
(1964) 08 GAU CK 0004
In the Gauhati High Court
Case No : First Appeal No. 20 of 1960

State of Assam

APPELLANT

Vs

Biraj Mohan Sarkar and Others

RESPONDENT

Date of Decision : 28-08-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 16, 21
Specific Relief Act, 1963 — Section 42
Suits Valuation Act, 1887 — Section 11

Citation : (1964) 08 GAU CK 0004

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : M.C. pathak, Govt, for the Appellant; T.N. Singh, for the Respondent

Judgement

G. Mehrotra, C.J.—This appeal is by the State of Assam, the principal Defendant in the suit before the Court below. The Plaintiff Respondent Biraj Mohan Sarkar brought a suit for a declaration of his title to the elephant mentioned in the schedule of the plaint by right of purchase from one Abdur Rahman Laskar. The Plaintiff's case is that in the year 1947 he commenced timber extraction work at Harangajow under permit system and is still carrying on the extraction work in that area. The Defendant No. 4, who was the owner-of the disputed elephant, settled with the Plaintiff in the month of April 1955 for giving the elephant on hire at Rs. 20/- per working day from the month of December 1955. The Plaintiff gave an advance of Rs. 600/- to him. The elephant was taken to Harangajow for the extraction work. When the elephant was in possession of the Plaintiff, the Defendant No. 4 In the month of March 1956 expressed his desire to sell his elephant to the Plaintiff. On the 23rd March 1956 for a sum of Rs. 6,000/- the elephant was sold at Silchar to the Plaintiff and thus the Plaintiff became, the owner, of the elephant. In view of certain demands against the proforma Respondent, the vendor of the elephant, due to the fishery dues, a recovery certificate was issued in favour of the State. When the elephant was engaged in the extraction work at Harangajow it was attached on the 28th

December 1956 by the order of the pro forma Defendant No. 3, that is the Sub-divisional Officer, Haflong, North Cachar Hills. It is this order of attachment which has been challenged by means of the present suit for a declaration of the Plaintiff's title to the elephant..

2. It is not disputed that the elephant is at Haflong and was attached by the order of the Subdivisions officer, Haflong, which is not within the jurisdiction of the court below. A number of points were taken in defense. The contention was that the; Silchar Court had no jurisdiction to try the suit. It was further urged before the court below that there was no transfer; the purchase was became and thus Abdur Rahman Laskar still continued to be the owner of the elephant. The trial Court repelled all the objections of the Defendants and decreed the suit. As against that decree the, present appeal has been filed.

3. Mr. Pathak, the Senior Government Advocate, has raised a number, of points. His first contention is that the Silchar Court had no Jurisdiction to try the suit. Secondly, It is .contended that the suit is barred by Section 42 of the Specific Relief Act and thirdly it is urged that the purchase; by the present Plaintiff was a beamy transaction and was not intended to be given effect to Lastly, it is contended that the suit was undervalued.

4. With regard to the first contention, reliance is placed on Section 16 of the Code of Civil Procedure.. Section 15 lays down as follows:

16. Subject to the pecuniary or other limitations prescribed by any law, suits.

(a) * * *

(f) for the recovery of moveable property actually under distraint or attachment, shall ie, Instituted in the Court within the local limits of whose jurisdiction the property is situate:

* * *

His contention is that as the property, which is sought to be recovered and was under attachment, was within the jurisdiction of Haflong Court, the Silchar Court had no Jurisdiction to entertain the suit In view of Section 16 of the Code of Civil Procedure. The" trial court has repelled this contention on the ground that though the property was actually attached by the order of the Haflong Court, in effect It was an off-shoot of an earlier Bakijai case which was started in the year 1951-52 in the Silchar Court, wherein the Deputy Commissioner of Cachar passed an order on 22-12-56 for necessary steps by the Subdivisional Officer, Haflong. Mr. Singh, who appears for the Respondent, has contended that in fact the attachment was under the orders of the Deputy Commissioner of Cachar and not under the orders of the Sub divisional Officer of Haflong. On the 22nd October 1956, the Deputy Commissioner of Cachar passed the following order:

Seen petition by A. Jabbar that A. Rahman has two elephants. Stay the sale case at the present stage. Issue fresh D.W. through proper channel against A.

Rahman for seizure of the elephants and giving these in zimma. The Petitioner to identify the elephants. Fix 22nd December 1956 for report.

It appears that the order of the Deputy Commissioner was that the distress warrant should be issued by the proper authority, A certificate under the Revenue Recovery Act, 1890 was issued by the Deputy Commissioner, Cachar, to the Deputy Commissioner of the United Milcir and North Cachar Hills on the 24th November 1956. It was in pursuance of this certificate of the recovery issued by the Deputy Commissioner, Cachar on 24-11-56 that the Nazir attached the elephant on the 29th December 1956. Thus, the attachment order was passed in pursuance of the Bakijai proceedings which were started in the Hafiong Court under the certificate of recovery sent by the Deputy Commissioner, Cachar, to the Deputy Commissioner of the United Mikir and North Cachar Hills.. It cannot be said that because the earlier steps were taken for the attachment of the elephant of Abdur Rahman Laskar by the Deputy Commissioner of Cachar, the present attachment was under the orders of the Deputy Commissioner of Cachar. The trial court is not right, in our opinion, in holding that the Bakijai proceedings, started before the Hafiong Court were off-shoot of the earlier Bakijai proceedings. Undoubtedly when the amount could not be realized by the proceedings started before the Silchar Court, steps had been taken to realize the amount of the dues by necessary certificate of recovery Issued by the Deputy Commissioner, Cachar. But, it cannot be said that the order of attachment was passed by the Deputy Commissioner of Cachar. Section 16 of the Code of Civil Procedure, which we have already referred to above, gives jurisdiction to the court to entertain the suit for the recovery of the property which is under attachment where the property, is situate. In the present case, in any view of the matter, the elephant was under attachment by the orders of the Hafiong Court under whose possession the elephant is and thus Section 16(f) of the Code of CPC is attracted to this case, and there is no substance in the reasoning of the court below that the Baikai proceedings started before the Halong Court are only off-shoot of the earlier Baikai proceedings.

5. The next contention of Mr. Singh is that Section 16(f) is attracted only to a case where the suit is brought for the recovery of the property and not for a declaration. Section 16(f) really applies to a case for the recovery of moveable property under distraint or attachment. If the principle is accepted that the property under attachment is in possession of the Court and no suit for recovery of the property will lie, then the provisions of Section 16(f) become redundant and there will be no case where Section 16 (0) will be attracted because in the cases of attachment the claimant of the property will only have to bring a suit for declaration and not for recovery of the property. This is not the intention of Section 16 of the Code of Civil Procedure. From a perusal of the plaint and from the entire facts in the case, it will have to be seen whether in substance the suit is for the recovery of the property or not and not from only the express words of the relief claimed in the plaint. The property is claimed by the Plaintiff under the sale. His case is that the property is not liable to attachment in execution of a

decree against his vendor and thus in effect the) suit is for the recovery of the property after the declaration of his title to him and it is the substance of the plaint which has got to be looked into and not the language of the relief. It should also be pointed out that in case it is held that the suit is not for recovery of the property and the property, is In the possession of a third party, in that event, the suit will fall u/s 42 of the Specific Relief Act and thus, in our opinion, there is no substance in the contention of Mr. Singh that Section 16 of the Code of CPC is not attracted as there is specific relief for the recovery of the property.

6. His next argument is that even if Section 16 of the Code of CPC applies to the present case-and the Cachar Court had no jurisdiction to try the suit, the decree of the court below Is protected u/s 21 of the Code of Civil Procedure. Section 21 of the Code provides that 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 innless there has bee/n a consequent failure of justice. Go far as the first condition of Section is concerned, it is fulfilled in the present case inasmuch as the objection and the jurisdiction was taken at the earlier stage in the suit - itself Mr. Singh contends that even though the objection was taken at the earlier instance unless it is shown that there has been a inconsequent failure of justice, the opposite party cannot be allowed to take up this position before this Court. He contends that there is no averment in the written statement or in the grounds of appeal or on the facts on record to show that any prejudice has been caused to the Appellant. In fact, the Appellant had all opportunity to meet the Plaintiff's claim and he has led evidence in support of the contention and thus no prejudice has been caused to the Appellant.

The question raised by Mr. Pathak is that Section 21 is not attracted to the present case. His contention mainly is that Section 21 applies to the cases where the objection relates to the place of suing and not to the objection which goes to the very root of the jurisdiction of thus Court. His contention is that the suit was not maintainable before the Cachar Court. The suit lay in. the Haflong Court which is not created under the CPC but the rules for administration of justice in the Mikjr Hills apply to that area and thus the Courts which have got right to determine the claim of the present Plaintiff were not created under the CPC and Lori respect of a suit which would lie in clew Haflong Court, the Cachar Court has no jurisdiction at all, It is not really a technical objection regarding the place of suing, but it goes to that very root of the jurisdiction of the Cachar Court lie has relied upon the case of Setrucharlu Ramabhadra Raju v. Maharaja of Jeypore AIR 1919 P.C. 150. There the suit was entertained in respect of a part of the property which was situated In the scheduled districts outside the territorial jurisdiction of the Court which entertained the suit and the trial court had taken the view that the decree was protected u/s 21 of the Code of Civil Procedure. This contention was replied by their Lordships of the Privy Council and the decree of the court below was modified. The following observation may be usefully quoted:

The learned Judges of the Court of Appeal thought that the matter was met by Section 21 of the Code, which provides that no objection as to the place of suing shall be allowed by any Appellate Court unless the objection was taken in the Court of First Instance, which in this case had admittedly not been done. Their Lordships cannot agree with this view. This is not an objection as to that place of suing; it is an objection going to the nullity of the order on the ground of want of jurisdiction. The order for sale as made under Sections of the Code of CPC which the Code itself says are not to apply to the scheduled district."

With these observations the decree of the court below was modified. In our opinion, the principle enunciated in this case applies with full force to the facts of the present case.

7. Mr. Singh has referred to the case of Kiran Singh and Others Vs. Chaman Paswan and Others, He has drawn our attention to the following passage at page 342.

With reference to objections relating to territorial jurisdiction, Section 21 of the CPC enacts that no objection to the place of suing should be allowed by an appellate or revision Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying "Section 21 and 99 CPC and Section 11 of the Suits Valuation Act is; the same namely, that when a case has been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds unless it had resulted in failure of justice, the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits. The contention of the Appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained u/s 11 of the Suits Valuation Act.

The question raised there was about the applicability of Section 11 of the Suits Valuation Act. Undoubtedly that observations go to show that the principle underlying Section 21 of the Code of Civil Procedure) has been embodied With regard to the pecuniary jurisdiction in Section 11 of the Suits Valuation Act. It is pointed out in this very case that it will depend on the nature of the objection Raised "in each case. If the objection is only of a technical nature, undoubtedly it will not render the decree of the court below a nullity. But, if the objection goes to the very root of the jurisdiction of the court, the decree of the court below will be a nullity and Section 21 will not be attracted to such a case at all. Each case will thus have to be examined on the nature of the objection taken by the party. The observations in this case that the objection to the jurisdiction both territorial and pecuniary are of technical nature, does not apply to all objections relating to jurisdiction but it applies to the objections of the technical nature.

Mr. Pathak has argued that Section the CPC is attracted" only to a case where

the courts- are within the jurisdiction of one District Judge and not where the courts are under two separate District Judges. We do not think that for the purpose of this case it is necessary for us to deal with this argument. It is only to be pointed out that the court below had no jurisdiction u/s 16 of the Code of CPC to entertain the present suit and as the objection relates to the very root of the jurisdiction of the court Inasmuch as the Halfling Court is not governed by the CPC at all and there are different sets of Courts In those areas which dispose of the matters, it cannot be said that the objection raised by the Appellant is only of a technical nature and Section 21 of the Code of CPC protects the decree.

8. In view of our decision on this point, It Is not necessary to go into the other question on the merits raised by the Appellant.

9. In the result, therefore, we allow this appeal, set aside the order of the court below and dismiss the suit for want of jurisdiction by the Catcher Court. Parties will bear their own costs throughout.