider the written statement evidence and other material that was available on record at the time the case was received by transfer for disposal of the case.

13. In view of what has been discussed above, in my opinion, the learned appellate court was clearly in error in remanding the case to the trial court with the direction to return of the plaint. The appeal, therefore, succeed.

14. The appeal is allowed. The judgment and Order dated 5.5.2003, are hereby set aside. The matter is sent back to the learned first appellate court with the direction to hear and decide the appeal on merit in accordance with law.