

(1923) 08 PAT CK 0039
In the Patna High Court

The Benares Bank Limited

APPELLANT

Vs

Surendra Narain Singh and Others

RESPONDENT

Date of Decision : 13-08-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 20

Citation : AIR 1924 Patna 831

Hon'ble Judges : Macpherson, J; Das, J

Bench : Full Bench

Judgement

Das, J.—I think this application must succeed the petitioner Bank was the plaintiff in a mortgage action at Benares. The suit was filed against the opposite party and various other persons whose names it is unnecessary to mention. The Benares Bank, Limited, obtained the usual mortgage decree on the 17th December, 1917. The decree as I have said, was against the" opposite party and others by compromise.

2. The opposite party, sometime in 1922, instituted a suit in the Third Court of the Subordinate Judge of Patna for a declaration that the consent decree passed in Benares was wholly inoperative as against them. One of the questions which the learned Subordinate Judge had to try was, whether the Court at Patna had jurisdiction to entertain the suit.

3. I am dearly of opinion that the suit is not a suit for land and that Section 16 of the Code has no application to the facts of the case. Mr. Gangadhar Das has insisted that the suit is for the determination of a right to or interest in Immovable property. His argument is based upon the view that it is impossible for him to succeed in the action unless he establishes his title to the properties which were mortgaged by defendants Nos. 5 and 6 in favour of the Benares Bank, Limited, and that, in so far as he is inviting the Court to adjudicate the title of his clients to the mortgaged properties which are situated within the jurisdiction of the Patna Court, he is in effect asking the Court to determine the right to or interest of the petitioners in Immovable property. In my opinion the

argument is unsustainable in point of law. The only question which the learned Subordinate Judge has to decide is, whether the plaintiffs are entitled to a decree declaring that the, decree passed by the learned Subordinate. Judge of Benares in 1917 is inoperative and void as against the plaintiffs in the present action. The plaintiffs in their action, no doubt, have asked the Court to adjudicate their title to the properties in dispute and also to hold that the defendants Nos. 5 and 6 were not entitled to mortgage the properties which belonged to them to the Benares Bank, Limited. But as the learned Chief Justice has pointed out in the case of Ramsumran Prasad v. Gobind Das 1922 Pat. 615, "the Court is in all cases bound to adjudicate upon the matters in issue between the parties and it is unnecessary for the plaintiff to pray that this should be done. The real relief which the plaintiff, seeks, is the delivery of possession of the, property by dispossession of the defendant, and if he asks for a decree in those terms when he is not; bound first to ask for a declaration before such relief can be granted, I do not think that, merely because he asks the Court to adjudicate upon the matters in issue, the suit should be treated as a suit to obtain a declaratory decree with consequential relief."

4. The question which the learned Chief Justice had to decide in the case to which I have referred was a question of Court-fees payable on a certain plaint which had been filed by the plaintiff, but in my opinion we are entitled to refer to that decision in order to determine the question whether the suit should be regarded as a suit for a land because in giving the appropriate relief to the plaintiffs the Court may have to determine some question as to the right to the property as between the plaintiffs and the pro forma defendants. I do not say that the Court may necessarily have to determine those points; but it may have to do so. In my opinion the suit which has been filed by the plaintiffs in this case cannot be regarded as a suit for land, having regard to the relief which they prayed in this action.

5. The next question is, whether part of the cause of action may be said to have arisen within the jurisdiction of the Patna Court. If Section 16 does not apply, the only other Section to which we may refer is Section 20 of the Code of Civil Procedure. That Section provides as follows: "Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction,-

(a) the defendant, or each of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business or personally works for gain or,

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given or the defendants who do not reside, or carry on business or personally work for gain, as aforesaid acquiesce in such institution; or.

(c) the cause of action wholly or in part arises.

6. It is conceded that the terms of Clauses (a) and (b) have not been complied with. The only other question is, have the terms of Clause (c) been complied with? That leads us to consider the meaning of the term "cause of action," All that I need do is to refer to the decision of the late Chief Justice of the Allahabad High Court in the case of *Dan Dila v. Munna Lal* (1914) 36 All. 564. That was a case where a decree had been obtained by the respondents as against the appellant in Calcutta. The appellant instituted a suit in Mainpuri for a declaration that the decree passed by the Calcutta High Court had been obtained by fraud. No application for execution had been made as against the appellant and the Subordinate Judge held, and the High Court confirmed the decision of the learned Subordinate Judge, that the Mainpuri Court had no jurisdiction whatever to entertain the suit. No doubt, if an application for execution had been presented as against the opposite party in Patna, that itself would have given rise to a cause of action of which the respondents might have taken advantage; but it is conceded that the petitioner Bank has not presented any application for execution of the decree which it has obtained as against the opposite party and it does not seem to us right that this suit should have been instituted in the Patna Court. As was pointed out by the late Chief Justice of the Allahabad High Court, where a decree has been improperly obtained the proper and most convenient course is for the party aggrieved to go to the Court that granted the decree and get it set aside by that Court. I do not for a moment suggest that under no circumstances would another Court have jurisdiction to entertain a suit for a declaration that a decree granted by another Court is not binding upon it, but it must be established that there is cause of action within the jurisdiction of the Court. In my opinion the learned Judge had no jurisdiction to entertain the suit.

7. I must accordingly allow the application, set aside the order passed by the Court below and direct that the plaint be taken off the file and returned to the opposite party for the purpose of being filed in the proper Court. The petitioners are entitled to their costs throughout and we assess the costs in this Court at five gold mohurs.

Macpherson, J.

8. I agree.