

(1897) 02 CAL CK 0009

In the Calcutta High Court

Case No : Appeal from Appellate Decree Nos. 70 and 71 of 1895

Sibu Haldar and Madan Haldar

APPELLANT

Vs

Gupi Sundari Dassya

RESPONDENT

Date of Decision : 17-02-1897

Acts Referred:

Citation : (1897) 02 CAL CK 0009

Final Decision : Dismissed

Judgement

Maclean, C.J.—There are three points raised in this appeal. The first and the principal one is the question whether the Court below had jurisdiction to entertain the suit. The, Appellants contend that the suit ought to have been brought in the Pubna Court whilst in fact it was brought in the Goalundo Court. The Respondents, however, urge that be that as it may, if there be any reasonable ground for uncertainty as to the Court having jurisdiction with respect to the subject-matter of the suit, then it is open to this Court under sec. 16A of the CPC not to allow that objection to be raised. What we really have to consider then first is, whether there was any reasonable ground for uncertainty as to which Court had jurisdiction. I am by no means satisfied that the District Judge was not right in finding that the Goalundo Court had jurisdiction to try this suit, but, if not, I think upon the facts that there is a reasonable ground for uncertainty as to which Court had jurisdiction, and if so, I think we ought not to allow the objection to be raised. The mere fact that a serious argument has been addressed to us as to which was the proper Court in which to bring the suit shows, per se, that there is reasonable ground for uncertainty on the matter. When two Courts have held that they have jurisdiction to try the case, a third Court, as the Advocate-General frankly admitted, is not likely to look with a very favourable eye upon an appeal on that point, and I think the section I have referred to was expressly framed to meet objections of this class if there be any reasonable uncertainty upon the question of jurisdiction. I think we ought not now to allow this question to be raised, so much then, for the first and main ground of appeal. The second question is as to the amount of the rent which

both Judges below had found to be payable. The Appellants say that although the Munsif had arrived at his decision upon evidence, apparently oral evidence, in addition to a particular document which was put in, namely, a decree in another suit in which one of the co-sharers was the Plaintiff, but to which the Defendants were not parties, the District Judge relied upon this decree alone as evidence as to the amount of rent. But I think it is clear, that the District Judge did not arrive at his conclusion upon the evidence afforded by the decree alone. He apparently considered the other evidence which had been adduced before the Munsif, and he arrived at his conclusion upon a consideration of all the evidence. I think that the appeal on this point also fails.

2. The only other point urged before us was as to the question of damages. That was not raised in the Court below and it is not one of the grounds stated in the memorandum of appeal, and under the circumstances I do not think that we ought to give special leave to appeal upon this point. Looking at the amount of damages allowed, I do not think the Defendants are likely to suffer by our not allowing this point to be now raised. I think, therefore, that on these grounds the appeal fails, and that it ought to be dismissed with costs.

Banerjee, J.

3. I am of the same opinion. I only wish to add a few words on the question of jurisdiction.

4. It was contended for the Appellants that the Faridpore Court had no jurisdiction to try the case, and that the suit ought to have been brought in the Pubna Court, and the ground of this contention is two-fold.

5. In the first place it was argued that the suit being one for rent of a fishery, it ought to have been brought in the Court within whose jurisdiction the Defendant was residing, the suit not being one for immovable property in any sense.

6. And it was in the second place contended that even if the suit lay properly in the Court which had jurisdiction over the fishery, still the objection as to jurisdiction should prevail, as a fishery was not immovable property within the meaning of sec 16A of the CPC relied upon for the Respondent, and as the other requirements of the section had not been satisfied in this case, there being no uncertainty in the matter of jurisdiction. The suit being one for arrears of rent of a fishery, the provisions of the Bengal Tenancy Act applicable to suits for the recovery of arrears of rent, are made applicable to it by sec. 193 of that Act; and one of the provisions of the Act applicable to suits for arrears of rent is to be found in sec. 144 which enacts that "the cause of action in all suits between landlord and tenant, as such, shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought." That Court, therefore, had jurisdiction to try this suit for arrears of rent which has jurisdiction to try a suit for possession of the fishery. And if a fishery is

immovable property within the meaning of sec. 16A, sec. 16A would be applicable to this case, and would be a complete answer to be Appellant's contention, provided the other requirements of the section have been satisfied.

7. I am of opinion that a fishery comes within the definition of "immovable property" in the General Clauses Act (I of 1868), sec. 2, cl. 5. That clause says:-- "Immovable property shall include land, benefits to arise out of land," &c, &c., and a right of fishery comes within the description,--benefits arising out of land covered with water. The view I take is in accordance with the observations of the majority of the Full Bench in the case of *Fadu Jhala v. Gour Mohun Jhala* ILR 19 Cal. 544. Though a majority of the Full Bench were of opinion that a fishery does not come within the meaning of the term "immovable property," as used in sec. 9 of the Specific Relief Act, still four of the five learned Judges who composed the Full Bench say that a fishery comes within the definition of immovable property as given in the General Clauses Act. And there is nothing repugnant in the subject or context of sec. 16A of the Code to make the definition of immovable property in the General Clauses Act inapplicable to the term as used in that section.

8. It remains then to see whether the other conditions required by sec. 16A of the CPC have been satisfied. That section in sub-section (2) provides that where there has been no statement such as the first sub-section contemplates, recorded in the Court below, a Court of Appeal or Revision shall nevertheless disallow the objection on the ground of want of jurisdiction, if it appears to such Court that there was a reasonable ground for uncertainty as to the Court having jurisdiction with respect to the subject-matter.

9. In this case it is impossible to say that there was no reasonable ground of uncertainty upon the question. The Appellate Court, in its judgment, observes, after referring to the boundaries, as declared in the Calcutta Gazette, of the District of Faridpore, that "no notification is known of as laying down the Pubna boundaries." That, at any rate, creates a reasonable uncertainty in the matter.

10. I think that the conditions required by sec. 16A have been satisfied in this case, and that the objection as to jurisdiction ought not to be entertained.

Maclean, C.J.

11. I should like to add that I entirely agree with Mr. Justice Gooroo Das Banerjee that a right of fishery, such as this, is immovable property within the meaning of sec. 16A of the Code of Civil Procedure. I do not think there can be any doubt about it. It is admitted that the appeal numbered 71 will be governed by this decision. That appeal therefore will also be dismissed with costs.