
(1929) 06 PAT CK 0021
In the Patna High Court

Sonabati Kumari APPELLANT
Vs
Kirtyanand Singh and Others RESPONDENT

Date of Decision : 14-06-1929

Acts Referred:

Santal Paraganas Settlement Regulation, 1872 — Section 5
Sonthal Parganas Act, 1855 — Section 2

Citation : AIR 1929 Patna 555

Hon'ble Judges : Wort, J;Rowland, J

Bench : Full Bench

Judgement

Wort, J.—On 4th March 1929, the learned Additional Subordinate Judge of Bhagalpur made an order on a petition of the plaintiff allowing the plaintiff to amend his plaint according to the amendments set out in his petition. From that order the defendant applies to this Court to exercise its revisional powers and asks the Court to declare that the Subordinate Judge had no jurisdiction to make the order which he did. The basis of that contention is that the; Subordinate Judge had no jurisdiction with regard to the action, and consequently no jurisdiction to make any order therein.

2. The plaint in the suit was filed originally in the Court of the Officer of the Santal Parganas, who is described in one part of the record as the Subordinate Judge of Dumka. But by an order of this Court dated 20th June 1927, it was ordered that the suit should be transferred to the Court of the Subordinate: Judge of Bhagalpur.

3. The history of the case is as follows:

I should say in the first place that the-litigation related to an estate which is-known as the Hundwai Estate and which is claimed by the plaintiff in his plaint to be a dependency of Mahalat Kharakpur. It consists of some 13 talukas, and on 27th September 1922, the Government issued a notification under Para. 5, Regn. 3 of 1872, bringing certain portions of the pargatta under settlement. These portions related to three complete talukas and portions of seven others.

4. On 27th May 1925, by a notification which was published in the Gazette, the Government declared the settlement which was commenced by the notification of 27th September 1922, completed. There was an entry in the Record-of-Rights as a result of that settlement to the effect that the talukas were Government ghatwali inalienable, hereditary and indivisible and there was a note added thereto that the Government revenue for the estate is to be paid through the proprietors of the Kharakpur estate. As a result of that entry, the plaintiffs commenced a suit in the Court of the Subordinate Judge, Dumka, purporting to be a suit under Para. 25(a), Regn. 3 of 1872. That was on 30th October 1925. On 27th August 1927 there was a notification under Para. 5, Regn. 3 of 1872, bringing under settlement operations a part of the remaining portion of the talukas which had not been the subject matter of the settlement which was completed on 27th May 1925, and on 15th August 1928 there was a further notification, the result of which was to bring the whole of the remaining portions of the Talukas under settlement operations.

5. The position of affairs, therefore, at that date, that is 15th August 1928, was that as regards the three talukas and portions of seven others, the settlement operations had been commenced and completed. As regards the remainder, that is the three completed talukas and portions of seven others, a notification as regards settlement had been made under Clause (5), Regn. 3 of 1872, As a result of these two notifications, dated 27th August 1927, and 15th August 1928, the plaintiff filed a petition before the Subordinate Judge of Bhagalpur praying for an amendment which was to the effect that these talukas or portions thereof which were the subject matter of what I may describe as the current settlement were to be excluded from the cause of action set out in the plaint. It is argued by the learned advocate on behalf of the applicant that certain paragraphs of the plaint had not been amended particularly paragraph 26, the result of which is that declaration is sought with regard to the whole of the 13 talukas; but, in my judgment, quite apart from the fact that there has in fact contrary to what the applicant alleges been an amendment, it is sufficiently clear from a perusal of the plaint that the action now relates to those portions of the 13 talukas of which settlement was declared to be completed on 27th May 1925.

6. The argument on behalf of the applicant before us is that by reason of the provisions of Para. 5, Regn. 3 of 1872, the jurisdiction of the Subordinate Judge is excluded. Para. 5 reads:

From the date on which, u/s 9, the Lieutenant Governor declares, by a Notification in the Calcutta Gazette that a settlement shall be made of the whole or any part of the Santal Parganas, until the date on which such settlement is declared, by a like notification, to have been completed, no suit shall lie in any civil Court established under the Bengal, Agra and Assam Civil Courts, Act, 1887.

7. Sub-clause of that paragraph reads:

Between the dates referred to in Sub-section (1), all suits of the nature therein

described shall be filed before or transferred to an officer appointed by the Lieutenant Governor u/s 2, Santal Parganas Act, 1855.

8. Reference has been made in the argument which has been addressed to us to Act 37 of 1855, particularly Clause (2) which reads:

The said districts (those described in Clause (1) of the Act) shall be placed under the superintendence and jurisdiction of an officer or officers to be appointed in that behalf by the Lieutenant Governor of Bengal and such officer or officers shall be subject to the directions and control of the said Lieutenant Governor.

9. Clause 2 reads:

The administration of civil and criminal justice and the collection of the revenue, not being permanently settled land-revenue within the said districts, are hereby vested in the officer or officers to be so appointed:

Provided that all civil suits in which the matter in dispute shall exceed the value of one thousand rupees shall be tried and determined according to the general Laws and Regulations in the same manner as if this Act had not been passed.

10. Apart from the reference which is made in Sub-clause 2, Clause 5, Regn. 3 of 1872, in my judgment, this Act, that is to say Act 37 of 1855 is not strictly relevant for the purpose of determining the question which comes before us. Shortly, that question is what is the proper construction to be placed upon Clause 5, Regn. 3 of 1872. I have sufficiently indicated that the estate which is in dispute in this action is divided up in the sense that as to a part the settlement has been concluded and as to the remainder the settlement is in progress.

11. The argument on behalf of the applicant is this, that quite clearly, and as the plaintiff himself admits, the Subordinate Judge of Bhagalpur had no jurisdiction as regards that portion of the estate which is under settlement; at the present time his jurisdiction is necessarily excluded as regards the remainder of the talukas, that is to say that portion of the estate in which the settlement has been completed. I should add that Mr. Sinha's argument appears to be that as the estate has been described as indivisible in the Record-of-Rights, the plaintiff's cause of action must be equally indivisible, that if he seeks a declaration as regards any part of the estate, he must necessarily ask for a declaration as regards the whole, that is to say to put it in the words of Mr. Sinha, he cannot divide his cause of action. It is admitted by Mr. Sinha on behalf of the applicant that had those portions of the estate which now form the subject matter of the cause of action in accordance with the amendment in the plaint been a separate estate, then undoubtedly the Subordinate Judge of Bhagalpur would have jurisdiction, and to repeat his argument in other words the fact that it forms the remainder of the whole estate, the plaintiff is precluded from bringing his action in the form in which it now appears in the amended plaint.

12. In this connexion the case of Mafia Prasad Singh v. Ramani Mohan Singh AIR 1914 P.C. 140 is relied upon. The action in that case was based on a mortgage

and a part of the land which was the subject-matter of the mortgage-deed was land in the Santal Parganas. The suit had been commenced in the Court of the Subordinate Judge of Bhagalpur as a part of the land was within the jurisdiction of that Court. Lord Moulton delivering the opinion of the Judicial Committee of the Privy Council discussed the Regulations elaborately, and in the result came to the conclusion that the suit was not maintainable. It is necessary to notice that there was never any suggestion throughout the proceedings in that case of any amendment by the plaintiff as regards that portion of the land which was in the Santal Parganas ; there was no suggestion to exclude it, and in the course of the judgment of Lord Moulton it is stated:

It is necessary therefore to ascertain what was the exact position (so far as settlement is concerned) of the land included in the mortgage bond at the date of the commencement of the action in which the present appeal is brought, namely, 20th June 1904. The information supplied to their Lordships by the parties, as to the notification appearing in the Calcutta Gazette show conclusively that, although portions of the lands mortgaged had been settled, and notification had been duly made that such settlement had been completed, at dates prior to the institution of the suit, other portions were not so settled. It is clear, therefore, that the suit" came within the provisions of Section 5, Santal Paraganas Settlement Regulation, 1872, relating to the exclusive jurisdiction of officers appointed by the Lieutenant Governor of Bengal or by Settlement Officers, inasmuch as it related to land which had not been settled.

13. For the reasons stated therein, that is to say that the action included land" which was as the learned Law Lord declared the subject matter" of a current settlement and therefore governed by Section 5 of the Regulation, 1872, the suit was not maintainable.

14. I have already stated that there was no suggestion in that case in any way excluding that portion which was not the subject-matter of the current settlement.

15. It is argued that what the Judicial Committee of the Privy Council in effect decided was that no such exclusion could be made. In other words the cause of action was indivisible, that unless the plaintiff could bring a suit as regards the whole of the property, the subject-matter of the mortgage, he could not bring a suit and enforce his security as regards a portion, and it is further argued, therefore, that in this case the plaintiff was not entitled to bring his suit with regard to a portion of the 13 talukas.

16. This point appears to have come before this Court in the case of Shahdeo Narain Deo v. Kusum Kumari [1920] 5 Pat. L.J. 164. In the course of the judgment delivered in that case it is stated:

The Subordinate Judge, upon the question of jurisdiction with which we now propose to deal, held that his jurisdiction was barred only in respect of that portion of the estate which lies within the Santal Parganas. It must be here

observed that geographically Lachmipur estate is situated partly within and without the Santal Parganas.

17. Then later in the judgment the learned Judges of this Court mentioned the case of Maha Prasad Singh v. Ramani Mohan Singh AIR 1914 P.C. 140 and stated as their opinion that the contention which was placed before them on behalf of the appellant was well founded: in other words the plaintiff was not entitled to bring his suit with respect to that portion of the estate which fell outside the Santal Parganas.

18. It appears, and it was argued, that the basis of the decision of the Judicial Committee of the Privy Council in that case was that the question was decided on the basis of whether the cause of action was divisible or not. In the course of the judgment in the case of Shahdeo Narain Deo v. Kusum Kumari [1920] 5 Pat. L.J. 164 it is said:

Their Lordships enquired merely whether the suit was one in regard to land in the Santal Parganas, and holding that it was so, they held that no Court outside the Santal Parganas had jurisdiction to hear or try the suit.

19. In that case which was relied upon by the learned advocate for the applicant the proposition which I have stated came up before the Privy Council, that is to say in the case of Shahdeo Narain Deo v. Kusum Kumari A.I.R 1923 P.C. 21. In the course of the judgment in that case this point which I have just made reference to was referred to and Lord Phillimore stated:

This view (that is to say the suggestion which is made by the learned advocate on behalf of the applicant) was taken in the High Court, and, if it be correct, is at once fatal to the case of the plaintiffs. It seemed, however, to their Lordships not so plain, on first impression, that this decision was correct, and counsel for the respondent desiring to have the matter tried upon the merits, their Lordships have heard the argument upon the merits without further discussion of the preliminary question of jurisdiction.

20. The passage to which I have referred is at p. 61 (of 50 I.A.) and it is sufficiently clear that the case in Maha Prasad Singh v. Ramani Mohan Singh AIR 1914 P.C. 140, did not decide the question which it is argued by the learned advocate for the applicant before us that it did decide. Therefore, there is no authority which is binding on us: the question is an open one, and we have to determine in this case whether the jurisdiction of the Subordinate Judge of Bhagalpur was precluded as regards this part of the plaintiff's cause of action as now framed in the amended plaint. I have already stated, and I repeat, that it seems to me that the argument of the appellant comes down to this, that the Subordinate Judge's jurisdiction is precluded merely by reason of the fact that in the Record-of-Rights the estate is described as indivisible. Let us assume for a moment that it is so, or let us assume that there is some substance in the argument which the learned advocate on behalf of the applicant has advanced before us in this connexion. Now quite clearly if by indivisible is meant such a

character or nature of the estate which prevents the plaintiff from proceeding with the action as regards one part only, then equally clearly that is a matter which ultimately the learned Subordinate Judge in the course of the trial will have to determine according to the facts and law. That, in my judgment, appears to be a sufficient answer to the argument which is put before us on behalf of the applicant that the Subordinate Judge has no jurisdiction in this matter. In my judgment, quite apart from the facts which may emerge during the course of the trial, there is nothing in the plaint itself, taking the facts as set out and established, which precludes the jurisdiction of the Subordinate Judge in this matter. In those circumstances I would dismiss this application with costs; hearing fee five gold mohurs.

Rowland, J.

I agree.

21. The point before us is whether the Subordinate Judge acted without jurisdiction in permitting an amendment of the plaint at the instance of the plaintiff. The suit was instituted for the reliefs that have been indited therein and as first framed it asked for a declaration on the one hand that the entry in the Record-of-Rights was incorrect in respect of that portion of the Hundwai Pargana regarding which the Record-of-Rights had been completed and had been gazetted as completed. On the other hand there was a further prayer for a declaration that the defendant held the entire Pargana of Hundwai as a tenure-holder under the plaintiff. At the time when the suit was instituted there is no question for doubt as to the jurisdiction of the Court to entertain it. At that time a portion of the Hundwai property had been the subject of settlement and the settlement had been completed ; the other portion had not yet been settled, nor had the notifications issued under which settlement was subsequently taken up. When those notifications issued on 27th August 1927 and on 15th August 1928, respectively, they had the result u/s 5, Santal Parganas Settlement Regn. 3 of 1872, of affecting the jurisdiction of the Subordinate Judge, and the point before us is what exactly was the effect on his jurisdiction. The words in Section 5 are:

no suit shall lie in any civil Court in the area covered by such a notification, nor shall any civil Court proceed with the hearing of any such suit which may be paneling before it.

22. Now there is no doubt what the position would have been if without an amendment of the plaint the Court had proceeded to the trial of the suit Such a case was that of Maha Prasad Sinha v. Ramani Mohan Singh AIR 1914 P.C. 140. That suit referred to land some of which was the subject matter of a notification u/s 5 and some was not but the suit was tried out and it was held that the entire decree was without jurisdiction. The case of Shahdeo Narain Deo v. Kusum Kumari [1920] 5 Pat. L.J. 164 was also a case which had been tried out. There was want of jurisdiction and their Lordships of the High Court were inclined to the view that the lack of jurisdiction could not have been cured even by an

amendment of the plaint. The case went on appeal to the Privy Council and is reported in *Shahdeo Narain v. Kusum Kumari* AIR 1923 P.C. 21 and the question of jurisdiction was left open. But in the present case that stage has not been reached. The prohibition in Section 5 is against the Court proceeding with the hearing of a suit which is pending before it. By hearing of the suit I understand the proceedings which are particularised in Order 18, Civil P.C., which is headed:

Hearing of the suit and examination of witnesses

and the order contains the rules as to who is to begin as to the statement of the case of the parties, as to the examination of the witnesses, the record of the evidence and so on. Those it seems are the proceedings which are barred by Section 5. It does not appear that interlocutory orders of a preliminary nature are barred. Indeed it is difficult to suppose that where a Court has had jurisdiction over a case its jurisdiction can be completely divested, at least to the extent of taking from it the jurisdiction to decide whether it can proceed or not.

23. It may, however, be argued that after the publication of these notifications the only jurisdiction left to Subordinate Judge was to transfer the suit under Sub-section (2), Section 5, Regulation of 1872 to an officer appointed by the Lieutenant-Governor u/s 2, Santal Parganas Act, 1855 or Section 10 of the Regulation.

24. This has not in fact been the position taken up by the learned advocate for the petitioner but same support is given to it by the decision in *Baijulal Marwari and Another Vs. Thakur Prasad Marwari and Others*, . That was a case not of an original suit but an execution; but it was held there that the Subordinate Judge of Godda acted wrongly in dismissing a pending application in execution on the ground of want of jurisdiction. What he should have done was to transfer the application to an officer referred to in Section 5, Clause (2). That case is not exactly on all fours with the present one and the decision more closely analogous to what we are dealing with here may be found in *Ramsaran Ray v. Ramprasanna Mukerjee* [1919] 29 Cri.L.J. 206. That was a mortgage suit during the pendency of which it was discovered that a part of the mortgaged property lay in the Santal Parganas and in an area within which Section 5, Regn. 3 of 1872 was a bar to the exercise of jurisdiction by the Subordinate Judge.

25. The plaintiff then applied for an amendment of his plaint by excluding from his claim such property as lay within the area over which the Subordinate Judge's jurisdiction was barred. The Subordinate Judge permitted the amendment and it was eventually held in the High Court that the course taken by him was correct. I am therefore of opinion that the Subordinate Judge in the present case had not acted without jurisdiction and that the present application should be dismissed with costs.