

Dhandei Kunwar Vs. Chotu Lal

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Court : Allahabad

Decided On : Dec-11-1916

Reported in : (1917)ILR39All254

Judge : Piggott and ;Walsh, JJ.

Appellant : Dhandei Kunwar

Respondent : Chotu Lal

Judgement :

Piggott, J.

1. I have arrived, though not without hesitation, at the conclusion that we ought not to interfere in this matter. The application is one moving this Court to interfere, in the exercise of its revisional jurisdiction, with an order passed by the Subordinate Judge of Jaunpur, who has applied the provisions of Section 202 of the Tenancy Act (Local Act II of 1901), to the facts of a certain suit pending before him. The application, as drafted, purports to be under Section 107 of the Government of India Act of 1915, which reproduces Section 15 of the former High Courts Act. We allowed the applicant, nevertheless, to argue his case on the assumption that he was entitled to claim relief either under this section or, in the alternative, under Section 115 of the Code of Civil Procedure (Act V of 1908). As I concurred in permitting the argument to proceed on these lines, I do not feel justified in pressing the point now; but it must be clearly understood that I am not committed to the

view that it is desirable to allow an application to secure admission under one section in order that it may be argued under a different one.

2. I am considerably impressed by the ingenuity of the attempt to invoke the general powers of superintendence vested in this Court in connection with the present matter. Quite a plausible case can be made out for doing so. After all, the operative portion of the order complained of is simply that the suit pending in the court below do stand adjourned to some uncertain future date. It was put to us, with considerable force, that a capricious or perverse order of adjournment for an indefinite or very lengthy period might amount to a practical refusal to try the suit in which such order was made, If and when such a case arises, I have no doubt this Court will find appropriate means for dealing with it. The present is not such a case: the learned Subordinate Judge has passed his order of adjournment, because he holds himself bound to do so by the provisions of Section 202 of the Tenancy Act. He has arrived at this conclusion after a fair and judicial consideration of the pleadings of the parties and of the arguments addressed to him. On the principles laid down by the Full Bench of this Court in *Muhammad Suleman Khan v. Fatima* (1886) I.L.R. 9 All. 104, the powers of superintendence of this Court do not warrant interference in a case like this.

3. I find, however, even more difficulty about applying the provisions of Section 115 of the Code of Civil Procedure to the facts before us. Before doing this I should have to hold that the order complained of was one which decided a case, and a case in which no appeal lies. I do not think either of these conditions is fulfilled. As I have already pointed out, the present effect of the order of the court below is simply that the hearing of the suit in question stands adjourned. At some future date the learned Subordinate Judge may proceed to determine one or more of the issues arising in the suit in accordance with the decision of the Revenue Courts in another suit between the same parties which, we are informed, has been instituted and is pending. When he does this, and if his decision is adverse to the plaintiff, the latter will have a prompt remedy available by way of appeal from the decree. To such an appeal the provisions of Section 105 of the Code of Civil Procedure would apply, so as to enable the plaintiff to obtain from this Court an authoritative decision of the question of law involved, I do not deny the force of the

arguments from convenience which have been addressed to us; but to my mind the hearing of this application has also illustrated the grave practical inconveniences involved in asking this Court to determine an intricate question of law otherwise than on a regular appeal. At any rate, it did not seem to me that a single argument was addressed to us in support of the admissibility of this application which could not have been urged with greater force by the unsuccessful applicant in *Muhammad Ayal v. Muhammad Mahmud* (1910) I.L.R. 32 All. 623. I find nothing to the contrary in the case of *Debi Das v. Ejaz Husain* (1906) I.L.R. 28 All. 72, relied upon by the applicant. The question there was as to a possible remedy available by way of a separate suit; there seems a broad distinction between this and the question of an available remedy by way of appeal, for the objection to interference in the latter class of cases is based on the wording of Section 115 of the Civil Procedure Code itself. Apart from the view which I am myself 'disposed to take of the provisions of this section in relation to the facts before us, I feel that we should be departing from the established practice of this Court and setting a new precedent if we allowed the present application.

4. Taking this view, I feel that it is not desirable that I should express a final opinion on the question of law involved in this application. On one or two points which were argued before us with great keenness I have formed clear and positive opinions, and these I think it on the whole desirable to place on record. The interest of a thekadar in any agricultural land included in his lease is a 'holding' and the thekadar is a non-occupancy 'tenant' of the same, within the meaning of these terms as employed in the Tenancy Act. I think this follows inevitably from the definitions themselves and from the wording of other sections of the Act, particularly Section 53; it has also been affirmed by a Bench of this Court in *Natha v. Mian Khan* (1909) 6 A.L.J. 649. Nor does it appear to me that the position of the thekadar would be affected if he obtained possession, under one and the same contract of lease, of some agricultural land and of other immovable property not falling within the definition of 'land' given in Section 4 of the Tenancy Act. He would, to my thinking, become a 'tenant' of so much of the property concerned as was 'land' within the meaning of the Tenancy Act, and that 'land' would be his 'holding.' Again, it does not seem to me possible to read the opening words of Section 202 of the Tenancy Act as if they were limited to suits instituted in a Civil

Court 'relating to an agricultural holding' and to nothing else. The words used are wide and general, and I do not feel justified in limiting their application. I conceive that if a suit to instituted in a Civil Court, part of which relates to an agricultural holding and part to other matters, the provisions of Section 202 of the Tenancy Act must be applied to so much of the suit as does relate to the agricultural holding. Otherwise an unscrupulous plaintiffs would find it easy to nullify the provisions of the section altogether. Finally, I can see no good reasons for taking the words 'an agricultural holding', as used in this section, out of the general principle that words used in the singular number involve the plural. I think the section applies equally to suits 'relating to' a single agricultural holding and to a number of agricultural holdings. The case against the present applicant may therefore be stated thus: 'According to the plaintiff, the suit was one relating to a large number of agricultural holdings scattered over twenty-seven villages, and to a few items of property which were not agricultural holdings at all: according to the defendant, it was a suit relating to a single agricultural holding. The court below was therefore justified in assuming that the provisions of Section 202 of the Tenancy Act did apply to the suit, provided only that the defendant's pleading satisfied the requirements of the latter part of the section. This it admittedly did.' To this line of argument I can see only one answer, namely, that the 'holding' of a thekadar can never be an 'agricultural holding,' and that the word 'agricultural' was inserted in the section with the express object of excluding thekaders from its operation. On this point I prefer to reserve my opinion.

5. It is enough for me that the order complained of proceeds upon a fair judicial decision on a difficult question of law, that it does not seem to me to decide any case and that the decision itself is one which is open to re-consideration on a regular appeal. I would therefore dismiss this application. Although I think the plaintiff was wrong in making it, yet upon consideration of the pleadings in the suit and the circumstances of the case as a whole, I think it would be reasonable to leave the costs of this application to be costs in the cause, and I would order accordingly.

Walsh, J.

6. I regret my inability to agree with the order of my brother Pigoott in this case. As the differences between us are fundamental, I will state my chief reasons as shortly as I can. I find it impossible to hold after an examination of the plaint that this suit is one instituted 'relating to an agricultural holding.' It is an action against a discharged servant for the delivery of the property entrusted to him and for an account. The defence sets up a tenancy. That does not alter the nature of the suit. If the defence succeeds in its entirety, the suit fails. The suit does not change its character. It follows in my opinion that the suit is not within Section 202 of the Agra Tenancy Act at all, and that the court had no jurisdiction to make the order complained of.

7. The next question is whether the Order is one which this Court has jurisdiction to revise under Section 115 of the Code of Civil Procedure. I think it is. It was an order made in response to a petition to which the plaintiff filed a formal answer, and which the court decided in a long and careful judgment. I think this was a 'case' as distinguished from a 'suit.' But it is admitted in any event to have been an 'interlocutory order.' Although there are cases where this High Court has refused to interfere in revision with an interlocutory order, it has never been decided that it has no jurisdiction to do so. On the contrary, there is a long series of authorities, cited in Mr. Agarwala's book, in the Calcutta High Court from 1907 down to 1916, that there is jurisdiction. I agree with that view which can not be better expressed than Mr. Justice Mukerji puts it in the case reported in Indian Cases, Vol. VIII, page 87. The passage I am going to cite is to be found at page 90 of the Report and runs thus: 'The learned vakil has contended that the order now assailed is an interlocutory order and that, consequently, the Court is powerless to set matters right, though fully satisfied that the Order is wholly unjust and erroneous. We do not feel pressed by this argument, which is invariably the last resort of a litigant when convinced that the order he has obtained from the court below is contrary to law and cannot be defended on the merits.' He then cites several authorities and finally sums up by saying that 'they show that it is within the powers of this Court to interfere with interlocutory orders if the Court is satisfied that such interference is needed in the interest of justice.' This really in my view is sufficient to dispose of the respondent's argument.

8. But there is in my view another fatal objection to the order of the court below. It is admitted that the property in the schedule to the plaint is not wholly held for agricultural purposes. I have already pointed out that, according to my reading of the plaint, the suit does not relate to an agricultural holding as such, and that it was a mere accident that the property claimed is largely agricultural. But I am unable to accept the contention that the court, on a plaint which includes non-agricultural property, should, by a sort of legal fiction, treat a part of the holding as a holding in itself, in order to apply a section which is otherwise inapplicable. In my view, the defendant, having regard to the plaint, had to show that this was a suit which related to a holding of land held for agricultural purposes only, and he has entirely failed to do so.

9. Whether this Court will interfere in revision with an interlocutory matter appears to me, as Mr. Justice Knox has said, to be merely a matter of discretion to be decided on the facts peculiar to the case. It is said that it ought not to do so, where there is a remedy available by way of an appeal. There are at least two instances, namely, in I.L.R. 18 All, page 163, and in I.L.R. 28 All. page 72, where this Court has done so, although another remedy was available. The case reported in I, L. R., 34 All. page 592, was much relied upon by Dr. Sulaiman, who argued this case extremely well, as an authority to the contrary. It is not, in my opinion, an authority for any thing. The head-note sets out only the opinion of Mr. Justice Karamat Husain. Mr. Justice Knox merely agreed with the Order in that case because he said that 'sufficient ground had not been shown for interference.' But that case, in my opinion, has no bearing on the present application. In that case there was an order setting aside an ex parte decree and ordering a re-trial. The applicant in revision, after a second trial and after a decree had been passed against him in the second trial from which he did not appeal, applied for revision of the earlier order setting aside the first decree. That is to say, he waited until he lost the case, and then applied for the revision of the order which ordered the case to be tried over again. He clearly had no merits of any kind. The Court rightly refused his application, and the reasons given by Mr. Justice Karamat Husain are, in my opinion, mere obiter dicta and were unnecessary for the decision of the case.

10. Whether this case is one in which the Court ought to exercise its discretion in favour of the applicant is a question which necessarily raises various considerations. Taking the view I do that the court below has exceeded its jurisdiction by requiring the defendant to institute a suit in a court which has no jurisdiction over the plaintiff's suit, I cannot treat it as a mere order for an adjournment, The plaintiff appears to me to have a serious grievance. But it is not necessary for me to give my reasons for exercising a discretion which will never be exercised, as it is my duty to withdraw this judgment, which is no part of the order of the Court.

11. As we have failed to agree, the application for revision must stand dismissed. We are agreed that the costs of this application will be costs in the cause.

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