

(2013) 08 AHC CK 0094

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1681 of 2013

Vidya Shanker Tiwari

APPELLANT

Vs

Surya Kant Tiwari and Others

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Citation : (2013) 7 ADJ 729 : (2013) 100 ALR 370 : (2013) 5 AWC 4969 :
(2013) 121 RD 100

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Advocate : Arvind Srivastava, for the Appellant; Siddharth Nandan, for the Respondent

Judgement

Sanjay Misra, J.—This petition is directed against the order dated 1.10.2012 (Annexure 5 to the petition) passed by the District Judge, Deoria in Transfer Application No. 327 of 2012 (Surya Kant Tiwari v. Vidya Shanker Tiwari and others). The petitioner herein was defendant in a suit filed by the plaintiff respondent No. 1 for permanent injunction and demolition before the Civil Judge (Junior Division), Deoria. An ex parte injunction order was granted. The petitioner defendant filed his written statement on 5.7.2012 alongwith his objection to the temporary injunction application raising a dispute regarding valuation of the suit. It was stated by him that the plaintiff respondent had valued this property in suit at Rs. 15,000/- whereas the valuation of the property was more than five lakhs. He stated that the pecuniary jurisdiction of the Civil Judge (Junior Division) was Rs. 25,000/- and since the property in suit was valued at more than rupees five lakhs the suit was not maintainable before the Civil Judge (Junior Division) who had no pecuniary jurisdiction to entertain a suit valued more than Rs. 25,000/-. The plaintiff respondent appears to have admitted the fact of under valuation of the suit property hence he filed an amendment application to change the valuation of the suit property to Rs. 5,20,000/-. The said application was allowed by the Civil Judge (Junior Division) on 24.9.2012.

2. The plaintiff respondent No. 1 then filed a Transfer Application No. 327 of 2012 (Surya Kant Tiwari v. Vidya Shanker Tiwari and others) u/s 24 CPC before the District Judge, Deoria who in turn invited comments from the Civil Judge (Junior Division). The Civil Judge (Junior Division) on 27.9.2012 sent a letter to the District Judge, Deoria that after the valuation of the suit property has been amended in the plaint he had no pecuniary jurisdiction. The District Judge on the said comments has passed the impugned order dated 1.10.2012 transferring the case from the Court of Civil Judge (Junior Division), Court No. 10, Deoria to the Court of Civil Judge (Senior Division), Court No. 18, Deoria and as such allowed the Transfer Application No. 327 of 2012 filed by the plaintiff respondent. The impugned order dated 1.10.2012 is quoted here under:

3. The petitioner defendant feeling aggrieved against the impugned order dated 1.10.2012 has filed this petition inter alia stating that the impugned order was passed ex parte against the defendant petitioner that the provisions of Order VII Rule 10 CPC have been ignored and violated, that since by the amendment application the valuation of the property in suit was sought to be amended to Rs. 5,25,000/- hence the Civil Judge (Junior Division) having pecuniary jurisdiction only up to Rs. 25,000/- could not have entertained the amendment application or pass any order thereupon and in view of the own admission of the plaintiff in the amendment application regarding valuation of the suit property he could not pass any orders in the suit itself, that the District Judge in exercise of his jurisdiction u/s 24 CPC could not have transferred the suit from the Court of Civil Judge (Junior Division) to the Court of Civil Judge (Senior Division) in view of the express provisions of Order VII Rule 10 CPC, that the amendment in valuation of the suit and property once allowed on 24.9.2012 would relate back to the date of institution of the suit hence on such date i.e. 21.12.2009 the suit was not competently instituted before the Court having pecuniary jurisdiction only upto Rs. 25,000/-.

4. In support of his contention learned counsel for the petitioner has relied upon a decision of a learned Single Judge of this Court in the case of Murari Lal v. Raman Lal, LAWS (ALL) 1977-9-7, to state that the power u/s 24(5) CPC could be exercised by the District Judge only when the suit was validly instituted in the Court of original jurisdiction and therefore any order passed in a suit not validly instituted in the proper Court would not get validity.

5. He has referred to a decision of learned Single Judge of this Court in the case of Devendra Singh Vs. Bhole Ram, , to submit that consent of the parties cannot confer jurisdiction on a Court to try a suit and once the amendment in valuation is allowed and the pecuniary jurisdiction of the Court has changed the plaint would have to be returned for presentation before the competent Court and it could not be transferred and directed to proceed in the Court having pecuniary jurisdiction.

6. Learned counsel for the petitioner has also placed reliance on a decision of the Supreme Court in the case of Kulsum R. Nadiadwala Vs. State of Maharashtra

and Others, , to the effect that when the statute prescribes a procedure to do a thing in a particular manner then the thing is to be done in the manner it is prescribed.

7. Learned counsel for the petitioner has further cited a decision of the Supreme Court in the case of Sinnamani and Another Vs. G. Vettivel and Others, , to state that when the statute requires filing of a suit then it must be instituted only in the manner prescribed and in no other manner.

8. Learned counsel for the plaintiff respondent No. 1 has disputed the submission made by learned counsel for the defendant petitioner and has submitted that there is no illegality in the impugned order dated 1.10.2012 passed in Transfer Application No. 327 of 2012 (Surya Kant Tiwari v. Vidya Shankar and others) by the District Judge, Deoria in view of the provisions of Section 24(5) of the Code of Civil Procedure. He states that the suit was filed before the Civil Judge (Jr. Div.) valuing it at Rs. 15,000/- which was triable by the Civil Judge (Jr. Div.). He states that on the objection filed by the defendant regarding valuation of the suit property, the plaintiff respondent did not contest it but admitted that the suit property was under valued in the plaint hence, the plaintiff respondents filed an amendment application to increase the valuation from Rs. 15,000/- to Rs. 5,20,000/- which was allowed on 24.9.2012. Upon the valuation of the suit being increased to Rs. 5,20,000/- it was no more maintainable before the Civil Judge (Jr. Div.) who had pecuniary jurisdiction only up to Rs. 25,000/-. He states that the plaintiff respondents then filed Transfer Application No. 327 of 2012 u/s 24 of the CPC before the District Judge praying that the suit be transferred from the Court of Civil Judge (Jr. Div.) to the Court of Civil Judge (Sr. Div.) which is competent to try the suit having valuation of Rs. 5,20,000/-. Learned counsel states that the transfer application filed by the plaintiff respondent has been allowed by the District Judge, Deoria and now the suit has been directed to be transferred to the Court of Civil Judge (Sr. Div.) from the Court of Civil Judge (Jr. Div.). According to him the District Judge has jurisdiction to transfer such suit in view of the specific provisions of Section 24(5) of the CPC as such there can be no illegality or jurisdictional error when the District Judge has passed the impugned order dated 1.10.2012 in Transfer Application No. 327 of 2012.

9. In support of his submission, learned counsel for the plaintiff respondents has placed reliance on a decision of learned Single Judge of this Court in the case of Bal Kishna and others v. VIth Additional District Judge, Kanpur Nagar and others, 2003 (1) ARC 515 and submits that in such circumstance, there was no occasion for returning the plaint and the suit was rightly transferred when the valuation was increased from Rs. 1000/- to Rs. 80,000/-.

10. Learned counsel for the plaintiff respondents has cited another decision of learned Single Judge of this Court in the case of Lallu @ Chandrika Prasad and others v. Lakshmi Narain and others, 2005 (23) LCD 749 and states that when the suit was filed before the Munsif Court it was valued at Rs. 240/- and was correctly instituted in the Munsif Court. On a plea raised by the defendant, the

Court determined the value of the suit at Rs. 30,000/- which exceeded the pecuniary jurisdiction of the Munsif Court hence the District Judge rightly transferred the suit to the Court having jurisdiction in exercise of his power u/s 24(5) of the Code of Civil Procedure.

11. Learned counsel for the plaintiff respondents has relied upon a decision of learned Single Judge of this Court in the case of Chandra Shekhar and others v. Rakesh Kumar, 2010 (4) ALJ 168, to submit that a suit can be transferred u/s 24 of the CPC from a Court which has no jurisdiction to a Court of competent jurisdiction and to proceed with the suit from the stage it is transferred and not unnecessarily for a de-novo trial.

12. From the aforesaid submission of learned counsel for both the parties and the decision cited by them in support of their submission the legality of the impugned order dated 1.10.2012 passed in a Transfer Application No. 327 of 2012 by the District Judge, Deoria u/s 24 of the CPC is required to be adjudicated in this petition. Therefore, the question which arises for consideration is "whether in the facts and circumstances of the present case, the District Judge had jurisdiction u/s 24(5) of the CPC to transfer the instant Suit No. 2163 of 2009 or the plaint ought to have been returned to the plaintiff under Order VII Rule 10 of the CPC by the Civil Judge (Jr. Div.) for it to be presented before the Court of Competent pecuniary jurisdiction".

13. The law is settled that the jurisdiction of the Court depends upon the allegations made in the plaint and the forum and jurisdiction of the suit is not dependent upon the defence taken by the defendant. On a defence taken to the jurisdiction of the Court in the written statement would invite framing of an issue as provided in Order 14 CPC but even before framing of an issue the Courts jurisdiction can be adjudged on the allegations made in the plaint.

14. The facts pleaded in this writ petition are not disputed by the plaintiff respondents to the extent that Suit No. 2163 of 2009 was filed by the plaintiff respondents before the Court of Civil Judge (Jr. Div.) upon a valuation to Rs. 15,000/-. The plaintiff got his plaint amended increasing the valuation of the Suit to Rs. 5,20,000/- and that such amendment application was allowed on 24.9.2012.

The dispute is the jurisdiction of the District Judge to transfer the suit after amendment of its valuation to the Court of Civil Judge (Sr. Div.) from the Court of Civil Judge (Jr. Div.). The Provisions of Section 24 of the CPC are quoted hereunder:

24. General power of transfer and withdrawal--

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or

disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and-

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

15. For the purpose of this petition, the provision of sub-section 5 of Section 24 of the CPC is relevant which provides that the suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

16. The provision is quite clear that if a Court has no jurisdiction to try a suit the District Judge may at any stage transfer it.

17. The provision of Order VII of the CPC relate to a plaint. Order VII Rule 10 of the CPC provides for return of the plaint for being presented to the Court in which the suit should have been instituted.

18. Order VI of the CPC deals with the pleading which shall mean plaint or written submission. Admittedly in pleadings a party cannot approbate and reprobate and Order VI Rule 17 of the CPC provides for amendment of plaint.

19. In the present case by the amendment in valuation of the suit property it has taken the suit out of jurisdiction of the Civil Judge (Jr. Div.). Hence the proper course would be either to allow the amendment and then return the amended

plaint to the plaintiff for presentation before the Court having pecuniary jurisdiction. If any other procedure is adopted then the question under such circumstances would arise whether the suit was properly instituted. In the present case it is the plaintiff who has applied for amendment of valuation having earlier under valued the suit at the time of its institution. Therefore, when valuation of the suit is to be determined on the basis of the plaint by the Court then the amendment application increasing the valuation of the suit would oust the jurisdiction of the Court where the suit was firstly instituted. It is under these circumstances that it has to be seen whether the suit was properly instituted in the Court of competent jurisdiction.

20. The amendment in the plaint would necessarily relate back to the date of the institution of the suit. The law is clear on this point to the extent that if by amendment no new party is added or no subsequent event is pleaded then the amendment in a plaint would relate back to the date of institution of the suit. It has been so held in *Shyam Nandan Sahay and Others Vs. Dhanpati Kuer and Others*, ; *Raja Soap Factory and Others Vs. S.P. Shantharaj and Others*, ; *Murari Lal Vs. Raman Lal and Others*, .

21. Once the plaintiff amends the valuation then the amendment would relate back to the date of institution of the suit and if it is beyond the pecuniary jurisdiction of the Court where the suit was initially instituted then it would not be a suit properly instituted.

22. Since upon the valuation, the suit should have been instituted in the Court of Civil Judge (Sr. Div.) and with the ouster of the jurisdiction of the Civil Judge (Jr. Div.) the plaint ought to have been instituted in the Court having pecuniary jurisdiction. The provision of Order VII Rule 10 of the CPC has provided for the plaint to be returned to be presented to the Court in which the suit should have been instituted hence in the present case in view of the amended valuation of the suit it should have been instituted in the Court of Civil Judge (Sr. Div.) but it was earlier instituted in the Court of Civil Judge (Jr. Div) but because the amendment would relate back hence it was not a suit presented to the proper Court in which the suit should have been instituted. As soon as the suit was beyond the jurisdiction of the Court the provisions of Order VII Rule 10 CPC came into play.

23. The District Judge u/s 24(5) of the CPC can transfer a suit properly instituted from a Court which has no jurisdiction to try it. Such a suit pending before a Court which has no jurisdiction to try it can be transferred by the District Judge but it would be in reference to a suit presented before a Court where it is properly instituted. When the suit is presented before a Court which would have no jurisdiction to try the suit then it would be a suit not properly instituted.

24. The result would be that in the present case when the amendment of valuation of the suit was sought by the plaintiff such amendment would relate back to the date of institution of the suit. On that date i.e. 21.12.2009 the suit

having valuation of Rs. 5,20,000/- could not be held to be a suit properly instituted in the Court of Civil Judge (Jr. Div.) which had a pecuniary jurisdiction of only Rs. 25,000/- hence it was not a suit properly instituted and the Court of Civil Judge (Jr. Division) did not have jurisdiction over the suit in view of its pecuniary jurisdiction.

25. Under such circumstances, the jurisdiction u/s 24(5) of the CPC conferred on the District Judge would be available only in a suit properly instituted in the competent Court and it would not be available over a suit not properly instituted.

26. Insofar as the decision in the case of Bal Kishan (Supra) relied upon by learned counsel for the plaintiff-respondent is concerned, clearly the Court was considering the grievance that the suit should have been registered again when it was transferred because it would create problem in execution of the decree since it was registered as a suit in the Court of Munsif and subsequently on the basis of valuation it was transferred to the Court of Civil Judge. The High Court held that the defendants of the suit are not affected by such transfer because if there is difficulty in the execution of the decree it is the plaintiff who will face the difficulty and not the defendant. This decision does not apply in the present proceedings.

27. In Chandra Shekhar (Supra) the suit for ejectment and arrears of rent and damages was filed in the Court of Small Causes (Jr. Division) but upon increase of its valuation and at the stage of final argument the transfer application was made and the District Judge u/s 24 CPC directed it to proceed from the stage it was transferred. This decision is very clear since after institution of the suit the pleadings were complete, evidence had been recorded and final argument was to be advanced hence the High Court did not interfere in the order of the District Judge passed u/s 24 CPC. In the present case such is not the circumstance. No evidence has been led and even the replication is yet to be filed, therefore, there was no such circumstance in the present case.

28. In the case of Lallu @ Chandrika (Supra) the Court was seized of a matter where it was held that the provisions of Section 24(5) CPC appears to be for convenience of the parties to avoid delay in disposal of the cases and to avoid return of the plaint in every situation which would entail de-novo proceedings making entire exercise done before the previous Court as futile. In the present case the circumstance is quite different. The defendant-petitioner has just put in appearance and neither any evidence has been led nor the pleadings have been completed, therefore, whereas in the above noted case the circumstance for interpreting the jurisdiction of the District Judge u/s 24(5) CPC were different but in the present case they are not so.

29. To ignore the provision of Order VII Rule 10 CPC and affirm an order passed u/s 24(5) CPC the circumstance of the case are very material inasmuch as where after evidence has been led and the suit is at the final hearing stage and then the valuation has been enhanced by a determination made by the Court the

power u/s 24(5) CPC was exercised by the District Judge and it was affirmed because a de-novo trial would be inconvenient to the parties and if the plaint was returned under Order VII Rule 10 CPC at that stage then it would entail a complete retrial before the Court having jurisdiction and starting the trial de-novo.

30. As indicated above the circumstance of the three decisions relied upon by learned counsel for the plaintiff-respondent were totally different and the said judgments were in the interest of justice and circumstances of those cases.

31. The provision of Order VII Rule 10 CPC are quite specific and deal with a circumstance which has arisen in the present proceedings where when the amendment was allowed to increase the valuation of the suit it related back to the date of institution of the suit before a Court which had no jurisdiction to try the suit and neither the pleadings were completed nor evidence was led hence it was not a case of transfer to proceed from the stage after evidence had been led. The plaint having not been properly presented in the Court where the suit ought to have been instituted was required to be returned to the plaintiff for presentation before the competent Court having pecuniary jurisdiction.

32. Therefore, in the present case the procedure adopted by the plaintiff by filing the Transfer Application before the District Judge to transfer the case because valuation has increased and the District Judge passing an order on the transfer application of the plaintiff u/s 24 CPC was not in accordance with the procedure prescribed under the statute. It is settled law that when the statute provides a thing to be done in a particular manner then that thing has to be done in the manner prescribed as has been held in the case of A.K. Roy and Another Vs. State of Punjab and Others, , Babu Verghese and Others Vs. Bar Council of Kerala and Others, , Diwan Singh v. Rajendra Prasad, 2007 (1) Supreme 52 and L. Hirday Narain Vs. Income Tax Officer, Bareilly, and Kulsum R. Nadiadwala (supra).

33. The first issue raised in this petition is thus answered by holding that if the suit was not properly instituted the District Judge could not exercise his jurisdiction u/s 24(5) of the CPC by ignoring the provision of Order VII Rule 10 of the Code of Civil Procedure.

34. The second issue raised in this petition is answered by holding that the plaint ought to have been returned under Order VII Rule 10 CPC.

35. The plaint is therefore directed to be returned to the plaintiff under Order VII Rule 10 CPC for being presented before the Court of Competent pecuniary jurisdiction.

36. For the reasons above mentioned the impugned order cannot be sustained and is liable to be set aside.

37. The impugned order dated 1.10.2012 passed in Transfer Application No. 327 of 2012 by the District Judge, Deoria is set aside.

38. This petition is allowed. No order as to costs.