

(1990) 03 CAL CK 0021
In the Calcutta High Court
Case No : C.R. No. 230 of 1988

Smt. Satyabala Samanta and others	Vs	APPELLANT
Bishnupada Adak and others		RESPONDENT

Date of Decision : 22-03-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 82, Order 38 Rule 13, Order 7 Rule 10, 7, 9
Provincial Small Cause Courts Act, 1887 — Section 16

Citation : AIR 1991 Cal 78 : 95 CWN 130

Hon'ble Judges : A.K. Nandi, J

Bench : Single Bench

Advocate : Bhaskar Bhattacharya and Gobindalal Ghosh, for the Appellant; A.K. Sett and Rampada Pal, for the Respondent

Judgement

1. The plaintiffs/opposite parties filed Money Suit No. 10 of 1984 in the Additional Court of Munsif for recovery of a sum of Rs. 130/- on account of rent in arrear in respect of the southern room. The defendant is a tenant since Jaistha, 1386 B. S. at a monthly rental of Rs. 10/- payable according to Bengali Calendar month. The suit has been filed to recover rent from Aswin, 1386 B.S. to Aswin, 1387 B,S.
2. The defence denies the relationship of landlord and tenant between the parties. The suit land originally belonged to Laxmi Thakurani and Brahma Barwari Committee. Barwari Committee is in possession of the land on behalf of the deity. Barwari Committee raised the structure. The defendant is a tenant in respect of the disputed room at a monthly rental of Rs. 25/- under the Barwari Committee.
3. The trial Court decreed the suit and the Additional District Judge, 4th Court, Midnapore confirmed the judgment and decree in Money Appeal No. 4 of 1986.
4. Court of appeal finds that there was a Kutcha structure on the suit land previously while the plaintiffs took possession of the land in execution of a

decree. The plaintiffs constructed the pucca structure. The plaintiffs have proved induction of the defendant in the suit room. The defendant has failed to prove induction by Barwari Committee. Two courts below considered the evidence on record, both oral and documentary, and accepted the case of the plaintiff. The story set up by the defence was disbelieved. But the courts decided the question of title incidentally. The concurrent finding of fact by the two courts below cannot be held to be perverse and therefore it does not call for interference in revision.

5. The revision has been preferred by the defendant in the suit. He mainly attacks the judgment on the ground that the suit was cognizable by a court of small causes and the trial of the suit as a long cause in the manner has vitiated the proceeding. The court having no jurisdiction to try the suit on the original side the decree is void. A suit of small cause nature is tried on the original side by a court not invested with powers of a Court of Small Causes. Courts have been faced with the question as to whether the decree in such a case is without jurisdiction and consequentially void.

6. Divergent opinion has been expressed by courts. One view is that the decree is void. AIR 1925 101 (Oudh) The other view is that it is an irregularity or defect in procedure. The decree is not a nullity, Jodha Bijal v. Maganlal Chaganlal AIR 1930 Bom 80; Bhaiyalal Girdharilal Shrivastava Vs. Tikaram Udaichand Jain,

6A. Section 16 of the Provincial Small Cause Courts Act reads as follows:

"Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a court of small causes shall not be tried by any other court having jurisdiction within the local limits of the jurisdiction of the court of small causes by which suit is triable".

7. The provision bars the trial of a small cause suit by a court of Ordinary Civil Jurisdiction provided there is a court of small causes to try the suit.

8. Mr. Bhattacharya appearing for the petitioners very much relies upon Section 9 of the Civil Procedure Code. CPC ordinarily applies in small cause suits excepting Section 7, Order 21 Rule 82, Order 38, Rule 13 and Order 50 of the Code of Civil Procedure. Section 9 of the Code lays down ;--

"The courts shall (subject to the provision herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

The two provisions read together clearly indicate that the court of ordinary civil jurisdiction will not try a suit of small cause nature.

9. In the instant case, the trial of an alleged suit of small cause nature has been tried as a long cause by a civil court on the original side. The petitioner contends that the decree awarded by the two courts below is void. The main ground that weighed with the court of appeal below to repel the argument is that such a belated plea cannot be allowed to be taken. The plea was taken during argument

only. Mr. Bhattacharya relied upon Section 99 of the Code of Civil Procedure.

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

10. Relying upon this provision it is contended that the question of jurisdiction can be raised even in appeal and in revision. The petitioners are substantially correct. The question of jurisdiction can be taken even in appeal or in revision if such jurisdiction is inherently lacking in the trial Court.

11. In this connection we may also look to Section 21 of the Code as amended in 1976.

Section 21(1): No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to competence of a court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the court of first instance at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3).....

12. Supreme Court observed in Kiran Singh and Others Vs. Chaman Paswan and Others, "It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity. Invalidity can be set up whenever and where ever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceeding. A defect in jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties."

13. The argument of the petitioner is that Section 16 of the Provincial Small Cause Court Act read with Section 9 of the CPC bars the jurisdiction of the Civil Court to try a suit of small cause nature on the original side and therefore the decree is a nullity. In view of the decision in Kiran Singh and Others Vs. Chaman Paswan and Others, such a void decree can be challenged in revision. Therefore, the reasoning of the Court of appeal below, it is urged, will fail. It is further contended that in view of the provision contained in Order 7, Rule 10 of the CPC the plaint should be returned to the opposite party for presentation in proper court.

14. Section 99 of the CPC is qualified by Section 21 of the Code. In other words,

the Court will not entertain the plea of want of jurisdiction even u/s 99 of the Code in so far as such plea is untenable u/s 21 of the Code.

15. Section 21(2) has been engrafted in the Code by Amendment Act of 1976. In the decision in *Kiran Singh and Others Vs. Chaman Paswan and Others*, while the Supreme Court found defect of jurisdiction, refused to interfere on the ground that no prejudice had been caused in that case on valuation given in plaint. Appeal would lie before the District Judge. On revision of valuation first appeal would lie only in High Court. But the first appeal was heard by the District Judge. Supreme Court found that no prejudice had been caused in that case. The consideration of absence of prejudice weighed with the Court to reject the objection.

16. Two considerations must weigh with the Court. The paramount consideration in such cases would be whether the Court was inherently lacking jurisdiction. The distinction between inherent want of jurisdiction and irregular exercise of jurisdiction cannot be overlooked. Second consideration is prejudice of the parties or failure of justice. In the former case the question of prejudice or consideration of failure of justice are immaterial. In the latter they are very material.

17. The scheme of the Provincial Small Cause Court Act has been designed to ensure speedy trial and a cheap remedy. Elaborate procedure in a civil suit need not be followed in the trial of a small cause by Small Cause Court. Therefore, a summary procedure is followed to try a small cause. A Munsif exercising original civil jurisdiction can try a money suit on the original side. Such a suit may be maintainable in a court of small causes. On account of the bar u/s 16 of the Provincial Small Cause Court Act and Section 11 of the Code of the Civil Procedure the former does not or rather cannot try a suit of small cause nature. Therefore if the former court tries a small cause by following an elaborate procedure of a civil suit the parties to the suit do not get prejudiced. What they actually lose are a speedy trial and a cheaper remedy. But they get chances of appeal. In the contrary case, of course, there shall be prejudice. A money suit not triable by a court of small causes cannot be decided by following a summary procedure by the court of small causes since the parties were entitled to an elaborate procedure of a civil suit on the original side.

18. So the Munsif was not inherently lacking jurisdiction to adjudicate a money claim on the original side. In deciding a case of a small cause nature on the original side there was an irregular exercise of jurisdiction. In *Bhaiyalal Girdharilal Shrivastava Vs. Tikaram Udaichand Jain*, this has been termed as "defect in procedure".

19. The second test is failure of justice or prejudice of the parties as pointed out. The Munsif who was competent to adjudicate a money claim has tried the case on the original side and the parties had full opportunity to contest the case. There has been no failure of justice or prejudice of the parties

20. In this context the incorporation of sub-section (2) of Section 21 of C.P. Code may be considered. If a suit is triable by an Assistant District Judge is tried by a Munsif objection on this score cannot be entertained in a superior forum unless such objection had been taken in the trial court before settlement of issues. In the instant case the jurisdiction has been questioned during the time of argument. Once the trial is concluded the defendant cannot be heard to say that the Court had no jurisdiction.

21. Similar problem has been dealt with by the Full Bench of the Madhya Pradesh High Court in Bhaiyalal Girdharilal Shrivastava Vs. Tikaram Udaichand Jain, . The question was considered from different points of view and it has been finally held that the decree is not a nullity for contravention of Section 16 of the Provincial Small Cause Court Act. I am in agreement with the view. In accepting the view I do not propose to lay down that a suit of small causes can be filed in a court of civil jurisdiction on the original side despite the existence of a court of small causes which can take cognizance of the case. But I find that the decree does not become a nullity for trial of a small cause suit by a court of ordinary civil jurisdiction on the original side inadvertently or otherwise provided the parties submitted to the jurisdiction of the court or did not raise objection at the earliest opportunity.

22. This revisional application must fail on another ground. The small causes Court will not take into cognizance any dispute which involves intricate question of title. In the instant case the opposite parties claim title to the property. The defence denies the title and sets up another as the owner. According to the defence the property belongs to the Barwari Committee under whom the defendant is a tenant. So the Court has to decide this dispute question of title. An ordinary Court of civil jurisdiction should adjudicate this dispute.

In any event thereafter, the revisional application cannot succeed. It therefore fails.

Let a copy of this order go down to the Court below forthwith.

23. Revision dismissed.