

(1987) 04 CAL CK 0017
In the Calcutta High Court
Case No : F.M.A. No. 700 of 1986

Smt. Sheela Adhikari

APPELLANT

Vs

Rabindra Nath Adhikari and Others

RESPONDENT

Date of Decision : 30-04-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10

Citation : AIR 1988 Cal 273 : (1987) 1 CALLT 157 : 92 CWN 248

Hon'ble Judges : Ajit Kumar Nayak, J;A.M. Bhattacharjee, J

Bench : Division Bench

Advocate : G.C. Ghosh, for the Appellant; Sudhish Das Gupta and A.N. Shaw, for the Respondent

Final Decision : Allowed

Judgement

A.M. Bhattacharjee, J.—Can a court return a plaint under the provisions of Order 7, Rule 10 of the CPC solely on the ground that some of the causes of action united in the plaint are not triable by it for want of territorial jurisdiction, even though the other causes of action joined therein are within such jurisdiction? An affirmative answer to this question will result in dismissal of the appeal while a negative answer will require the appeal to be allowed. For the reasons stated hereinbelow, we answer the question in the negative.

2. Under Order 2, Rule 3(1) of the Code, a plaintiff can unite any number of causes of action against the same defendant. But since the Rules in the First Schedule of the Code cannot override or outweigh the Sections in the body of the Code. Rule 3(1) of Order 2 as to joinder of causes of action must be read subject to the provisions of Code relating to place of suing as provided in Sections 16-20 of the Code. This would have been the position in law even without the words "save as otherwise provided" with which Rule 3(1) begins and these words have only made it more explicit what would have irresistibly followed even otherwise without the aid of those words as a result of the overall operation of the provisions of Sections 16-20 of the Code. The result, therefore, is that though

under the provisions of Order 2, Rule 3 any number of causes of action may be united in one suit against the same defendant, yet because of the provisions of Sections 16-20 of the Code, the Court in which such suit is filed must have territorial jurisdiction in respect of all such causes of action. No citation should be necessary for this too obvious a proposition but yet reference, if need be, may be made among others, to a Division Bench decision of the Allahabad High Court in *Karam Singh v. Kunwar Sen* AIR 1942 All 387 and also to a Division Bench decision of the Madhya Pradesh High Court in *Nava Samaj Ltd. and Others Vs. Civil Judge, Class 1 and Others*, .

3. But how should a court proceed when a suit is filed therein comprising several causes of action where the Court has territorial jurisdiction in respect of some of them only and not others? On this point, there appears to be a cleavage of opinion among the different High Courts and even the same High Court has not always spoken in the same voice (vide, *Mulla CPC -- 14th Edition -- Vol. II*, pages 1042-1043 *AIR Commentaries on CPC -- 10th Edition -- Vol. 3*, pages 216-217). One view appears to be that the Court should return the plaint so far it relates to the causes of action which are beyond its jurisdiction and proceed with the suit on a certified copy of the plaint so far it relates to causes of action within its jurisdiction. With respect, we have not been able to persuade ourselves to agree with such curial vivisection of the plaint as in our view under Order 7, Rule 10 of the Code, the plaint is to be returned either as a whole or not at all. The whole plaint in its entirety cannot obviously be returned by the Court when it comprises some causes of action within the jurisdiction of that court, for the plaintiff has a right to a judgment on such causes of action as are otherwise cognizable by that court. The expression "plaint" in Order 7. Rule 10 would, in [our view, mean the whole plaint and not a part of it and the Rule, in our opinion, does not authorise the court to make a dichotomy of the plaint and then to retain one part while return the other part.

4. The other view appears to be to call upon the plaintiff to amend his plaint by striking out all such causes of action as are beyond its jurisdiction and, that being done, to proceed with the plaint in respect of the remaining causes of action which are within its jurisdiction. But if the plaintiff does not so amend the plaint, the court would have to proceed to judgment with the plaint as it stands unamended on all such causes of action as are within its cognizance and to dismiss the suit in respect of the causes of action outside its jurisdiction. This appears to be the view held by Sir Shah Sulaiman in a Division Bench decision of the Allahabad High Court in *(Acharya Guru Mahant) Ramrup Goshain and Others Vs. Mahant Ramdhari Bhagat and Others* and followed by Braund, J. in a later single Judge decision in *Latu Vs. Smt. Rani Maha Laxmi Bai* and another and with this view we are in respectful agreement.

5. Mr. Das Gupta, the learned counsel for the respondent, has however, urged that allowing the plaintiff to amend his plaint by deleting the causes of action outside the Court's jurisdiction would be opposed to the view of this court held in

the Division Bench decision in *Mst. Zohra Khatoon Vs. Janab Mohammad Jane Alam and Others*, . It is true that the Division Bench in *Zohra Khatoon* (supra at p. 135} has held that "where the Court inherently lacks jurisdiction to entertain the suit, it cannot make any order for amendment to bring the suit within its jurisdiction". But where a suit comprises some causes of action within the jurisdiction of the Court where it is filed, the court cannot be said to lack inherent jurisdiction to entertain the whole suit simply because some other causes of action sought to be united therein are outside its jurisdiction. It would be different if the Court has no jurisdiction in respect of any of the causes of action united in the suit, for in that case the entire suit would be beyond its grip. But if the court has jurisdiction over some of the causes of action and thus has jurisdiction over a portion of the plaint, there should be no reason why it cannot allow the plaintiff to amend the plaint to lop off those portions beyond its grip and proceed with the portions within its grasp. In our view, where the court finds that the plaint comprises causes of action within its jurisdiction as well as causes of action outside its jurisdiction, neither the suit can be dismissed as a whole nor the plaint can be returned as a whole. And as we have already indicated, the plaint, if it is to be returned, must be returned either as a whole or not at all and it is not for the court to make a dissection of the plaint and then to retain a part and to return a pan.

6. We must note that even though Mr. Das Gupta has urged on the strength of *Mst. Zohra Khatoon Vs. Janab Mohammad Jane Alam and Others*, that the Court cannot allow the plaintiff to amend the plaint by deleting the causes of action outside its jurisdiction, he nevertheless concedes that the Court can and should return the plaint to the plaintiff who can then make a fresh presentation of the plaint after deleting those causes of action outside the court's jurisdiction. Now if a court can return the plaint to the plaintiff and the plaintiff can then represent the plaint after the necessary deletion, it may be difficult to appreciate as to why such necessary deletion cannot be allowed to be done by the Court while the plaint is on its file. As pointed out by the Supreme Court in *Thakur Pratap Singh Vs. Shri Krishna Gupta and Others*, , the tendency of the court towards technicality is to be deprecated as it is the substance that counts and must take precedence over more form. If in substance a plaintiff can be allowed to prune off the matters from the plaint, it should not matter much whether he does so within the court or outside. But we need not pursue this aspect at any more length as we have already held that a court cannot be branded as one without jurisdiction in respect of a plaint comprising causes of action both within and outside its jurisdiction and therefore the principle, as laid down in *Zohra Khatoon* (supra), that the court without jurisdiction in respect of a plaint cannot allow its amendment would not apply to the case at hand.

7. Coming now to the case at hand, the learned counsel for the parties arc agreed that the reliefs as prayed for in Clauses (c) and (d) of the last paragraph of the plaint relate to a cause of action arising within the jurisdiction of the Calcutta City Civil Court where the suit has been filed as the alleged document of

surrender giving rise to that cause of action was created within the jurisdiction of that Court. But the other reliefs prayed for in Clauses (a), (b), (e), (f), (g) and (h) of that paragraph relate to causes of action arising outside the jurisdiction of that Court. That being so, the court was wrong in finding that it had no jurisdiction at all to try the suit or even a part of it and therefore the impugned order No. 33 dated 3-9-86 recording such finding and ordering return of the plaint must be set aside.

8. We accordingly allow the appeal, set aside the impugned order and send the case back to the trial Court for proceeding according to law with this direction that the plaintiff shall within two months from this date amend the plaint by striking out the causes of action relating to the reliefs prayed for in Clauses (a), (b), (e), (f), (g) and (h) of the last paragraph of the plain and, that being done, the trial Court shall proceed with the case on the plaint so amended. And we further direct that if that is not done, the trial Court shall proceed to trial with the plaint as it stands on the causes of action relating to only the reliefs prayed for in Clauses (c) and (d) of that paragraph and dismiss the suit in respect of other causes of action. In the circumstances, of the case, we make no order as to costs. Let the records of the case go down at once along with a copy of this judgment.

Ajit Kumar Nayak, J.

9. I agree.