

Kartar Singh Vs. Nanda

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Court : Allahabad

Decided On : Apr-26-1926

Reported in : AIR1926All664; 95Ind.Cas.846

Appellant : Kartar Singh

Respondent : Nanda

Judgement :

Daniels, J.

1. This revision arises out of a suit for the price of a tree alleged to have been wrongly cut down and sold. The suit was originally instituted in the Small Cause Court. The learned Judge of that Court mistakenly held that it was not a suit of Small Cause Court nature and returned the plaint on the objection of the defendant. The plaintiff then filed the suit on the regular side. The defendant then pleaded that the suit was a Small Cause Court suit. The learned Munsif accepted his contention and again returned the plaint. His order has been upheld by the learned Subordinate Judge in appeal, and against this order the plaintiff applies in revision. The result of the orders passed by the Court below is that it is impossible for the plaintiff to get his case tried anywhere. It is clearly a case in which this Court in the interests of justice is bound to interfere.

2. The case is really one of estoppel. The defendant having successfully pleaded in the Small Cause Court that the suit was one triable on the regular side ought not

to have been allowed when the suit was filed on the regular side to turn round and plead that it ought to have been filed in the Small Cause Court. I am told that there is a decision of the Madras High Court to this effect in Letters Patent Appeal No 39 of 1918, which has not been reported. There is no precisely identical reported case, but there is a very similar case of this Court, Abdul Qayum v. Fida Husain AIR 1915 All 463, in which a plaintiff filed an ejectment suit in the revenue Court. On the defendant objecting that the suit was cognizable only by a civil Court the plaintiff was directed to file a suit in that Court. It was held that on his doing so the plaintiff could not be allowed to plead that the suit was not maintainable in the civil Court.

3. This is not a case for the application of the principle that consent of parties cannot give jurisdiction. The suit is within the jurisdiction of the Munsif unless he is precluded from hearing it by reason of the fact that it ought to be filed in the Small Cause Court. It cannot be filed in that Court because there is a final decision between the parties that the Small Cause Court cannot entertain it.

4. I accordingly set aside the orders of the Court below and direct the learned Munsif to restore the case to his file and decide it on the merits. Costs will abide the result.

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