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Khairullah Vs. Badri

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Court : Allahabad

Decided On : Dec-13-1972

Reported in : AIR1973All340

Judge : Om Prakash Trivedi, J.

Acts : Provincial Small Cause Courts Act, 1887 - Sections 15; Provincial Small Cause Courts (Amendment) Act, 1970; Code of Civil Procedure (CPC) , 1908 - Sections 9 and 21

Appeal No. : F.A.F.O. No. 162 of 1971

Appellant : Khairullah

Respondent : Badri

Advocate for Def. : Swaraj Prakash, Adv.

Advocate for Pet/Ap. : V.B. Khare, Adv.

Disposition : Appeal dismissed

Judgement :

Om Prakash Trivedi, J.

1. This appeal has been filed by plaintiff Khairullah and arises under the following circumstances: The appellant had filed a suit for recovery of Rs. 1488/-with costs

against the respondent in the court of Munsif. Gorakhpur. The suit was decreed by the Munsif on 14-7-1970 for a sum of Rs. 1488/- with pendente lite and future interest. The defendant appealed and raised the point that during the pendency of the suit before the Munsif U. P. Act 14 of 1970 by which Sub-sections

(2) and

(3) of the Provincial Small Cause Courts Act, 1887 were amended had coma into force. By this amendment in Sub-section

(2) of Section 15 subject to the exceptions specified in the Schedule and to the provisions of any enactment for the time being in force all suits of a civil nature of which value does not exceed Rs. 1000/-were made cognizable by the Court of Small Causes and by amendment in Sub-section

(3) the State Government was empowered to direct that all suits of a civil nature of which value does not exceed Rs. 2000/-shall be cognizable by the Court of Small Causes mentioned. In the order. U. P. Act 14 of 1970 was published in the U. P. Gazette on 8-4-1970. The point raised before the lower appellate Court was that on account of the bar created by Section 16 of the Provincial Small Cause Courts Act, 1887 read with this amendment jurisdiction of the Munsif to try the suit was taken away and the jurisdiction to try the suit became vested exclusively in the Judge, Small Causes, exercising jurisdiction over cases upto a valuation of Rs. 2000/-. This argument was accepted by the lower appellate Court. It was held that on account of amendment of Section 15 of the Provincial Small Cause Courts Act, 1887 by U. P. Act 14 of 1970 jurisdiction of the Civil Court was taken away to try a suit of the present nature and that the Munsif had no jurisdiction to decide the suit after this amendment. The appeal was allowed. The judgment and decree of the Munsif were set aside and the plaint was ordered to be returned for presentation, to the proper court. It is against this order that the present appeal is directed.

2. The first submission of learned counsel is that U. P. Act 14 of 1970 did not contain any provision relating to pending suits and inasmuch as amendment in Section 15 of the Provincial Small Cause Courts Act did not in terms apply retrospectively it should be held that the jurisdiction of the civil Court remained

unaffected in respect of this pending suit. This argument is devoid of substance because it is plain that the amendment in Sub-sections (2) and (3) of Section 15 effected by U. P. Act 14 of 1970 related to procedural matter; because it is well settled that all procedural amendments should take effect retrospectively; because in mere procedure or the forum the subject has no vested right. This is so especially when there is no saving provision in U. P. Act 14 of 1970 to protect pending actions and suits and to provide that pending actions and suits shall continue to be governed notwithstanding the amendment by the old procedure. There is, therefore, no validity in the argument of the learned counsel that the amendment of Section 15 of the Provincial Small Cause Courts Act, 1887 did not affect pending suits. On the other hand, it is quite clear that the amendment having related to procedural matters applied with retrospective effect and therefore affected the forum of pending suits also with the result that after 8-4-1970 in view of Section 16 of the Provincial Small Cause Courts Act, 1887 jurisdiction of the regular Civil Court was taken away to decide suits covered by Sub-sections (2) and (3) of Section 15 of the Act of 1887. Consequently, the Munsif had no jurisdiction to decide the suit and the decree passed by him would be a nullity.

3. In this connection learned counsel referred to a Full Bench decision of this Court in the case of Manzurul Haq v. Hakim Mohsin Ali, 1970 All WR (HC) 419 = (AIR 1970 All 604) and in that connection referred to observations made in para 21 of the report to the effect that it is clear from a reading of Section 16 of the Provincial Small Cause Courts Act that the Court of Small Causes is merely a court of preferential and not of exclusive jurisdiction. These observations were made in the context of deciding whether the earlier decision of the Judge, Small Causes, will operate as res judicata in a subsequent suit for arrears of rent and ejectment filed in the court of Munsif. The argument was that the decision of the Judge, Small Causes, operated as res judicata as he was a Court of exclusive jurisdiction and, therefore, proceeding before such a Court is not a civil suit. Khare, J. in his leading judgment held that the Court of Small Causes is not a Court of exclusive jurisdiction but only a Court of preferential jurisdiction. That conclusion had relevance only for the purpose of deciding the question of res judicata. The question did not arise in that case as to what is the effect of Section 16 of the Provincial Small Cause Courts Act which conferred exclusive jurisdiction on Courts

of Small Causes in respect of suits of a particular category and barred the cognizance of such suits by any other court. Indeed it was not even seriously maintained by the learned counsel that the bar of Section 16 was absolute respecting suits which were made exclusively cognizable by Courts of Small Causes. That being so, once it is held that by amendment of Section 15 jurisdiction to try the suit of the present nature had been conferred exclusively on the Court of Small Causes it must follow immediately on account of bar in Section 16 that the Munsif had no jurisdiction to try the suit. The ruling is of no assistance to the appellant.

4. The only other point made by the learned counsel was that the respondent had submitted to the jurisdiction of the Munsif; raised no objection before him that he had no jurisdiction to try the suit and, therefore, he was prevented from raising the objection of jurisdiction before the lower appellate Court.

This argument is also without force as neither acquiescence nor consent of parties can confer jurisdiction on a Court which lacks inherent jurisdiction and a decree passed without jurisdiction is a nullity. In Kiran Singh v. Chaman Paswan, AIR 1954 SC 340 the Supreme Court observed as follows:--

'It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.'

5. These being the only points raised I find no force in this appeal which is dismissed with costs to the respondent. Let the record be sent down to the Munsif concerned forthwith.

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