

Jit Singh and ors. Vs. Ghetlu and ors.

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SooperKanoon Citation : sooperkanoon.com/450590

Court : Allahabad

Decided On : Feb-13-1939

Reported in : AIR1939All446

Appellant : Jit Singh and ors.

Respondent : Ghetlu and ors.

Judgement :

Bennet, J.

1. This is a second appeal by the plaintiffs whose suit was decreed by the trial Court, the Civil Judge, but dismissed by the learned District Judge of Kumaon in appeal. The plaint sets out that the plaintiffs have a reservoir of water (naula) in a certain plot and that the defendants deceived an Assistant Collector and stated that this reservoir was a water spring (dhara) and the Assistant Collector did not understand it and further stated that they, the defendants, used to draw water from this 'naula' and that the Assistant Collector gave a wrong judgment and the Board of Revenue struck off the appeal of the plaintiffs. The relief asked for was a decree embodying the order for setting aside the decree for getting water from the 'naula' of the plaintiffs obtained from the Court of the Assistant Collector on 23rd February 1931 which was upheld by the Court of the Commissioner. The learned District Judge held that the Water Rules of 1917 covered the case and gave the Revenue Court jurisdiction because those rules referred to 'water mills and use of water' and

Rule 10 states:

Any person interested in a water mill, or irrigation channel or other water right may institute a suit in the Court of the Assistant Collector in charge of the sub-division against any other person.

2. It was admitted that the suit in the Revenue Court began when these rules were in force. Afterwards, for these rules there were substituted rules of 28th October 1930, in continuation of notification of 22nd August 1930. The latter notification is not before us. Under Section 6, U.P. General Clauses Act (1 of 1904) it is provided that:

Where any United Provinces Act repeals any enactment hitherto made or hereafter to be made then unless a different intention appears, the repeal shall not...(e) affect any remedy, or any investigation or legal proceeding commenced before the repealing Act shall have come into operation...and any such remedy may be enforced and any such investigation or legal proceeding may be continued and concluded...as if the repealing Act had not been passed.

3. It is true that this Section refers to an enactment but the definition in Section 14 states "enactment" shall include a regulation.' We consider that the rules in question will come under the heading of regulations and that these rules in Kumaon were made by the Local Government which had power to pass rules having the force of law. Section 6 therefore will apply and the Revenue Court had jurisdiction to try the suit. A further defect in the case of the plaintiffs is that the plaintiffs brought a suit for setting aside the decree of the Assistant Collector upheld in appeal by the Commissioner on the ground that the defendants had deceived the Court. In para. 5 the deception is stated to be that the defendants stated that they used to draw water from the aforesaid 'naula' and it was 'further submitted that there could be no path from the houses of the defendants to the 'naula'. These questions are questions of fact and all the statements to the Assistant Collector would not amount to fraud practised on the Court. The plaintiffs desired to amend their plaint by further pleading want of jurisdiction and that application was refused. The grounds of second appeal bring forward again this point of want of jurisdiction of the Revenue Court. The learned District Judge found

that there was no fraud and we consider that the finding is correct because the allegations made in the plaint would not amount to fraud.

4. As regards the objection that no civil suit could be brought for a declaration that the decree of the Revenue Court to which the plaintiffs were a party was invalid for want of jurisdiction, learned Counsel referred us to a ruling, *Shah Tajmul Ali v. Kamala Ranjan Roy* : AIR1936 Cal138 . There is a reference on page 141, col. 1 of this ruling to the provisions of Section 44, Evidence Act. No doubt the provisions of that Section will enable a party to plead want of jurisdiction in regard to a judgment which has been produced and proved by the adverse party. But that is a quite different matter from saying that a suit can be brought for a relief of this nature as in the present case. Reference was further made to *Mt. Siraj Fatima v. Mahmood Ali* : AIR1932 All293 . That case dealt with the right to avoid a judgment on the ground of undue influence or fraud and not on the ground of want of jurisdiction. We consider that no civil suit lies for a mere declaration that a decree of a Revenue Court was without jurisdiction. In the Water Rules of 1917, Rule 2 provides as follows:

All suits and applications referred to in these rules shall be heard and determined by Revenue Courts or Revenue Officers as the case may be and no Court or officer other than a Revenue Court or Revenue Officer shall take cognizance of any dispute or matter in respect of which any such suit or application might be brought or made.

5. It is clear therefore that the Revenue Court had sole jurisdiction in this matter and the contention for the appellants is incorrect. For all these grounds we consider that there is no force in this second appeal and we dismiss it with costs.