
(1939) 12 AHC CK 0018
In the Allahabad High Court

Satruhan Singh and Others

APPELLANT

Vs

Collector of Gorakhpur and Others

RESPONDENT

Date of Decision : 20-12-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 99
Court of Wards Act — Section 54

Citation : AIR 1940 All 205 : (1940) 10 AWR 109

Hon'ble Judges : Bajpai, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Bajpai, J.—The plaintiffs are the appellants before us. They are the sons of Ganesh Pratap Narain Singh who was defendant 13 in the suit out of which this appeal arises. The plaintiffs alleged that their father had executed one mortgage on 24th May 1927 in favour of Pirthi Pal Tiwari, defendant 12, hypothecating some property at Basti and that the said mortgage was invalid inasmuch as it was a mortgage of ancestral property without legal necessity. They then alleged that their father had executed another mortgage on 1st June 1933 in favour of defendant 11 Rikh Prasad Dube again hypothecating some Basti property which mortgage was also invalid inasmuch as the property mortgaged was ancestral property and the mortgage was without any legal necessity. They attacked another transaction, namely the mortgage of 4th October 1910. This mortgage was in favour of Mahadeo Prasad and some Gorakhpur property was mortgaged thereunder. The property was alleged to be ancestral property and the mortgage was said to be without legal necessity. This mortgage was the subject of suit No. 460 of 1929 and a decree was obtained on the basis of the mortgage on 12th June 1930. The decree-holders are represented in the present suit by defendants 1 to 10-B. The property of defendants 1 to 10 was under the Court of Wards, and defendant 10-A was the Manager of the Court of Wards, Gorakhpur, and defendant 10-B was the Collector of Gorakhpur. It is not necessary to say anything about the defendants' third party who seem to have been impleaded on

the allegation that they were in collusion with the defendants" first party, namely the persons whose property was under the Court of Wards.

2. Several defences were taken by the various defendants on the merits of the case and it was pleaded that the three mortgages were for legal necessity, that the property was not ancestral and that a valid notice was not served u/s 54, Court of Wards Act, on the Collector of Gorakhpur. There was one other plea taken by the Collector of Gorakhpur and it was to the effect that the Basti Court, where the suit was instituted, had no jurisdiction so far as the relief in connexion with the decree in Suit No. 460 of 1929 was concerned inasmuch as the property affected by the decree was at Gorakhpur. The trial Court dismissed the plaintiffs' suit so far as the first mortgage, namely the mortgage of 24th May 1927 was concerned. It decreed the suit so far as the mortgage of 1st June 1933 and the decree dated 12th June 1930 were concerned. The plaintiffs did not appeal with respect to that portion of the claim which was dismissed nor did the defendants interested in the mortgage of 1st June 1933 file any appeal before the lower Appellate Court but the Collector of Gorakhpur impugned the decree of the trial Court in connexion with the mortgage of 4th October 1910 and the decree in Suit No. 460 of 1929 passed on that mortgage.

3. The lower Appellate Court decided all questions of fact against the Collector of Gorakhpur, but held in his favour so far as the legal plea of jurisdiction was concerned and deciding that plea in favour of the Collector of Gorakhpur dismissed the plaintiffs' suit so far as the relief in connexion with the decree in Suit No. 460 of 1929 was concerned. The plaintiffs have come in second appeal to this Court and their contention is that the view of law taken by the lower Appellate Court is unsound and that in any event, the plaintiffs should have been permitted to abandon that part of the claim. It is also said that the decree of the trial Court should not have been varied because the merits were found both by the trial Court and by the lower Appellate Court to lie with the plaintiffs, and Section 99, Civil P.C., says that:

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

4. The contention is that the merits of the case were decided by the lower Appellate Court in favour of the plaintiffs and all that was said was that the suit of the plaintiffs was bad for multifariousness but that defect did not in any way affect the merits of the case or the jurisdiction of the Court. This argument assumes that the trial Court had jurisdiction in the matter, for it is conceded that if the trial Court had no jurisdiction, Section 99, Civil P.C., will have no application. We have therefore got to see whether the trial Court had jurisdiction over the Gorakhpur property covered by the decree. Reliance in this connexion is placed on Section 17, Civil P.C., which provides that:

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate.

5. The submission is that the present suit was to obtain relief respecting certain immovable property situate within the jurisdiction of the Basti Courts and in respect of certain immovable property situate within the jurisdiction of the Gorakhpur Courts, and the plaintiffs had the option to bring their suit in any Court where any portion of the property was situate. We think that there is a fallacy underlying this contention. Where a plaintiff has two or more causes of action in the suit he can take advantage of the provisions of Section 17 if the joinder of such causes of action is permitted by the succeeding provisions of the Code, for instance, Order 1, Rule 3 and Order 2, Rule 3, Civil P.C. If he cannot do so and the joinder of such causes of action is bad for multifariousness, then the suit cannot be tried in either of the Courts within whose jurisdiction the properties are situate. Order 2, Rule 3 says that

save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

6. Now it is clear that the present claim offends against the provision of Order 2, Rule 3 and the plaintiffs cannot take advantage of Section 17, Civil P.C. this view of the matter we think the decision of the Court below was correct and the plaintiffs could not combine the claim in respect of the Gorakhpur property with the claim in respect of the Basti property. There then remains the question whether the plaintiffs should be permitted at this stage to abandon a part of the claim. Such a request has been made to us and we think Order 23, Rule 1, Civil P.C., can be invoked in aid by the appellants. We allow the plaintiffs to abandon that part of their claim which related to the third transaction, namely the mortgage of 4th October 1910, and the decree in suit No. 460 of 1929 with liberty to institute a fresh suit in respect of such part of their claim. The decrees of the Courts below concerning the portion of the claim which the plaintiffs have been allowed to abandon are set aside. Under the peculiar circumstances of the case we direct that the parties will bear their own costs of this appeal excepting respondent 8, Pirthi Pal Tewari, who seems to have been impleaded unnecessarily and who will get his costs from the appellants. Costs in the Court below will be as directed by the lower Appellate Court, and the plaintiffs must pay, as a condition precedent to the institution of a fresh suit with respect to the part of the claim now abandoned, the costs awarded by the lower Appellate Court to the Collector of Gorakhpur.