

(1969) 11 CAL CK 0016
In the Calcutta High Court
Case No : Civil Revision Case No. 1687 of 1969

Nitai Pada Das and Others	Vs	APPELLANT
Srimati Deepika Rani Bhattacharjee		RESPONDENT

Date of Decision : 26-11-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 16, 16(d), 17, 19
Registration Act, 1908 — Section 7
Specific Relief Act, 1963 — Section 39

Citation : 74 CWN 619

Hon'ble Judges : S.N. Bagchi, J; Amaresh Roy, J

Bench : Division Bench

Advocate : Chandra Nath Mookerjee and Sibdas Ghosal, for the Appellant; B.K. Panda and Jayindranath Nanda, for the Respondent

Judgement

1. This Rule was issued by us on 29.5.69 and is directed against an order dated 4.2.69 passed by 2nd Court of Subordinate Judge at Alipore in Title Suit No. 21 of 1967. By that order the learned Subordinate Judge has held that the said Court has territorial jurisdiction to entertain the suit, by answering Issue No. 3 raised in the suit which was heard as preliminary issue. The question raised is whether the suit is governed by clause (d) of section 16 C.P. Code or by Section 20 C.P. Code.
2. The suit is one for declaration that a Deed or Trust alleged to have been executed at 75, Hindusthan Park, Calcutta, which is within territorial jurisdiction of the Court of Subordinate Judge of 24-Parganas is void and was obtained by fraud and as such is not binding on the plaintiff and for cancellation of that Deed of Trust which was registered at 75, Hindusthan Park, Calcutta, by Sub-Registrar of 24-Parganas acting u/s 7 of the Registration Act on behalf of Registrar of Assurance, Calcutta.
3. It is undisputed that the property covered by the alleged Deed of Trust is situate at Puri in Orissa and that all the defendants in the suit reside at Puri, so

outside the territorial jurisdiction of the Court of 24-Parganas.

The learned Subordinate Judge has held. "The present suit is primarily for adjudging the impugned deed of trust as void and not binding and as such the present suit cannot be taken as one for the determination of any right to or interest in the immovable property forming the subject matter of the impugned deed of trust as contemplated in section 16(d) C.P.C." though he has also held that-"The effect of the finding on the question whether the impugned deed is illegal and void will obviously affect the question of title to or interest in the said property at Puri."

4. The defendants have moved against the order u/s 115 C.P. Code. The order has been impugned by Mr. Mukherjee for the petitioner as having been passed by acting erroneously and with material irregularity in exercise of the jurisdiction. His contention is that the suit is one for determination of title and interest in the property in respect of which the disputed Deed of Trust if a valid document will have effect; so it is one under clause (d) of section 16 C.P. Code; therefore section 20 C.P. Code cannot apply.

5. This proposition is based on an assumption that section 16 and section 20 of the Code are mutually exclusive in their respective field of application of each. That is an erroneous view of law. The words "Subject to limitations aforesaid" in section 20 obviously refers to "the pecuniary or other limitations" mentioned in section 16, and does not connote that cases coming within any of the clauses of section 16 cannot be governed by any other section in that chapter including section 20.

6. Section 16 is one of a group of sections and as a general section refers to courts in India and to properties situate in India. Section 17 provides for cases where the property is in the jurisdiction of different Courts. While section 16 refers to immovable property, section 20 refers to personal actions such as action in tort or contract and actions for specific reliefs in personem. Jurisdiction for such actions depends upon residence of defendant or the accrual of cause of action.

7. Present suit is obviously an action for specific relief envisaged by section 39 of Specific Relief Act and is primarily an action in personem or personal action against the defendants. A decree that may be passed in the suit may no doubt have an effect on title or any interest in the immovable property in respect of which fraud or other torts have been alleged. It is not a suit for determination of any right to or interest in immovable property which will fall within section 16(d). On the pleadings, cause of action in this case undoubtedly arose within the jurisdiction of Alipore Court and therefore section 20(c) applies. Law is well settled that section 20 C.P. Code is a general section embracing all personal actions. Personal actions are transitory because they may occur anywhere, such as actions for tort to persons or to movable property or suits on contract, which may by the effect of the relief obtained bear on title to or interest in movable or

immovable property directly or indirectly.

8. Section 16 is the general section embracing real actions against the "res" or property, and so are local and must be brought in forum "reistae" that is the place where the immovable property is situate, there is no exclusiveness of fields of operation of the two sections, that is section 16 and section 20. They may overlap as do other sections in the chapter, because an action may also be a mixed action, being partly real and partly personal. Section 16 and 17 both deal with real and local actions while section 19 and 20 both deal with personal and transitory actions. Section 20 overlaps section 19 which gives an option where the cause of action accrues in the jurisdiction of one court and the defendant resides in the jurisdiction of another court. In our view therefore even if the case would be within section 16(d), it is within section 20(c), and therefore the Subordinate Judge at Alipore has rightly held that his Court has jurisdiction to try the suit as framed. The Rule is accordingly discharged with costs.