

(1972) 11 CAL CK 0003

In the Calcutta High Court

Case No : Civil Revn. Case No's. 1508 and 1759 of 1972

Sm. Shyama Sundari Dasi "Devi"

APPELLANT

Vs

Ramapati Chattopadhyaya and Another

RESPONDENT

Date of Decision : 23-11-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 17, 20

Citation : AIR 1973 Cal 319 : (1974) 2 ILR (Cal) 141

Hon'ble Judges : R.N. Dutt, J

Bench : Single Bench

Advocate : B.B. Das Gupta and Sudhis Das Gupta, in C.R. No. 1759 of 1972 and Ranjit Kumar and Biswa Ranjan Banerjee, in C.R. No. 1508 of 1972, for the Appellant; B.B. Das Gupta and Sudhis Das Gupta, in C.R. No. 1508 of 1972 and Ranjit Kumar and Biswa Ranjan Banerjee, in C.R. No. 1759 of 1972, for the Respondent

Judgement

R.N. Dutt, J.—These two Rules are taken up together as they arise out of the same order. The petitioner in Rule No. 1508/72 are two defendants in the suit instituted by the petitioner in Rule No. 1759/72 as plaintiff.

2. The plaintiff filed the instant suit in the court of a Munsif at Alipore. The plaintiff has in the suit prayed for a declaration that the two documents dated November 9, 1966 and March 17, 1967, both executed and registered at Rampurhat were obtained by fraud and as such void and invalid and for permanent injunction restraining the defendants from interfering with the plaintiff's possession in the lands covered under those documents and from exercising any rights as shebait of deity Shri Shyamrai Deb Thakur.

3. The deity represented by the plaintiff was made defendant No. 1 and the petitioners in Rule No. 1508/72 were made defendants Nos. 2 and 3. Defendants Nos. 2 and 3 filed written statement and raised an objection that the Munsif at Alipore had no territorial jurisdiction to entertain the suit. The Munsif has held that the Alipore Court has no territorial jurisdiction in respect of the document

dated November 9, 1966; but the Alipore Court has territorial jurisdiction in respect of the document dated March 17, 1967. Defendants Nos. 2 and 3 obtained Rule No. 1508/72 against the finding of the Munsif that he has territorial jurisdiction for the suit in respect of the document dated March 17, 1967 and the plaintiff has obtained Rule No. 1759/72 against the finding of the Munsif that he has no territorial jurisdiction in respect of the document dated November 9, 1966.

4. Mr. Bnnerjee, who appears for the defendants Nos. 2 and 3 in Rule No. 1508/72, submits that the suit comes u/s 20 of the Code of Civil Procedure. But Mr. Das Gupta, who appears for the plaintiff in Rule No. 1759/72, submits that the suit comes u/s 17 of the Code.

5. The short allegations are as follows:--

The plaintiff lives at Behala within the territorial jurisdiction of the Munsif at Alipore. The deity Shri Shri Shyamrai Deb Thakur is situated within the territorial jurisdiction of the Munsif at Rampurhat. The lands covered under the document dated November 9, 1966, lie within the territorial jurisdiction of the Munsif at Rampurhat. The document dated March 17, 1967, covers some lands within the territorial limits of the Munsif at Rampurhat and some lands at Behala which is within the territorial limits of the Munsif at Alipore. The documents were executed and registered by the plaintiff at Rampurhat. The fraud alleged is said to have been committed at Rampurhat. No part of cause of action has been alleged to have arisen at Behala.

6. We have, therefore, to consider if with these allegations the suit comes u/s 17 or Section 20 of the Code. Section 17 has reference to Section 16 of the Code and Section 17 is attracted only if the suit in question comes under the provisions of Section 16. Mr. Das Gupta submits that the present suit comes under Clause (d) of Section 16 which reads-

"(d) for the determination of any other right to or interest in immovable property." I have said that the suit is for a declaration that the two documents are void and invalid as obtained through fraud and for, permanent injunction. On the face of it, it cannot, therefore, be said that the suit is for determination of any right to or interest in the properties covered under the documents. Mr. Das Gupta argues that the permanent injunction is for restraining the defendants from interfering with the plaintiff's possession of the lands. But that again cannot be said to be determination of any right to or interest in the said land. The reliefs claimed are only personal reliefs, namely, a declaration that the documents are void and for permanent injunction restraining the defendants from doing some acts. Strictly speaking, the reliefs claimed in the suit cannot be said to be claims for determination of any right to or interest in the lands and so, the suit really comes u/s 20 of the Code. u/s 20 the Alipore Court has no territorial jurisdiction in respect of either of the documents because neither the defendants live within its territorial jurisdiction nor did the cause of action arise

within its territorial jurisdiction.

7. In the result, Rule No. 1508/72 is made absolute. But Rule No. 1759/72 is discharged. The order of the learned Munsif is modified and it is held that the Alipore Court has no territorial jurisdiction to entertain the instant suit. The plaint should, therefore, be returned to the learned Advocate for the plaintiff. Let the records be sent down at once. The Munsif will on receipt of the records return the plaint to the learned Advocate for the plaintiff for presentation before the appropriate court.

8. No order is made as to costs in these Rules.