
(1923) 11 CAL CK 0029
In the Calcutta High Court

The East Indian Railway Company

APPELLANT

Vs

Kanailal

RESPONDENT

Date of Decision : 21-11-1923

Acts Referred:

Citation : 80 Ind. Cas. 205

Hon'ble Judges : C.C. Ghose, J

Bench : Single Bench

Judgement

C.C. Ghose, J.—This is an application u/s 115, CPC and it has arisen under the following circumstances: On the 13th June 1920, the Opposite Party delivered to the Jodhpur-Bikaner Ry. at Bikaner Station for carriage to Howrah as passenger's luggage 12 packages, 7 of which were placed in the guard's van. At Howrah the Opposite Party received all the said packages save one of those placed in the guard's van, which had been lost in transit. On the 26th April 1921 the Opposite Party instituted a suit in the Calcutta Small Cause Court for the recovery of a sum of Rs. 981-4-0 in respect of the package which was lost against the East Indian Ry. Company. On the 7th February 1923, the suit was decreed in favour of the Opposite Party, although the Petitioner Company had taken the point that no notice of suit u/s 77 of the Railways Act had been given. The Petitioner Company now contends that the learned Judge in the Small Cause Court had exercised a jurisdiction not vested in him by law in entertaining and decreeing the suit against the East Indian Ry. Company in the absence of a notice u/s 77 of the Railways Act. The Petitioner Company applied to my learned brother, Mr. Justice Greaves, on the 20th August 1923, and obtained a rule u/s 115, CPC against the Opposite Party and this rule has now come on for bearing before me.

2. On behalf of the Petitioner Company considerable stress has been laid on the case of C.D.M. Hindley v. Joynarain Marwari 54 Ind. Cas. 439 : 24 C.W.N. 288 : 40 C. 962 and on the case of The Assam Bengal Ry. Co., Ltd. v. Radhika Mohan Nath 72 Ind. Cas. 714 : (1923) AIR (C.) 397 : 28 C.W.N. 438 and it has been

contended that usurpation of jurisdiction by the Small Cause Court by holding that a notice u/s 77 of the Railways Act is unnecessary can be revised by this Court u/s 115, Civil Procedure Code.

3. Sir Binode Mitter for the Opposite Party has contended that the present is not a case of usurpation of authority, nor is it a case of a conscious violation of a rule of law and that, therefore, on the authority of the decision of the Privy Council in *Ameer Hossain v. Sheo Baksh Singh* 11 C. 6 : 11 I.A. 237 : 4 Sar. P.C.J. 659 : Rafique and Jackson's P.C. No. 83 : 6 Ind. Dec. (N.S.) 760 (P.C.), the present rule ought to be discharged.

4. It is well settled that where a Court has jurisdiction to determine a question and it has determined that question, it cannot be said to have acted illegally or with material irregularity, simply because it has come to an erroneous decision. The leading case on this subject is the case of *Ameer Hossain* 11 C. 6 : 11 I.A. 237 : 4 Sar. P.C.J. 659 : Rafique and Jackson's P.C. No. 83 : 6 Ind. Dec. (N.S.) 760 (P.C.), cited above, and following this decision it has been held that the High Court will not interfere u/s 115, Civil Procedure Code, merely because the lower Court had wrongly decided that a suit was barred by limitation, or that it was barred as *res judicata*, or because the lower Court had proceeded upon an erroneous construction of the sections of an Act, or had misunderstood the effect of a document in evidence, or had excluded evidence which it ought to have admitted. The Privy Council in the case of *Balkrishna Udayar v. Vasudeva Aiyar* 40 Ind. Cas. 650 : 44 I.A. 261 : 40 M. 793 : 22 C.W.N. 50 : 15 A.L.J. 615 : 2 P.L.W. 101 : 33 M.L.J. 69 : 26 C.L.J. 143 : 19 Bom. L.R. 715 : (1917) M.W.N. 628 : 6 L.W. 501 : 11 Bur. L.T. 48 (P.C.), observed as follows: "It will be observed that Section 115 applies to jurisdiction alone, the irregular exercise of it or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved." There is no doubt that conflicting views of the scope and effect of Section 115 are to be found in the cases in the reports and in these latter days I do not feel called upon to reconcile these conflicting views. I ought to add that my attention has been drawn to the case of *Jannoitzer v. Mohanand Chatterji* decided by Jenkins, C.J. and Woodroffe, J., on the 21st January 1904, Unreported. The passages in the judgment which are specially relied upon are these:

Per Jenkins, C.J.

I wish to reserve for consideration, should it ever hereafter arise, the question whether rejection or admission of evidence may not be in some peculiar circumstances an illegality or material irregularity, as for instance, where it is in direct contravention of some statutory provision.

Per Woodroffe, J.

Thus where a Court acts upon an unstamped document, where the legislature says that it is not to be acted upon at all, or on an unregistered document where registration is required, the Court has, I think, no option but to follow the

mandatory provisions of the legislature, and if it does not follow such mandatory order, then it acts illegally.

5. No doubt there are these observations, but the real question is whether the judgment of the Small Cause Court Judge is revisable by me on the facts of the present case under the first part of Section 115, Civil Procedure Code. On this point I desire to adopt the observations of West, J., in the case of *Amritrav Krishna Deshvande v. Balakrishna Gunesh* 11 B. 488 : 6 Ind. Dec. (N.S.) 321: "Now, jurisdiction, according to the exact conception of it formed by the Roman lawyers, consists in taking cognizance of a case involving the determination of some jural relation, in ascertaining the essential points of it and in pronouncing upon them. An enquiry into whether the jurisdiction exists is not an exercise of jurisdiction over the case itself, but an investigation of another question altogether, that of whether the considerations of cognizance are satisfied. There is in the determination of such a question no adjudication in the stricter sense, no ascertainment of jural relations and command consequent thereon. This enquiry, therefore, may properly be reviewed in many cases, where when the exercise of a true jurisdiction in the fuller sense has taken place, no appeal or even review may be possible. If the objection that might have been raised as a preliminary one is not in fact raised until the hearing of the case has proceeded to a certain stage, the enquiry thus provoked is not thereby changed in its character. It is only in a second intention of the Court that "jurisdiction" is used in speaking of such an enquiry as an exercise of jurisdiction; objections affecting jurisdiction must relate either to the person, the place or the character of the suit. If a Court has competence in these respects, it may exercise jurisdiction and does exercise it whether correctly or erroneously in dealing judicially with a cause placed before it. Jurisdiction again has two closely related but distinguishable senses. It means sometimes authority, sometimes the exercise of the authority and this either in investigation or by way of command. Where the law speaks of exercise of jurisdiction, or failing to exercise jurisdiction, it means using or failing to use authority in entering on an enquiry and carrying it to a judicial conclusion. The exercise of jurisdiction is not declined when such a conclusion has been arrived at, merely because, had the decision on a particular point been different, further questions would have had to be disposed of."

6. In my judgment, the present is not like the class of cases referred to by Woodroffe, J. Nor is it like the case where it has been held that, if a Court wrongly decides that a suit is of a civil nature and entertains the suit on that basis, the decision is open to revision u/s 115, CPC for no Civil Court is competent to entertain a suit which is not of a civil nature. On the facts of the present case and on the judgment of the learned Small Cause Court Judge, I feel great doubt whether I can say that the Court had no jurisdiction to entertain this suit. No doubt the Court has said that notice u/s 77 of the Railways Act on the facts of this case is unnecessary, but I think it is a strong thing to say that the Court by holding that a notice u/s 77 of the Railways Act on the facts of this case is unnecessary did assume a jurisdiction which had not been vested in it by law.

It may be said that this case is on the border line, but on the best consideration that I am able to give, I am inclined to think that if there is an error at all in this case, it is an error on a point of law and that no question of jurisdiction properly arises on the present application.

7. The result, therefore, is that this Rule must be discharged with costs.