

(1970) 02 AHC CK 0002
In the Allahabad High Court
Case No : Civil Revision No. 1363 of 1967

Tika Ram

APPELLANT

Vs

Naubat

RESPONDENT

Date of Decision : 10-02-1970

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 16
Uttar Pradesh Panchayat Raj Act, 1947 — Section 85

Citation : (1970) 40 AWR 237

Hon'ble Judges : Satish Chandra, J; R.L. Gulati, J

Bench : Division Bench

Advocate : S.S. Bhatnagar, for the Appellant; A. Banerjee for opp. party., for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—Naubat Singh, the opposite party on 10-1-1966 filed a suit for recovery of Rs. 500/- on the basis of a parole loan in the Nyaya Panchayat. The Applicant contested the suit. He denied having borrowed any money from the Plaintiff. Subsequently, acting u/s 85 UP Panchayat Raj Act 1947 the Munsif, Ghaziabad withdrew the suit from the jurisdiction of the Nyaya Panchayat and transferred it to the 3rd Addl. Munsif, Ghaziabad for trial. This Munsif on 20-12-1966 dismissed the suit on the finding that the Plaintiff had failed to prove the loan. The Plaintiff filed an appeal which succeeded. On 17-3-1967 the Judge Small Cause Court, Meerut, allowed the appeal and decreed the suit on the finding that the advance of Rs. 500/- to the Defendant had been established. Aggrieved the Defendant has come up to this Court in revision. At the hearing of the revision the only point urged by the learned Counsel for the Applicant was that no appeal lay against the decree of the learned Munsif under the provisions of the Panchayat Raj Act. Considering the question to be one of general importance the learned Single Judge has referred the matter" to a larger Bench. That is how this matter has come up before this Bench.

2. Section 85 UP Panchayat Raj Act provides for transfer of cases from Nyaya Panchayat. In a civil case a Munsif can at any stage withdraw the suit and

(1) try and dispose of the same, or (2) transfer it to another Bench of the Nyaya Panchayat, or

(3) transfer the same for trial or disposal to any other...Munsif...competent to try or dispose of the case.

Section 89 of the Act provides for revision against the orders of the Nyaya Panchayat in a civil case. The revision lies to the Munsif. Under Sub-section (2) of Section 89 the Munsif can--(a) quash the decree or order passed by the Nyaya Panchayat,

(b) modify the order,

(c) remand the case to the Nyaya Panchayat for retrial with such direction as he may deem fit, or

(d) try the case himself or transfer it to another court or officer competent to try the same.

It will be seen that u/s 89 of the Act the Munsif can try the case himself or transfer it to another competent court for trial. u/s 85 the Munsif can, after withdrawal, dispose of the case himself or transfer it to any other Munsif competent to try the case. Unlike Clause (d) of Section 89(2) a transfer Under Clause (3) of Section 85(1) can only be to a competent Munsif. The transfer cannot be to any other court, even though he may be competent to try the case.

3. The Panchayat Raj Act does not make any provision regarding the appealability of an order passed by the Munsif. The jurisdiction has been conferred on the Munsif as a court and not by way of a persona designata. In our opinion, the Munsif, while trying or disposing of the suit would--act as a Court of Munsif and would exercise the jurisdiction conferred on him by the Bengal, Agra and Assam Civil Courts Act and would hence be governed by the provisions of CPC both in the matter of procedure to be followed by him as well as in relation to the appealability of the orders passed-by him during the trial of the suit as well as the decree passed by him. Once the Munsif disposes of the suit his order would be a decree within meaning of the CPC and would be appealable u/s 96 thereof. As such the appeal was validly filed before the lower appellate Court.

4. In Janardan Prasad v. Kalindri Prasad 1963 AWR 28 a learned Judge of this Court held that when a Munsif tries a suit himself after withdrawing it from the Nyaya Panchayat he acts as a Munsif and not as a persona designata. His decree would be appealable under Part VII of the Code of Civil Procedure. This decision was followed by another learned Judge of this Court in Lakshmi Chand v. Nand Kishore 1965 ALJ 767. It was held that the UP Panchayat Raj Act does not prescribe any procedure for the trial by the Munsif of cases instituted before the Nyaya Panchayat and withdrawn by him for trial by himself. There is also no

provision in the Act with regard to appealable or non-appealable character of the decree or order passed by the Munsif. Such provisions exist with regard to trial of the case by the Nyaya Panchayat only. By implication it can, therefore, be held that the decree or orders passed by the Munsif in such cases are subject to appeal or revision and by virtue of the provisions of the Bengal, Agra and Assam Civil Courts Act an appeal shall lie to the District Judge and such appeal can be transferred to any civil judge including the additional civil judge for hearing.

5. Learned Counsel for the Applicant relied on the decision of a Division Bench case of this Court in *Karimullah v. Sri Ram and Pearey* 1964 AWR 441. In that case it was held that the Munsif has jurisdiction to transfer a suit from the Nyaya Panchayat to the court of Judge Small Causes u/s 89 UP Panchayat Raj Act if the suit in its nature could be tried by the Small Cause Court. In our opinion, the case has no application to the facts of the present case. In the present case the Applicant has not challenged the jurisdiction of the Munsif to try the suit on the ground that the suit was Small Causes in nature. He has only challenged the appealability of the decree passed by him. We are unable to agree with the learned Counsel for the Applicant that since in its nature the suit is Small Cause even if it is tried by the Munsif it will be deemed that the decree was passed by the Small Causes Court.

6. Under Clause (d) of Section 89(2) the Munsif has the power to transfer a case to any court competent to try the case. Under that provision the Munsif can transfer a case of the nature of Small Causes to Small Causes Court. That transfer is different to a transfer made u/s 85. Under Clause (3) of Section 85(1) the Munsif can transfer it to another Munsif alone. He has not been given power to transfer the case to any other court. If a suit is withdrawn u/s 85, it can be tried by the Munsif who withdrew it or by another Munsif to whom the case is transferred. The transferee Munsif would act as a court of Munsif and could not possibly be deemed to be acting as a Judge Small Causes Court. u/s 6 of the Provincial Small Cause Courts Act 1887 a Judge of the Court of Small Causes has to be appointed by an order in writing by the State. There is no evidence that the Munsif who tried the present suit was so appointed. He cannot be presumed to have decided the suit in the capacity of Judge Small Cause Court. The decree passed by him would not attract the incidents of a Small Causes Court decree so that a revision u/s 25 Small Causes Courts Act may alone lie.

7. Learned Counsel also relied on Section 16 of the Provincial Small Cause Courts Act, which provides:

Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

It will be seen that this section itself makes an exception in the case of a provision to the contrary made by any other enactment for the time being in

force. In the present cases there is a contrary provision in Section 85(3) of the UP Panchayat Raj Act. Clause (3) of Section 85(1) is a provision to the contrary in so far as it permits the transfer of a suit only to another Munsif, even though it may be in nature Small Causes. Section 16 of the Provincial Small Cause Courts Act will, therefore, not bar the Munsif from withdrawing and transferring a suit to another Munsif even though it may be of the nature of Small Causes.

8. There is no merit in the revision. It is accordingly dismissed with costs.