

Surjya Kumar Das and ors. Vs. Anil Chandra Kar and ors.

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Court : Guwahati

Decided On : Feb-01-2006

Judge : T. Vaiphei, J.

Acts : [Court Fees Act, 1870](#) - Sections 7; Allotment Rules, 1962 - Rule 14(2); [Suits Valuation Act, 1887](#) - Sections 11; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9, 21, 21(2), 99 and 100

Appeal No. : R.S.A. No. 45 of 2005

Appellant : Surjya Kumar Das and ors.

Respondent : Anil Chandra Kar and ors.

Advocate for Def. : P.K. Biswas and P. Majumder, Advs.

Advocate for Pet/Ap. : S.M. Chakraborty, Sengupta and S. Bhattacharjee, Advs.

Disposition : Appeal dismissed

Judgement :

T. Vaiphei, J.

1. This second appeal is directed against the judgment and decree dated 17.2.2005 passed by the learned Additional District Judge, Belonia, South Tripura in Title Appeal No. 6 of 2004 upholding the judgment and decree dated

16.11.2004 passed by the learned Civil Judge (Junior Division), Belonia, South Tripura in T.S. No. 31 of 1997.

2. Mr. S.M. Chakraborty, the learned senior counsel for the appellants strenuously urges that the following questions involves substantial questions of law:

1. Whether a suit for recovery of possession based on title can valued under Section 7(iv)(c) of the [Court Fees Act, 1870](#) as extended to the State of Tripura and can a decree be passed if the suit is under valued by the plaintiff ?

2. Whether the pendency of a Revenue proceeding challenging the order of allotment of the suit land will bar oust the jurisdiction of a civil court to try such a suit ?

3. I have carefully noted the submissions advanced by the learned senior counsel for the appellants and am not persuaded to hold that such questions involve substantial questions of law. For better appreciation of the points in controversy, a brief survey of the case will be appropriate. The respondents, who are the plaintiffs in the suit, instituted a suit against the appellants for declaring their title to the suit land and for recovery of possession thereof. It is not in dispute that the suit was valued at Rs. 10 only. The case of the respondents is that the suit land measuring 0.40 decimal forming a part and parcel of the land measuring 4.3 acres was allotted to them in the year 1986 and that they took over possession of the same thereafter, According to them on 15.7.1997, they were forcibly dispossessed of the suit land by the appellants which prompted them to institute the suit. The appellants contested the suit and filed their written statement by denying the respondents title to and possession of the suit land. It is the case of the appellants that they were in possession of the suit land by maintaining a pond thereon, which they constructed with financial assistance from the Government, They claimed that the order of allotment in respect of the suit land made in favour of the respondents was illegal, which is under challenge under Rule 14(2) of the Allotment Rules, 1962 and is pending before the Sub-Divisional Officer, Belonia, on their application.

4. On the basis of the pleadings of the parties, the learned Civil Judge framed the following issues:

- (i) Have the plaintiffs any cause of action?
- (ii) Have the plaintiffs right, title and interest over the suit land ?
- (iii) Is the story of possession and dispossession from the suit land true ?
- (iv) Are the plaintiffs entitled to get a decree as prayed for?
- (v) What other relief or reliefs are the parties entitled to get ?

The respondents-plaintiffs filed the following documents : (a) one allotment order dated 24.7.1986, (b) one Khatian bearing No. 239 and (c) one trace map of Mouja-Madhya Bharat Chandra Nagar, Sheet No. 2 Tahsil Michara. On behalf of the appellant-defendants, the following documents were filed : (a) an application addressed to Pradhan Chittamara Gram Panchayat, Belonia, (b) one letter addressed to the District Magistrate and Collector, South Tripura by S.D.O/Belonia dated 10.9.1998, (c) one notice issued by SDO, Belonia on 15.5.1999 in connection with Case No. 4/Rev/99 and (d) one certified copy of the order dated 30.6.2001 passed by SDO/ Belonia in connection with Case No. 4/Rev/99. In the course of trial, the respondents examined three witnesses on their behalf while the appellants also examined three witnesses from their side. On the conclusion of the trial, the learned Civil Judge: decreed the suit. Aggrieved, the appellants preferred Title Appeal No. 6 of 2004 before the learned Additional District Judge, South Tripura, who, as noted earlier, dismissed the same by the impugned judgment and decree.

5. Under Section 100, Code of Civil Procedure, the jurisdiction of the High Court is now confined to entertain only such appeals as involve a substantial question of law specifically set out in the memorandum of appeal and formulated by the High Court. The High Court must, at the stage of admission itself, be satisfied that the second appeal involves a substantial question of law. The test for determining as to what constitutes a substantial question of law is no longer *res integra*. This is what the Apex Court said in *Chunilai V. Mehta and sons Ltd. v. Century Spg. and*

Mfg. Co. Ltd. : AIR 1962 SC1314 (as reiterated from time to time in its subsequent decisions): -

The proper test for determining whether a question of law raised in the case is substantial, would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by the Supreme Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well-settled and there is a mere question of applying those principles or that the plea raised is palpably absurd, the question would not be a substantial question.

6. It is against the backdrop of the aforesaid settled law that I propose to examine the questions raised by Mr. S. M. Chakraborty, the learned senior counsel for the appellants, at the admission stage qua whether they can constitute substantial questions of law. On the first question, on going through the pleadings, it can be straightaway noticed that no plea was ever raised by the appellants in the trial court concerning the under-valuation of the suit by the respondents. A suit may be undervalued and instituted in a court of a lower grade or it may be overvalued and instituted in a court of a higher grade, but Section 11 of the Suits Valuation Act, 7 of 1887 provides that an, objection on this ground shall not be entertained by an Appellate or Revisional Court unless, (i) the objection was taken in the Court of the first instance at or before the hearing at which issues were framed and recorded, or (ii) the Appellate or Revisional Court is satisfied that the over under-valuation or under-valuation has prejudicially affected the disposal of the suit on its merits. Similarly, Section 21(2) of the Code provides that an objection to the pecuniary jurisdiction of the Court should be raised for the first time at the earliest stage of proceeding in a suit and that it should further be shown that some prejudice has resulted to the aggrieved party, before the proceeding of the court not having the requisite pecuniary jurisdiction could be set aside. Then, Section 99 of the Code also lays down that no decree shall be reversed or substantially varied, nor shall any case be remanded in appeal, on account of any mis-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, if

they do not affect the merits of the case or the jurisdiction of the Court. The combined effect of these three different provisions has been succinctly explained by the Apex Court in *Kiran Singh v. Chaman Paswan* : [1955]1SCR117 :

The policy underlying Sections 21 and 99 of the Civil Code of Procedure and Section 11 of the Suits Valuation Act is the same, namely, that when a case has been heard by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it has resulted in failure of justice, and the policy of the Legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court unless there has been a prejudice on the merits.

Terming this type of objection as 'the most technical of technicalities', the Privy Council in *Rachappa Subrao Jadhav v. Shidappa Venkatrao Jadhav* 46 L.A. 24, explained:

The Court Fees Act was passed not to arm a litigation with a weapon of technicality against his opponent but to secure revenue for the benefit of the State.... The defendant in this suit seeks to utilise the provisions of the Act not to safeguard the interest of the State, but to obstruct the plaintiff; he does not contend that the Court wrongly decided to the detriment of the revenue but that it dealt with the case without jurisdiction. In the circumstances, this plea, advanced for the first time at the hearing of the appeal in the District Court, is misconceived and was rightly rejected by the High Court.

7. It is next contended by the learned senior counsel that conceding that no such plea was raised at the trial court, prejudice has actually been caused to the appellant when, by reason of entertaining his undervalued suit by a court of a lower grade, i.e., Civil Court, Junior Division, his right to have his first appeal heard by the High Court has been denied. In my judgment, this contention must also meet the same fate in view of the observations made by the Apex Court in *Kiran Singh* case (supra) that mere change of form is not prejudice within the meaning of Section 11 of the Suits Valuation Act. Nor is mere error in the decision on the merits of the case a prejudice. It must be one directly attributable to over-valuation or under-valuation. As a matter of fact, by the under-valuation of the suit by the

respondents, the right of the appeal of the appellants has been enlarged. The legal position is now loud and clear. In the absence of plea raised by the appellants in the courts of the first instance objecting the under-valuation of the suit by them, such question cannot be raised at the appellate stage, not to speak of the second appellate stage on, the under-valuation of the suit. Therefore, the conclusion is inevitable that there is no substantial question of law worthy of formulation on this count.

8. Coming now to the second question, under Section 9 CPC, the normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is expressly or impliedly excluded as provided under the Section, but such exclusion is not to be readily inferred, and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try a civil suit. The test for determination of such question, as held by the Apex Court in *Dhulabhai v. State of Madhya Pradesh* : [1968]3SCR662 , is : (a) whether the legislative intent to exclude arises explicitly or by necessary implication and (b) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. In the instant case, the suit in question is for declaration of title to, and for recovery of possession of the suit land. The case of the appellants is that since their application for cancellation of the allotment order in respect of the suit land was pending before the Sub-Divisional Officer, Belonia in a revenue proceeding under Rule 14(2) of the Allotment Rules, 1962, the suit is barred by Section 9 of the Code. A perusal of the documents filed by the appellants in the Court of the Civil Judge (JD) will show that the proceeding was instituted only in 1998 whereas the suit was filed by the respondents in the year 1997. Be that as it may, the question is whether the pendency of a revenue proceeding will oust the jurisdiction of a civil suit court to try the instant suit. In my opinion, this question is also not open to debate. The law as now it stands without reference to cases is that where the relief claimed, by the plaintiff in a civil court is not one which can be granted by a Revenue Court, the suit can certainly be tried by the civil court. It is as clear as daylight that the Revenue Court will not have the jurisdiction to grant a decree of declaration of title to, or for recovery of possession of the suit land as claimed by the respondents. Under the circumstances, there is also no substantial question of

law on this question, viz., whether the pendency of a Revenue proceeding challenging the order of allotment of the suit land will oust the jurisdiction of a civil court to try the suit.

9. The off-shots of the foregoing discussion is that no substantial question of law has been made out by appellants for entertaining this second appeal. Consequently, the appeal is dismissed in limine. But there shall be no order as to cost.

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