

Eknath Vs. Jivraj

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Court : Allahabad

Decided On : May-16-1951

Reported in : 1951CriLJ1358

Judge : Suryanarayana Rao, J.

Appellant : Eknath

Respondent : Jivraj

Judgement :

ORDER

Suryanarayana Rao, J.

1. This is a revision petition in the course of proceedings to prevent breach of peace under Section 148, Hyderabad Criminal P.C. corresponding to Section 145 of the Indian Code. The proceedings were instituted on 95-5-1949 in the Court of Munsiff Magistrate Naldrug & the disputed land is situated in the village Kowtali. During the pendency of the proceedings, the village was transferred to the province of Bombay in pursuance of the India Hyderabad (Exchange of Enclaves)' Order, 1950 as from 25-1-1950. In spite of the said transfer, the Munsiff-Magistrate Naldrug continued to exercise jurisdiction & on 30-12-1960 directed possession of the property to be given to the first party. The respondent (sic.) demurs & has come in revision. His legal contention is that by reason of the transfer of the said tillage to the Bombay State, the Munsiff-Magistrate ceased to have jurisdiction & it

is the Bombay Court having territorial jurisdiction over the land in dispute that should have heard & decided the case. The respondent relies on a ruling of the Division Bench of this High Court reported in *State of Hyderabad v. Chander* A.I.R. (37) 1950 Hyd. 71 : 1951 Hyd. L. R. 291.

2. In that case an accused was facing trial in the Court of the Munsiff-Magistrate Naldrug for the offence of voluntarily causing hurt under Section 272, Hyderabad Penal Code, corresponding to Section 332 of the Indian Code, alleged to have been committed in village Deogaon. The Munsiff- Magistrate made a reference to the High Court whether, after the promulgation of the India-Hyderabad (Exchange of Enclaves) Order, 1950, which came into force on 25-1-1950, by which the said village Deogaon was transferred to Bombay State, he continued to have jurisdiction to try the accused. Their Lordships held that the Munsiff. Magistrate Naldrug continued to have jurisdiction, on the ground that in the absence of clear intention to the contrary the transfer of the territory did not affect the vested jurisdiction of the Magistrate, in the territory transferred, in a case pending before him at the time of the transfer & he continued to exercise the same even after the transfer of the territory; & that no such contrary intention appears either from Section 7 or its proviso read with Section 6, General Clauses Act, or any other provision of the said Order. The learned Judges proceed:

Presumably the accused is still in the custody of the Court & because of the personal jurisdiction also over the accused, the case can be continued.

The ruling is, however, distinguishable on the ground that it relates to the exercise of jurisdiction over the person of the accused, whereas in the present case the proceedings being under Section 148, Hyderabad Criminal P.C. corresponding to Section 145 of the Indian Code viz., the exercise of jurisdiction relates to immoveable property. The ruling has no application to the present case.

3. To determine whether an enactment takes away the jurisdiction of a Court in a pending action before it, one has to consider not only the enactment in question but also the cumulative effect of the entire law applicable to that pending action.

4. The distinction between an amendment in substantive law & an alteration in procedural law has also to be borne in mind, While a vested right under the substantive law may not generally be taken away by an amendment of the law made during the pendency of the action to enforce the vested right, no one has a vested right in procedural or processual law.

5. In *Arjun Singh v. Chander Kaur*, 68 I. C. 321, which was a case under Section 145, Criminal P.C., it has been laid down by Wazir Hasan, J.:

It during the progress of the proceedings under Section 145 circumstances intervene which have the effect of taking away the initial jurisdiction, anything done inspite of those circumstances in exercise of the same jurisdiction must in my opinion be treated as having been done without jurisdiction. It would be wholly wrong to say that if the Court once acquires jurisdiction to deal with a case, it can continue to deal with it under my circumstances & in any manner it pleases to exercise its jurisdiction. A decision or order at any stage of a case to be valid must fall within the category of the circumstances which constitute the jurisdiction of a Court from, the beginning to the end. I am unable to accede to the-broad proposition that once a Court acquires the initial' jurisdiction, that jurisdiction continues to cover decisions & orders which may be antagonistic to the circumstances that arise subsequent to the inception of the jurisdiction. In. my opinion no such broad proposition can be laid, down. If the circumstances are such as merely allow a continuant of the jurisdiction, the jurisdiction would: continue but if they are such as have the effect of destroying the jurisdiction, the jurisdiction must cease as soon as circumstances come into being, no matter at what stage of the case they arise....No decision can be regarded as valid if it contravenes the terms upon which the jurisdiction subsists even though there was a valid acquisition of jurisdiction at the beginning.

6. In *Vaithinatha v. Govinda Swamy Odayar* A.I.R. (8) 1921 Mad. 650, the question for consideration was whether the amendment to the' Limitation Act reducing the period of limitation for an application to bring the legal representative on record from six month to 90 days, applied to a case where the party died before the date-amendment came into force. In that case the appellant died on 31-7-19S0

& at that time the period of limitation for bringing the legal representative was six months. In September 1920 by an amendment of the Limitation Act the period was reduced to 90 days & the amendment came into force on 1-1-1921. The application for amendment was filed after 1-1-1921 but within six months from the date of the death of the appellant. Their Lordships, Chief Justice Wallis & Justice Oldfield held that the application having been filed after 1st Jan. was governed by the amending law & was time-barred, on the ground that the amending law was one relating to procedure & that

the new rules of limitation which are regarded merely as matters of procedure applied to cruises of action which arose before the enactment of rules.

7. In *Nataraja v. Rangaswamy* A.I.R. (II) 1924 Mad. 657, a party had obtained sanction from the criminal Court for prosecuting his opponent for an offence under one or other of Ss. 172 to 188, Indian Penal Code & in fact the prosecution was commenced in pursuance of the sanction. The order granting sanction was set aside at the instance of the party affected, by the higher Court. Against this order of setting aside the sanction, the complainant moved the High Court & in between, the Amending Act 18 of 1923 Criminal P.C. was passed whereby it was laid down that no Court could take cognisance of an offence under Ss. 172 to 188, Indian Penal Code, when the complaint is by a private party, & it should be the Court itself in which the offence was committed, which should set the criminal law in motion. It was contended in the High Court that the Amending Act has no application to the case as sanction was already given & prosecution launched, though by reason of the subsequent order of the Additional District Magistrate setting aside the sanction of Sub Divisional Magistrate the prosecution was quashed. Their Lordships held that the amendment did apply & that a fresh sanction by the High Court would be against the provision of the amending Act. Their Lordships say:

the new Criminal Procedure Code has abolished the right to present such a Petition (for sanction), & this petition must be heard under the existing processual law. That law now forbids any prosecution being instituted (merely upon a sanction granted to a private party).

8. In *Chelapathi Naidu v. Subba Naidu* A.I.R. (15) 1928 Mad. 1230, an application was made to the District Magistrate for action to be taken under Section 145, Criminal P.C. The District Magistrate took the petition on file & without himself taking action under Section 145, Clause (1) transferred it to a Sub-Divisional Magistrate under him for disposal.

9. The Sub-Divisional Magistrate made an order under Section 145, Clause (1) but the land concerned was not within the local limits of his jurisdiction. It was held that the District Magistrate was wrong in transferring the case to Sub-Divisional Magistrate who had no jurisdiction over the land concerned. Reilly J. observes :

The object of Section 145 is not to provide parties with an opportunity to bring their civil disputes before a Criminal Court or of maneuvering for position for the purpose of subsequent civil litigation, though that is often the effect of such proceedings, but to arm the Magistrate concerned with an additional weapon for maintaining peace within the area for which he is responsible. And the wording of Section 145 requires the Magistrate to state in his initial order that he is satisfied that there is a dispute likely to cause a breach of the peace concerning some land or water or its boundaries within the local limits of his jurisdiction. It is not the business of any Magistrate as such to maintain order or peace outside the limits of his local jurisdiction. What the Sub-Divisional Magistrate has in effect done in this case is to say

I am satisfied that there is a dispute likely to cause a breach of the peace concerning some land within some one else's jurisdiction, & I propose to use my power to prevent it, which is almost an absurdity'.

10. In *Rameshwar v. Baijnath* A.I.R. (22) 1935 Pat. 436, the ruling in A.I.R. (15) 1928 Mad. 1230 was distinguished on the ground that in the Patna case the transfer of the case under Section 145, Criminal P.C. by the District Magistrate under him, was in order, as the Magistrate had general jurisdiction over the entire district.

11. Proceedings under Section 145 have been held to be in the nature of police proceedings in order to prevent the commission of offences relating to breaches of

the peace (vide *Nga Chit v. Goa Ya* 44 I. C. 741) & to pass a temporary order in regard to tangible immoveable property in dispute between the rival parties having effect until their actual rights have been determined by a competent Court in more lengthy proceedings, & to bring to an end by a summary process disputes relating to land etc., which are in their nature likely, if not suppressed, to end in breaches of the peace.

13. It has been held by their Lordships of the Privy Council in *Damodar Gordhan v. Deoram Kanji* I Bom. 367 : (vide head note and p, 461):

Where the foundation of the jurisdiction of a British Court over the subject matter of a suit and the parties thereto is territorial and the territory by valid cession ceases to be British, the jurisdiction of the Court can no longer be exercised whatever be the stage or condition of the litigation at the time of such cession.

13. In my opinion the principle will apply even to the case of a transfer of territory from the Hyderabad State to the Bombay State where the foundation of jurisdiction over a pending action & over the subject matter of parties is territorial.

14. The determination of the forum for an action & the vesting & divesting it of territorial jurisdiction are matters of adjective law & there is no vested right in favour of a party litigant in the same.

15. On a review of the authorities & the wording of Section 7 of the said Exchange Order & Section 148, Hyderabad Criminal P.C. corresponding to Section 145, Indian Criminal P.C., I am of the opinion that it is necessary (for ?) the Magistrate to continue to have territorial jurisdiction over the land in dispute until the final disposal of the proceedings.

16. In the result I set aside the order under revision, as being without jurisdiction.

17. I am informed that the land in dispute is now in possession of the Munsiff Magistrate Naldrug, If the record of the case shows that such possession was taken from party to these proceedings, the land should be restored to that party; but if the record does not show from which party possession was taken, the Court will hold the same in its possession subject to orders of a competent Court.

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