
(1977) 12 CAL CK 0017
In the Calcutta High Court
Case No : C.R. No. 3470 of 1976

S.K. Jwala and Another

APPELLANT

Vs

Lama Helem Ian Haong Lee and Others

RESPONDENT

Date of Decision : 16-12-1977

Acts Referred:

Civil Procedure Code Amendment Act, 1968 — Section 16, 20, 20(1)

Citation : AIR 1978 Cal 247 : 82 CWN 245

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Sakti Nath Mukherjee and Bhaskar Ghosh, for the Appellant; Bankim Chandra Dutt and Partha Dutta, for the Respondent

Judgement

Salil Kumar Datta, J.—This rule, is directed against an appellate order dated July 7, 1976 whereby it was held, in reversal of the order of the learned Munsif, that the trial Court had the jurisdiction to try the suit and the suit was remanded for trial on merits

2. The predecessor-in-interest of the opposite parties instituted Title Suit No. 3 of 1971 in the court of the Fourth Munsif at Alipore for a decree for permanent injunction restraining the defendants, the petitioners in this Court, and/or their men or agent from entering the suit premises viz. 13, Canal Street, P. S. Entally, Calcutta and from disturbing or interfering with the plaintiff's possession by breaking open locks of the doors of the main building therein or otherwise. After filing the suit the plaintiff filed an application for temporary injunction in terms of the prayer made in the plaint and obtained an interim order.

3. The petitioners on entering appearance in the suit filed a written objection to the application, contending inter alia that they were in occupation of the suit premises and no possession thereof was ever taken in execution of the decree as alleged. Further the defendant No. 1 did not reside at premises No. 1/2, Harish Mukherjee Road, which was within the Jurisdiction of the Court but he resided elsewhere outside the said jurisdiction. It was further stated that the trial court

had no territorial jurisdiction to try the suit and admittedly the suit premises were situate outside the jurisdiction of the said court while the office of the defendant No. 2 was also outside the jurisdiction aforesaid.

4. It appears an issue being issue No, 2 was framed on the question of the territorial jurisdiction of the trial Court to try the suit. The learned Munsif decided the issue in favour of the defendants holding that his court had no jurisdiction to try the suit and directed the return of the plaint for filing in proper forum. The appellate court held that though Section 16 of the CPC had no application, Section 20 Clause (c) applied to the facts of the case, It was accordingly held that the trial court had jurisdiction to try the suit. The impugned order was set aside and the case was sent back on remand for trial on merits. In this rule the above order has been challenged.

5. Mr. Bankim Chandra Dutt appearing for the opposite parties raised a preliminary objection, stating that there is no appearance on behalf of the defendant No. 2 the company, in absence of proper authorisation. It appears that in the vakalatnama the petitioner No. 1 S. K. Jwala is appearing on behalf of the company as its constituted attorney on basis of a power of attorney dated March 27, 1967. It is said that the petitioner No. 1 is no longer an employee of the company and there was in fact no power of attorney in existence as alleged. The certified copy of the power of attorney as claimed was not produced at the hearing by the petitioner No. 1, In view however of the issue of jurisdiction of the Court to try the suit which is in controversy in the suit, the court has the inherent power to treat the company as an opposite party in the rule, when any of the defendants is competent to challenge the court's jurisdiction. I may accordingly treat the company as such and proceed to decide the point about the trial court's jurisdiction to try the suit. The certified copy of the power of attorney by the defendant No. 2 in favour of the defendant No. 1 has since been produced.

6. Section 20 as its terms indicate is subject to limitation of Section 16, the proviso whereof provides that where the relief sought for can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant resides or carries on business for gain. In *Md, Yasin v. Bimola Prosad* AIR 1924 Cal 443, the court held that the word "defendant" means "all the defendants" where there are more than one defendant in suit. In this case, admittedly the defendant No. 2 has its office outside the jurisdiction of the trial court even if it is held that defendant No. 1 resides within jurisdiction which is denied. Further as has been held by the appellate court, the plaintiffs case is that he had been in possession of the suit property and the relief sought for was an injunction restraining the defendant from interfering with his possession of the suit property. None of the clauses of Section 16 in the premises is attracted.

7. The question now is whether any part of the cause of action arose within the jurisdiction of the trial court as held by the appellate court, The suit is for injunction simpliciter against apprehended interference with possession.

8. Section 20, Sub-clause (c) provides that whole or part of cause of action must arise within the jurisdiction of the Court where the suit is instituted. There must be in existence such fact which by itself forms part of the cause of action of the suit. The mere preparation (assuming it to be so as contended) for interference with possession of the plaintiff of a property which is outside the jurisdiction of the Court even if such preparation is made at a place within the jurisdiction of the court, will not by itself form any part of the cause of action of the suit. Such preparation may be good evidence to support the plaintiff's claim or relief when there has been actual or apprehended interference with his possession of the suit property in a suit instituted in the court where the property is situate.

9. In *Benode Behari v. Smt. Nistarini* (1905) 32 Ind App 193 (PC) the decision rested on the ground that the primary object of the suit was the administration of estate of a deceased person resident within the jurisdiction, the principal executors being resident there while the actual administration was also going on there. In *Hem Chandra Dev and Others Vs. Dharendra Chandra Das and Others*, , the court held that in an administration suit of the estate of a deceased person, the suit is not one for determination of a right or interest in the Immovable property as such inquiry is merely incidental. Even if one property is situate outside jurisdiction and other properties are within jurisdiction, a part of cause of action, which is the breach of duty to administer the properties of the deceased arose within jurisdiction of the court which accordingly could decide the case.

10. This is not the position in this case, as, as we have already seen, no part of the cause of action arose here within the jurisdiction of the Trial Court. Under the Specific Relief Act, 1963, preventive relief is granted at the discretion of the court by injunction, temporary or perpetual, but the jurisdiction of the court to grant such relief is governed by the provisions of the Code of Civil Procedure. The appellate court was in error in thinking that a part of the cause of action arose, in the facts of the case, within the trial court's jurisdiction when no part of the cause of action arose within its jurisdiction nor was it so pleaded in the plaint.

11. The rule accordingly succeeds and is made absolute. The impugned appellate order is set aside and the order of the trial court is sustained. The plaint, as directed by the learned Munsif, be returned to the opposite parties for filing the same in proper forum.

12. There will be no order for costs in the circumstances.