

(1993) 04 AHC CK 0041

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14871 of 1993

Prem Kumar Peters

APPELLANT

Vs

2nd Addl. District and Sessions Judge, Kanpur and others

RESPONDENT

Date of Decision : 07-04-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 20, 21, 21(1), 80
Constitution of India, 1950 — Article 226

Citation : AIR 1994 All 158

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : S.M.A. Kazmi, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. In this writ petition, learned Standing Counsel has accepted notices for respondents Nos. 1 to 3. Both the learned counsel have agreed that the writ petition may be decided finally at this stage. Considering facts of the case learned Standing Counsel has not been required to file a counter affidavit and the writ petition is disposed of finally on the material already on the record.

2. Facts giving rise to this writ petition are that petitioner Prem Kumar Peters was serving as a Judicial Assistant in the Office of Collectorate, Kanpur Dehat. Petitioner filed Original Suit No. 155 of 1990 in the Court of Munsif, Kanpur Dehat for the declaration, against respondent No. 2 that his date of birth is 19th January, 1939 and the date of birth mentioned in the High Court Certificate as 19-1-1933 is incorrect. The relief of mandatory injunction was also sought directing Board of High School and Intermediate Education, U. P. Allahabad, (hereinafter to be referred as "Board"), to correct his High School Certificate accordingly. It is relevant to mention here that the plaint contained a specific averment that no relief is being sought against State of Uttar Pradesh (i.e. defendant No. 2). It was further stated in para 4 of the plaint that as Board,

defendant No. 1 is a department of the State (defendant No 2), hence to avoid any complication State is also being made party.

3. The suit was decreed ex parte on 11th October, 1990. An application was filed by Board on 1st January, 1991 for setting aside the ex parte decree, which was supported by an affidavit. The application was, however, rejected by the trial Court vide its order dated 30th May, 1991. Aggrieved by the aforesaid order Board, respondent No. 2 filed an appeal. The appellate Court decided the appeal vide its order dated 12th February, 1993 and plaint of the suit was directed to be returned for being presented before competent court. The appellate Court took the view that cause of action for suit of petitioner arose within the areas falling under Kanpur City and suit was wrongly filed in Court of Munsif, Kanpur Dehat and for this reason the decree dated 11-10-1990 and order dated 30-5-1991 will have no effect being without jurisdiction. Aggrieved by the aforesaid order of the appellate authority this writ petition has been filed under Art. 226 of the Constitution before this Court.

4. I have heard learned counsel for the petitioner and learned Standing Counsel.

5. Learned counsel for the petitioner has submitted that the appeal before the appellate Court was from the order rejecting the application under O. 9, R. 13, C.P.C. and the appellate Court should have confined itself to judge the correctness of the order impugned in appeal and the appellate Court was not justified in entering into the question of jurisdiction of the Court below in entertaining the suit itself for setting aside the decree. Learned counsel for the petitioner has submitted that the view taken by the appellate Court on the question of jurisdiction is also incorrect as from the averment in the plaint and the relief sought, cause of action was against respondent No. 2 and against which the suit could be filed before the Court of Kanpur Dehat also. Learned counsel for the petitioner has further submitted that the petitioner was serving in district Kanpur Dehat and the notice under S. 80, C.P.C. was sent to the State of Uttar Pradesh and other authorities in that district and considering all these facts and circumstances part of cause of action had arisen at Kanpur Dehat also and suit was rightly filed before the Munsif, Kanpur Dehat. Learned counsel for the petitioner has thirdly submitted that the appellate authority has not considered the order passed by the learned Munsif, Kanpur Dehat rejecting the application under O.9, R. 13, C.P.C. on merits and has illegally reversed the order and directed to return the plaint only on its finding on question of jurisdiction.

6. Learned Standing Counsel, on the other hand, has submitted that from the averments made in the application and the affidavit filed for setting aside ex parte decree there was sufficient cause and the appellate Court rightly has not entered into the merits of this controversy as in its opinion orders impugned before him were without jurisdiction. Learned Standing Counsel has further submitted that in any view of the matter it will not be in the interest of justice that the ex parte decree is allowed to continue and this aspect may also be considered by this Court and Court below be directed to decide the suit on merits

after hearing both parties.

7. I have considered the submissions made by the learned counsel for the parties and in my opinion on the question of jurisdiction the view taken by the appellate Court is not correct and suffers from manifest error of law.

Cause of action for filing the suit should be ascertained from the facts stated in the plaint. As mentioned earlier petitioner stated it specifically that no relief is being sought against State of Uttar Pradesh, but as Board is part of the department relating to education, State has also been impleaded as defendant No. 2. From relief also it is clear that it was claimed only against the Board. Hence from the plaint it was clear that the petitioner was aggrieved from the action of Board i.e. defendant No. 1 in the plaint, Section 20 of the CPC provides for place of filing of the suit of different categories. It says that the suits may be instituted where the defendants reside or cause of action has arisen. In cl. (c) it provides that it may also be filed where the cause of action had arisen wholly or in part. It is undisputed that the petitioner was in service in district of Kanpur Dehat and his grievance relating to the date of birth arose in that district on basis of his alleged apprehension that the wrong date of birth in High School certificate may affect him adversely. Further the Board being the department of the State may be deemed to be present throughout the State and in every district and for the aforesaid two reasons at least part of cause of action for filing suit had arisen in the area falling under Kanpur Dehat. The fact that the office of the Collectorate of Kanpur Dehat is also situated inside Kanpur city could have no effect. The learned appellate court fell in error in not considering the provisions contained in CPC and adopting the procedure applicable to criminal case for determining the place of trial. In my opinion, the Court should have confined itself to the provisions of Code of Civil Procedure.

8. There is yet another reason that the order cannot be sustained. Section 21(1) of CPC provides that no objection against the place of suing shall be entertained at the appellate or revisional stage unless such objection was raised in the court of first instance and unless there has been consequent failure of justice. In view of the bar created by Section 21(1), C.P.C. the appellate court could not legally reverse the decree only on the basis of wrong place of suing. The learned II Additional District and Sessions Judge, Kanpur Dehat committed a manifest error of law in entertaining the question of jurisdiction on basis of wrong place of suing and reversing the decree. In my opinion, the order passed by the appellate court suffers from a manifest error of law and cannot be sustained. Normally as the order of the appellate court is found to be erroneous and further as the appellate court has not considered the order rejecting the application of respondent No. 2 for setting aside the ex parte decree on merits, the case should have been remanded for deciding afresh. However in order to avoid further delay it appears appropriate that the application move on behalf of Board for setting aside ex parte decree may be considered and be decided by this order, for which the learned counsel for both sides have also agreed.

9. I have heard learned counsel for both the parties on this question also. From bare perusal of the application and affidavit filed on behalf of Board it appears that the official concerned who was assigned the work of looking after the suit, was transferred to some other department. The authorities remained under the bona fide impression that the pairwi of the suit is being done by the official already named. However it was subsequently noticed that nobody could appear to defend the interest of Board and the suit was decreed ex parte. In my opinion, from the averments made in the affidavit and the application the respondent No. 2 fully established that there was sufficient cause for setting aside the ex parte decree. The respondent No. 2 Board is a public body and nobody is expected to take a personal interest in the matter. Such lapses are very natural and common, so far as public bodies and government departments are concerned. However without expressing any kind of approval to such lapses it is stated that the harsh realities cannot be ignored and public interest and the interest of justice should be protected in such matters. If considered with narrow outlook it may appear to be an undeserved favour or lenient attitude towards the public bodies, but if considered with broad outlook it amounts to drawing a right balance between individual interest and the larger public interest. If considered with aforesaid angle, from the undisputed facts on record it is clear that the failure on the part of the respondent No. 2 in contesting the suit was not deliberate and it occurred in the peculiar facts and circumstances mentioned in the affidavit and there was sufficient cause for setting aside ex parte decree dated 11-10-1990.

10. For the reasons recorded above the writ petition is allowed. The order of the appellate authority in so far as it directed that the plaint be returned to the petitioner for being presented before the competent court is hereby quashed. However the ex parte decree passed on 30th May, 1991 is also quashed. The application for setting aside ex parte decree shall stand allowed. The suit No. 155 of 1990 shall stand restored to its original number and shall be decided by the court concerned after hearing parties in accordance with law expeditiously, if possible within a period of one year. There will be no order as to costs.

11. Petition allowed.