
(1999) 07 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeals Nos. 4026-27 Of 19991

Vivekananda Nidhi and Others

APPELLANT

Vs

Asheema Goswami (Smt)

RESPONDENT

Date of Decision : 21-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2000) 10 SCC 7

Hon'ble Judges : U. C. Banerjee, J;S. B. Majmudar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.
2. We have heard the learned counsel for the parties finally in this appeal.
3. The limited notice was issued in these proceedings at SLP stage to the following effect:

"ISSUE notice limited to the questions: (7) Once the amendment was granted, whether the trial court should have passed order under Order VII Rule 11 CPC, for returning the plaint for presentation before proper court; (2) Whether under these circumstances, the learned District Judge should have exercised administrative power under Section 24 without hearing the petitioner. Issue notice on stay application. Ad interim stay of further proceedings of Transferred Suit No. 359 of 1991 (renumbered as Title Suit No. 2 of 1996), pending before the Xth Additional District Judge, Alipore, South 24 Parganas (W.B.)"

4. When the appeal was heard finally, the second point which, in our view, requires a closer scrutiny, arose for consideration. We are not inclined to consider the first point which appears to us, on the facts of this case, to be of a technical nature.

5. So far as the second point is concerned, a few relevant facts may be noted for

appreciating the same. The respondent-plaintiff filed a suit in the Second Court of the learned Munsiff, Alipore for declaration that the deed of settlement in the form of a trust deed executed by her in favour of the appellant trust was not legal and valid and also prayed for consequential relief of injunction against the trustees. The said suit was registered as Title Suit No. 359 of 1991 in the Court of the learned Munsiff, Alipore, South 24 Parganas (W.B.).

6. When the suit had proceeded further, at the evidence stage, an amendment was moved by the respondent by which a prayer for possession of the suit properties was inserted. The appellants herein did not contest the said amendment. Thus, the amendment sought for was allowed. The result was that the original suit valuation of Rs 100 got enlarged to Rs 5,00,100 beyond the pecuniary jurisdiction of the learned Munsiff. It is at this stage that the respondent herein moved an application before the learned District Judge, Alipore, bringing to his notice the said order passed by the learned Munsiff, requesting the learned District Judge to assign the suit to an appropriate court within his jurisdiction.

7. Learned District Judge by his order dated 14-12-1995 stated that he has perused the application. This application obviously could have been filed under Section 24 of the Code of Civil Procedure and had, in fact, been filed under the same, as the said order says. The order recites that on a perusal of the application supported by the affidavit filed by the plaintiff and the xerox copy of the orders passed in TS No. 359 of 1991 by the Munsiff, 2nd Court, Alipore, enclosed therewith, it appeared that the learned Munsiff, 2nd Court, Alipore, was not empowered to try such suit, which is valued beyond Rs 30,000. Hence, by invoking the power conferred on the learned District Judge under Section 24 CPC, the title suit was ordered to be transferred from the file of the learned Munsiff, 2nd Court, Alipore, to the file of the 10th Assistant District Judge, Alipore for disposal.

8. The said order of the learned District Judge was challenged before the High Court. The learned Single Judge of the High Court by his impugned order, which is the subject-matter of this appeal, took the view, amongst others, that the learned District Judge, Alipore, had exercised powers under Section 24 CPC in his administrative capacity and, therefore, in the absence of any inherent defect in such orders, no question of exercising the power under Article 227 of the Constitution of India arose.

9. Shri A.K. Ganguli, learned Senior Counsel for the appellants vehemently contended before us that the aforesaid observations of the learned Single Judge of the High Court are not borne out from the nature of the order which was scrutinised by him. We have already noticed what is observed by the learned District Judge in the order passed by him under Section 24 CPC.

10. Learned Senior Counsel for the respondent is right when he contends that if it is an order passed suo motu under Section 24 CPC, there is no question of

issuing notice to the other side. However, the moot question remains whether the order of the learned District Judge was passed suo motu or not. Section 24 CPC itself provides that either on the application of any of the parties and after notice to the parties and after hearing such of them that desired to be heard, or of its own motion without such notice, the High Court or the District Court can at any stage pass appropriate orders under Section 24 CPC, if the conditions provided therein are satisfied. Now, on the facts of the present case, it is difficult to appreciate how the order of the learned District Judge can be considered to be a suo motu order when he was moved by an application by the respondent and on that application the learned District Judge thought it fit to invoke his jurisdiction and pass an order under Section 24 CPC. Therefore, invoking of powers under Section 24 CPC was not suo motu, but only on the basis of the abovesaid application. Once that conclusion is reached the statutory provisions of Section 24 start operating and whatever may be the ultimate nature of the order, the notice had to go to the other side. This, unfortunately, was not done in the present case. Therefore, only on this short ground, the impugned order of the District Judge dated 14-12-1995, as well as the order of the High Court confirming the same are set aside. As a consequence thereof, the transferred suit which is now, we are told, pending before the 10th Court of the District Judge, Alipore, has to be kept pending awaiting further orders as indicated hereinbelow. Therefore, the application of the respondents under Section 24 of the Code of Civil Procedure is restored to the file of the learned District Judge, Alipore. It will be for the District Judge, Alipore, after issuing notice to the appellants who are the contesting parties in the application under Section 24 CPC and after hearing both the parties, to pass appropriate orders thereon.

11. It is made clear that we make no observation on the merits of the controversy between the parties. It will be entirely for the District Judge, after hearing the parties, to take his own decision. In the meantime, the transferee court shall not take any further steps in respect of the transferred suit and the question of taking further steps will abide by the decision of the learned District Judge, Alipore, who will issue appropriate orders after hearing the parties.

12. The appeals are disposed of accordingly. There shall be no order as to costs.