

(1974) 05 AHC CK 0031
In the Allahabad High Court
Case No : Civil Revision No. 916 of 1969

Radha Charan Das

APPELLANT

Vs

Th. Mohini Beharaji Maharaj and Others

RESPONDENT

Date of Decision : 23-05-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 15
Suits Valuation Act, 1887 — Section 8

Citation : AIR 1975 All 368

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : D. Sanyal, for the Appellant; J.N. Chatterji, for the Respondent

Final Decision : Allowed

Judgement

M.P. Mehrotra, J.—This revision is directed against the judgment of the lower appellate Court whereby the said Court allowed an appeal and set aside the order passed by the trial Court. The trial Court by its order dated(?) returned the plaint for presentation to the proper Court holding that it had no jurisdiction to try the suit as the same was beyond its pecuniary jurisdiction. The lower appellate Court held that the suit was within the pecuniary jurisdiction of the trial Court and, therefore, set aside the order passed by the trial Court and directed that the plaint be retained and the suit be tried by it.

2. The brief facts are these. The plaintiffs filed the suit against the defendant seeking the relief of mandatory injunction removing the defendant from the Tattisthan and a prohibitory injunction was also claimed that he should not frequent the said Tattisthan and should not interfere with the management of the same and the other properties connected therewith. These reliefs were claimed in Clause (a) of the reliefs claimed in the plaint. In Clause (b) of the reliefs claimed in the plaint, the plaintiff sought that if in the opinion of the Court it was necessary, then the possession of the office held by the defendant be given to the plaintiffs. In the body of the plaint it was alleged that the plaintiff No. 1

Thakur Mohini Beharaji was an idol Birajman in the temple situated on the Tattisthan. The entire property vested in the idol and the management of the idol was entrusted to the plaintiffs Nos. 2 to 6 who were the trustees. It was further alleged that the trustees appointed a person who looked after and managed the affairs of the idol and such person was described as the Mahant. By an agreement dated 30th September, 1937 the defendant was appointed such Mahant and he was a licensee and agent of the plaintiffs bound by the terms of the agreement. The defendant committed breach and acted against the terms laid down in the said agreement. Some of the breaches were detailed in Clauses (a) to (d) of paragraph 5 of the plaint. Certain complaints against the defendant were lodged with the plaintiffs and the trustees enquired into the said complaints and found them to be correct. An explanation was sought from the defendant but he submitted none. Hence the trustees (plaintiffs Nos. 2 to 6) acting on behalf of the idol (plaintiff No. 1) held a valid meeting and removed the defendant from his office. In paragraph 8 (a) of the plaint it was stated that the defendant had removed many valuable manuscripts and religious books from the Tattisthan and had buried some of these books in the ground and some of the books were thrown into the river Jamuna. It was further alleged that the defendant was denying the rights and title of the plaintiff No. 1 and he was also denying the right of management of the plaintiffs Nos. 2 to 6. In fact, he was denying that the plaintiffs Nos. 2 to 6 were the trustees and he claimed the right of management in himself. On all these grounds the defendant was not fit to continue in the office of the Mahant and he was fit to be removed from the said office. In paragraph 8 (b) of the plaint it was alleged that the defendant had alienated a property owned by the plaintiff No. 1 and situated in Madhya Pradesh and this was done without the knowledge and permission of the plaintiffs trustees and he (the defendant) had misappropriated and squandered the receipts from the sale of the said properties. It was further alleged that the alienation of the said property was made on the false representation that the property belonged to the defendant. On all these grounds the defendant was unfit to continue as the Mahant and was liable to be removed from the said office. In paragraph 9 of the plaint it was stated that the defendant was directed to remove himself from the Tattisthan and not to visit the same and not to interfere in the management of the same, but he did not pay any heed to the plaintiff's direction. In paragraph 10 of the plaint it was stated that the plaintiff was entitled to a mandatory injunction removing the defendant from the Tattisthan and the plaintiffs were also entitled to a prohibitory injunction against the defendant restraining him from frequenting the Tattisthan and from interfering with the management of the same. Further, in case it was found necessary that possession should be got back from the defendant, then the plaintiffs were also entitled to get back possession. In paragraph 12 of the plaint it was said that for the purposes of determining the jurisdiction of the Court and paying court-fee the suit was being valued at Rupees 500/- as the property in question belonged to the idol. Further, the office and the management were not capable of any valuation. Hence court-fee was paid on the said amount of Rs.

500/-.

3. The defendant filed his written statement and contested the claim set up by the plaintiffs in the plaint. It is not necessary to refer to the defences raised in the written statement because the court-fee is payable and the valuation is to be determined on the basis of the allegations made, and the reliefs claimed, in the plaint and the defences in the written statement have no relevance for determining the valuation of the suit for the purpose of deciding the jurisdiction of the Court and for the payment of court-fee in the suit.

4. The trial Court issued a commission to the Amin to make a local inspection and submit his report regarding the valuation of the properties involved in the suit. The Amin submitted his report which is Paper No. 219-C and the map is Paper No. 220-C in the record of the trial Court. According to the estimate submitted by the Amin the value of the property attached to the Tattisthan was about Rs. 21,385/-. The said figure included the value of the temple also. The trial Court held that a temple has no market value. Therefore, the value of the temple should not have been included in the said figure of Rs. 21,385/-. Thereafter, the trial Court, in its order, observed :--

"Therefore, on a rough estimate having been made it appears that the property of about Rs. 15,000/- valuation is attached to the Tattisthan excluding the temple."

5. The trial Court held further the Mahant is not a mere Pujari of a temple, but he is the spiritual head of the Math having control over the Math property. Therefore, in the conception of Mahantship as in the case of Shebaitship both the elements of office and property are blended together and neither can be detached from the office. At the same time a Mahant as a superior in the Math has in addition to his duties even a personal interest of a beneficial character which is much longer than that of a Shebait. Therefore, the ejectment of the defendant from the office of Mahantship has not to be taken into consideration as ejectment merely of Pujari. His ejectment from the office is in the sense of dispossessing him of his rights as a spiritual head as well as the right to hold property of a Math. What I mean to say is that the property attached to the Math being managed by the Mahant by virtue of holding this office has to be taken into consideration. In the said view of the matter the trial Court, therefore, came to the conclusion that as the value of the property in dispute was over Rs. 5,000/-, therefore the said Court had no jurisdiction to try the suit. The plaint, therefore, was directed to be returned for presentation to the proper Court. The plaintiffs felt aggrieved and took out an appeal to the lower appellate Court. The lower appellate Court allowed the appeal on the ground that there was only a dispute about the management of the affairs of the idol and no question of ownership or possession was involved. No question of claiming back possession could, therefore, arise. Therefore, the market value of the property was irrelevant and the valuation disclosed in the plaint should have been accepted. The suit was, therefore, within the jurisdiction of the Munsif's Court. The defendant felt

aggrieved with the decision of the lower appellate Court and the instant revision was filed by him in support whereof I have heard Sri D. Sanyal, the learned counsel for the defendant-applicant and in opposition Sri J. N. Chatterji, the learned counsel for the plaintiff-opposite parties, has been heard.

6. The basic question is about the valuation of the suit for the purposes of determining the jurisdiction of the Court and, therefore, the relevant provisions of the Suits Valuation Act have to be noticed. Section 3 of the said Act lays down as under :--

Power of State Government to make rules determining value of land for jurisdictional purposes :-- "The State Government may make rules for determining the value of land for the purposes of jurisdiction in the suits mentioned in the Court-fees Act 1870, as in force for the time being in Uttar Pradesh, Section 7. paragraphs v, v-A and v-B :

Provided that such rules shall provide that the value of land for the purposes of jurisdiction shall in no case be less than the value as determined for the computation of court-fees.

(2) The rules may determine the value of any class of land, or of any interest in land in the whole or any part of a local area, and may prescribe different values for different places within the same local area."

7. Under the said section the State Government has framed certain rules. These rules are known as the Uttar Pradesh Suits Valuation Rules, 1942 and Rule 3 (e) lays down that in suits for the possession of land, the value of land for purposes of jurisdiction shall be determined as follows :--

"Where there are also buildings or a garden on the land the aggregate of the value of the land as determined in accordance with these rules plus the market value of such building or garden situated thereon." Section 4 of the Act reads as under :--

Valuation of certain suits for the purposes of jurisdiction :-- "Suits mentioned in paragraphs iv (a), iv-A, iv-B. v, v-A, v-B, vi, vi-A. viii and x (d) of Section 7 and Articles 17, 18 and 19 of Schedule II of the Court Fees Act, 1870, as in force for the time being in the Uttar Pradesh, shall be valued for the purposes of jurisdiction at the market value of the property involved in or affected by or the title to which is affected by the relief sought, or at the amount involved in or affected by or the title to which is affected by the relief sought, and such value shall in the case of land, be deemed to be the value as determinable in accordance with the rules framed u/s 3."

8. Now it has not been disputed before me that if the relief sought in the suit involved or affects the immovable property in question, then the suit will not be cognizable by the Munsif's Court. However, the contention of the learned counsel for the plaintiff-respondents is that it is the managerial right i. e. the right to manage the affairs of the idol which is in dispute and not the immovable

properties owned by the plaintiff idol. On the other hand, the learned counsel for the defendant-applicant contends that it is not a suit wherein the managerial rights only are involved but it is basically a suit where possession of the immovable property is claimed by the plaintiffs from the defendant. It is contended that the effect of both the reliefs (a) and (b) claimed in the plaint is that the defendant is sought to be removed from the possession of the property and the plaintiffs claim back possession. The learned counsel for the defendant-applicant placed reliance on the following cases :--

(1) Parsottamanand Giri v. Mayanand Giri AIR 1932 AH 593;

(2) Chief Inspector of Stamps Vs. Sewa Sunder Lal, :

(3) Mahabir Prasad Vs. Shamshuddin Ansari and Others, .

The learned counsel for the plaintiff-respondents placed reliance on the following cases :--

(1) Vaish College Society Shamli v. Lakshmi Narain 1969 All LJ 248;

(2) Gaindan Lal Misra v. Misri Lal Misra. 1971 All LJ 909.

9. I shall first take up these cases. The head note of Parsottamanand Giri Vs. Mayanand Giri is as under :--

"There is no justification for, interpreting "possession" in Section 7(v) as meaning possession as beneficial owner and consequently the question whether the plaintiff has or has not any beneficial interest in the properties does not make any difference as regards the court fee payable by him.

Where the plaintiff alleges that he is duly elected as Mahant in place of another and brings a suit for possession as Mahant of the properties attached to the mutt his case falls u/s 7(v) and court-fee is payable ad valorem upon the value of the properties of the mutt. In calculating the value of such properties the temple should be left out of consideration as having no market value."

10. The head note in AIR 1949 AH 560 is as under :--

"A suit with a prayer (i) that an order of the T. R. O. requiring the plaintiff to vacate the premises be declared ultra vires, null and void and (ii) that the defendant be restrained by perpetual injunction from interfering with the possession of the plaintiff over the premises so long as the tenancy continues and is not legally determined, falls u/s 7(iv)(a) and the consequential relief cannot be valued according to Section 7(iv-B) as that provision applies to suits for injunction and not to suits for declaration with consequential relief. The consequential relief should be valued in the manner provided u/s 7(iv)(a). According to proviso to Section 7(iv)(a) the valuation would be in accordance with either Sub-section (v), (v-A) or (v-B) of Section 7. The valuation has to be in accordance with the value to be put on the immovable property, namely the tenancy right in the premises and has to be computed in accordance with

principles laid down in Sub-section (v), (v-A) or (v-B) of Section 7. But to the facts, Sub-sections (v) and (v-A) would not apply; strictly Sub-section (v-B) also would not in terms apply. But its principle can be applied. Consequently, the court-fee in such a suit for consequential relief of injunction should be on one year's rent."

11. The head note of 1971 All LJ 860 is as under :--

"In the instant case the defendants did not enter in possession of the shop in dispute through the landlord who had at no time ejected the plaintiff, who was the tenant of the shop. On the other hand these persons originally went on the premises when the plaintiff took them as his partners in the business and they continued to remain in possession of the shop even after the partnership was dissolved. In order to take a plausible stand to justify their possession over the shop after the dissolution of the alleged partnership, they had persuaded the landlords, as alleged by the plaintiff, to recognise them as tenants. In such a case the suit for recovery of possession by the plaintiff against the landlord as well as the defendants who were his erstwhile partners in the business would fall within the scope of Sub-section (V) (II) of the Court-fees Act which relates to suits for possession of land, buildings or gardens.

"The subject-matter is, so far as the question of possession is concerned, the shop, and not the possession of the leasehold rights which are intangible and are not capable of physical possession. The valuation of the suit, therefore, depends on the market value of the shop and not on the value of the leasehold rights in it."

12. The head note in the Division Bench decision reported in 1969 All LJ 248 lays down as under :--

"Section 4 of the Suits Valuation Act and Section 7(iv-B)(b) of the Court-fees Act are complementary, and the crucial words in these sections should receive similar construction. It may be observed that these sections have two common expressions, namely, "involved in" and "affected by". Section 4 contains one more material expression namely, "the title to which is affected by." The words "the relief sought" are to be read along with all these three expressions. The third expression is, however not to be found in Section 7(iv-B).

There is a certain indeterminacy in the words "involved" and "affected." It is not possible to give them such an exhaustive meaning as will fit in with the changing patterns of cases. Each case should be decided on its own facts. These words will not cover a case where a property is remotely involved in or affected by the relief sought. The true nature and character of the allegations in the plaint should be examined in order to determine whether any property is involved in or affected by the relief, sought.

In the instant case it appeared from the allegations in the plaint that the subject matter of dispute was not any property but the right of the plaintiff to act as the

principal of the College. As Principal, the plaintiff had got no beneficial interest in the property of the College and the College funds. He was merely a paid employee of the College and performed certain duties of a merely ministerial nature with respect to the College property. The effective possession of property and control of funds was really vested in the Secretary-Manager and through him, ultimately in the Managing Body of the Society which ran the College. Accordingly it could not be said that any property was involved in or affected by the reliefs sought in the plaint.

The reliefs claimed by the plaintiff were incapable of valuation and he put a value on them according to his own choice. The valuation put by him will, in the circumstances of this case, be deemed to be the correct valuation and will determine the forum."

13. In 1971 All LJ 909 a learned single Judge of this Court laid down as under :--

"A manager of a school cannot be said to have any beneficial interest in the properties of the school.

The dispute in the instant case related to the Office of the Manager of an educational institution. The suit does not expressly or directly relate to any of the properties owned by the educational institution. The mere fact that the manager in the course of his duties as an office-bearer appointed by the school committee has to look after the affairs of the institution cannot mean that the dispute directly relates to the properties of the educational institution."

14. In my view the instant case does not fall within the ratio laid down in 1969 All LJ 248 and 1971 All LJ 909 (supra) I have given a gist of the allegations made in the plaint and it is obvious that it is not one of those cases where a mere right of management can be said to be involved. The plaintiffs' clear allegation is that the defendant is denying the title of the plaintiffs in the suit properties. It has been further alleged in the plaint that the defendant alienated one of the properties owned by the plaintiff idol claiming the said property to be his personal property. The relief of mandatory injunction has been claimed for the removal of the defendant from the properties in the suit. Further, the relief of possession has also been claimed if held by the Court to be necessary to be awarded in the circumstances of the case. In such a case I do not think it can be said that a mere right of management is involved in the suit. The ratio laid down in 1969 All LJ 248 and 1971 All LJ 909(supra) will be applicable to those cases where the rival claimants seek to manage the properties owned by a corporate body. For example, one claims to be the duly elected Secretary of the Society which claim is denied by a rival contender to the office of Secretary. In the same manner if a defendant principal of a College is sought to be got rid of by the plaintiff society running the institution, then it can be plausibly suggested that such a suit is not a suit involving or affecting the immovable properties of the Society or the institution. However, where the idol feels that some one is illegally in possession of the properties of the idol and seeks the removal of such person

from the properties in question, then in my view it cannot be contended I that the relief will not affect or involve the immovable properties claimed by the idol to belong to it. In this case I have found that on the plaint allegation the dispute is not merely regarding the management of the idol, but the title to the immovable properties claimed by the idol is in dispute. Therefore, :in my view the immovable properties are involved in or will be affected by the relief claimed in the suit and, therefore, the trial Court correctly held that the suit was beyond the pecuniary jurisdiction of the said Court.

15. Sri J. N. Chatterji, the learned counsel for the plaintiff opposite parties contended that Section 115, Civil P. C. did not stand attracted to the facts of the case as there was no jurisdictional error in the decision given by the lower appellate Court. He placed reliance for this contention on The Managing Director (MIG) Hindustan Aeronautics Ltd. v. Ajit Prasad Tarway 1972 SCD 161. The head note reads as under:--

"The order of the first appellate Court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate Court exercised its jurisdiction either illegally or with material irregularity. That being so, the-High Court could not have invoked its jurisdiction u/s 115 of the Civil P. C."

16. The facts of the case are distinguishable. The plaintiff happened to be an employee of the defendant Company, The latter framed charges against him in respect of certain matters and pending enquiry of those charges the plaintiff was placed under suspension. Immediately he was placed under suspension, the plaintiff rushed to the Court and filed a suit challenging the validity of the enquiry ordered against him. He also challenged the validity of his suspension. He asserted that proceedings against him were initiated on malicious grounds. In the suit he applied for an interim order staying the operation of his suspension as well as the proceedings in the enquiry directed against him. Initially an interim ex parte order was issued, but subsequently the trial Judge revoked that order after hearing both the parties. The plaintiff felt aggrieved and filed an appeal which was partly allowed. Thereafter, both the parties went up in revision to the High Court and the said Court accepted the revision petition of the plaintiff but rejected that of the defendant. It stayed the operation of the suspension order as well as the proceedings in the enquiry. Thereafter, the matter was taken to the Supreme Court and it was laid down by the said Court that the High Court had no jurisdiction to interfere with the order of the first appellate Court. In the said context the aforesaid observations were made by the Supreme Court.

17. In the case before me the order passed by the lower appellate Court is directly related to the jurisdiction of the trial Court to try the suit in question. If the trial Court had no jurisdiction to try the suit, then the direction of the lower appellate Court directing the trial Court to retain session of the case and to try the suit will clearly be a direction without jurisdiction. The trial court has held

that it had no jurisdiction to try the suit, but the lower appellate Court has held that the trial Court did have the jurisdiction to try the suit. If the order of the lower appellate Court directs the trial Court to retain and try a suit which the trial Court has no jurisdiction to try, then the direction of the lower appellate Court will be without jurisdiction. In any case, it will be an illegal order affecting the jurisdiction of the Court concerned. In this connection a reference may be made to *Indrajit Behera and Another Vs. Bhaja Meher and Another*, wherein it was laid down :--

"If a Civil Revision filed by the defendant involves only the question of court-fee, it must be dismissed as no revision is entertain-able on that question at the instance of defendants. But if it involves a question of jurisdiction it cannot be dismissed. That is, if the suit had been undervalued and on proper valuation being determined the lower court viz. Munsif would not have the pecuniary jurisdiction and the suit would be triable by the Sub-Judge, it is open to the High Court to interfere in revision."

See also *Sri Ratnavaramaraja Vs. Smt. Vimla*, and *Major S.S. Khanna Vs. Brig. F.J. Dillon*, .

18. In the result, the revision is allowed. The order of the lower appellate Court is set aside and that of the trial Court restored. There will be no order as to costs.