

(1976) 08 OHC CK 0013
In the Orissa High Court
Case No : Civil Revision No. 28 of 1975

Nityananda Pandey and Others

APPELLANT

Vs

Manohar Pandey and Others

RESPONDENT

Date of Decision : 03-08-1976

Acts Referred:

Suits Valuation Act, 1887 — Section 3, 6, 8

Citation : AIR 1977 Ori 10 : (1976) 42 CLT 1023

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : H.G. Panda, for the Appellant;

Final Decision : Dismissed

Judgement

R.N. Misra, J.—Plaintiff-opposite party No. 1 filed a Title Suit asking for recovery of possession of certain lands and mesne profits of Rs. 920 during the pendency of a proceeding u/s 145 of the Code of Criminal Procedure wherein the lands were attached and placed in charge of a receiver. He valued the relief for recovery of possession at Rs. 142.65 on the basis of fifteen times of the annual revenue u/s 7(v) of the Court-fees Act. Defendants did not dispute the calculation of the court-fees payable on the plaint, but challenged the pecuniary jurisdiction of the trial court to entertain the suit by contending that the market value of the lands was more than the pecuniary jurisdiction of the learned Munsif. On this plea, Issue No. 9 was raised to the effect:--

"Whether the court has pecuniary jurisdiction to try the suit?"

The learned Additional Munsif held, relying on a Bench decision of this Court in the case of Gopala Padhano and Others Vs. Ganesh Padhey, that the suit was - within the trial Judge's pecuniary jurisdiction. Defendants 1, 3, 4 and 6 have filed this revision application challenging the correctness of the determination of the preliminary issue.

2. When the Revision application was placed for hearing before a learned Single

Judge, he directed the matter to be heard by a Division Bench in view of the contention raised before him that the observation in the case reported in *Gopala Padhano and Others Vs. Ganesh Padhey*, that the repeal of the Madras Civil Courts Act does not affect the applicability of Section 14 thereof to south Orissa by virtue of Section 6 of the Suits Valuation Act requires re-consideration, because to areas included in the Koraput District, the principle has no application. That is how the revision application with a connected matter is before us.

3. Sections 3 6 and 8 of the Suits Valuation Act which are material may now be extracted:--

"3. (1) The State Government may make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-fees Act, 1870, Section 7, paragraphs v and vi and paragraph x, Clause (d).

(2)

6. On and from the date on which rules u/s 3 take effect in any part of the territories under the administration of the Governor of Fort Saint George in Council to which the Madras Civil Courts Act, 1873, extends, Section 14 of that Act shall be repealed as regards that part of those territories.

8. Where in suits other than those referred to in the Court-fees Act, 1870, Section 7, paragraphs v, vi and ix, and paragraph x, Clause (d), court-fees are payable ad valorem under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same."

Under Section 8 of the Suits Valuation Act, suits referred to in Section 7(v) of the Court-fees Act have been excluded from the general rule indicated in it, AS already noted, Section 3 makes provision for the State Govt. to make rules for determining the value of land for jurisdictions purposes for suits covered by Section 7(v) of the Court-fees Act. Admittedly rules have not been made u/s 3. u/ s 6, provision has been made that rules made u/s 3 take effect in the prescribed areas and Section 14 of the Madras Civil Courts Act is to stand repealed. Rules having not been made in the appropriate areas, Section 14 of the Madras Civil Courts Act would not be excluded.

Section 14 of the Madras Civil Courts Act provides:--

"When the subject-matter of any suit or proceeding is land, a house or a garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court-fees Act, 1870, Section 7, Clause (v)."

In *Gopala Padhano and Others Vs. Ganesh Padhey*, , a Bench of this Court examined the effect of these provisions. The Court found that by Orissa Regulation I of 1936, Section 14 of the Madras Civil Courts Act was repealed. The Regulation, however, expressly provided:--

"Save as otherwise provided by this Regulation, the repeal by this Regulation of any enactment shall not affect any Act or Regulation in which such enactment has been applied, incorporated or referred to....."

Relying on the aforesaid provision, Narasimham, C. J., speaking for the Division Bench concluded:--

"Thus by virtue of the savings section notwithstanding the repeal of the Madras Civil Courts Act, 1873, Section 14 of that Act which has been incorporated in Section 6 of the Suits Valuation Act will not be affected."

The learned Chief Justice also relied upon the well-known principle regarding the effect of repeal in support of the self-same conclusion. The provision in Section 6 of the Suits Valuation Act that "any part of the territories under the administration of the Governor of Fort Saint George in Council" was taken due note of and it was found from Section 7 of the Orissa Laws Regulation, 1936 that any reference to the old Presidency of Madras (by whatever form of words) in any of the statutes should be construed as reference to those areas of the Madras Presidency, which became part of the Province of Orissa, On this basis, the learned Chief Justice again observed:---

"..... Hence, as a matter of construction, we must hold that the territories referred to in Section 6 of the Suits Valuation Act are the ex-Madras areas transferred to the Province of Orissa, namely, Ganjam and Koraput districts."

4. Mr. Panda for the petitioners while not disputing the effect of the legal position with reference to the district of Ganjam contends that the position would be different with reference to the district of Koraput and that, mainly on the ground, to the district of Koraput, the Madras Civil Courts Act had no application. According to Mr. Panda, the Ganjam and Vizagapatam Act of 1839 and Rules made thereunder were applicable to the Agency areas of the old Vizagapatam district (out of which the present Koraput district has been carved out). Mr. Panda, however, has not been able to place before us any specific rules and we have been shown a set of Rules known as Madras Agency Rules framed u/s 6 of the Scheduled Districts Act of 1874. After the formation of the Province of Orissa, the Orissa Agency Rules have come into existence. There is no material on the basis of which we are in a position to accept Mr. Panda's contention that the Madras Civil Courts Act had no application to the areas covered by the present district of Koraput so as to hold that the observations made by the learned Chief Justice in *Gopala Padhano and Others Vs. Ganesh Padhey*, are erroneous.

5. The net effect, therefore, is that the provisions of Section 14 of the Madras Civil Courts Act have been rightly applied by the learned Additional Munsif for determining the jurisdictional value of the suit and his conclusion on issue No. 9 that he has jurisdiction is not assailable. The revision application must accordingly fail and is dismissed. Parties are directed to bear their own costs of the application.

Mohanti, J.

6. I agree.