

Sandeep Jain Vs. Suresh Chandra Jain and Others

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Court : Allahabad

Decided On : Apr-03-2000

Reported in : 2000(3)AWC1947

Judge : D.K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9, 16, 17 and 21

Appeal No. : First Appeal No. 828 of 1999

Appellant : Sandeep Jain

Respondent : Suresh Chandra Jain and Others

Advocate for Def. : Ravi Agrawal, Adv.

Advocate for Pet/Ap. : M.C. Gupta, Adv.

Judgement :

D. K. Seth, J.

1. The plaintiff had filed a Suit No. 619 of 1997 against the defendant-respondents for declaration of ownership and title as well as injunction in respect of the suit property one of which is situated at Muzaffarnagar and the other at Delhi on the basis of a Will executed on 21st June. 1994 by late Srnt. Vimla Jain. The defendants had admitted the claim of the plaintiff in the written statement and as

well as the Will as genuine. In this appeal, an affidavit has been filed on behalf of the defendants to the extent that they are not disputing the ownership of the plaintiff and are agreeable that the property in his possession may be retained by him. The learned counsel for the respondents Mr. Ravi Agarwal submits that Delhi property is in the possession of the plaintiff while the plaintiff has 1/5th share in the Muzaffarnagar property in respect whereof the defendants-respondents have no objection.

2. The learned counsel for the appellant Mr. M. C. Gupta submits that the trial court had decreed the suit in part only in respect of the Muzaffarnagar property declaring 1/5th share in the said property and excluded the property at Delhi on the ground that the Court did not have any jurisdiction over the said property though however, no issue as to jurisdiction was ever framed. In such circumstances, according to him, the suit should have been decreed fully.

3. After having heard both the counsel for the parties, it appears that the suit should have been decreed on admission.

4. Be that as it may, Section 15 of the Code of Civil Procedure requires institution of every suit in the Court of the lowest grade competent to try it. Clause (b) of Section 16 of the Code of Civil Procedure prescribes that a suit for partition of immovable property, subject to the pecuniary and other limitations, is to be instituted in a Court in whose local limits of jurisdiction the property is situate. Similarly, clause (d) of Section 16 requires institution of a suit subject to same limitations for determination of any other right to or interest in, immovable property within the local limits of Jurisdiction of such court where the property is situated. Such property is deemed to be a property situated in India. The present case being a suit for partition and declaration of interest in respect of two properties situated at two different places within the local limits of two different Courts could not be covered or governed by Section 16. Such a situation is governed by Section 17 of the Code of Civil Procedure. Section 17 prescribes a suit to obtain relief respecting Immovable property situate within the Jurisdiction of different Courts may be instituted in any one of the Courts within the local limits of jurisdiction of which any portion of the property is situate. However, the same is

subject to the competence of the Court with regard to valuation. In cases where the local limits of Court is uncertain, then also after recording the statement of uncertainty, such suit may be permitted to be filed in any one of the Courts having territorial Jurisdiction.

5. Thus, a suit in respect of property situated within the local limits of jurisdiction of two different Courts can be instituted in any one of such Court within the jurisdiction whereof any part of the property is situate.

6. This question has since been conclusively determined that institution of a suit in any one of such Court having jurisdiction would enable the Court to pronounce the Judgment in respect of whole of the property including those outside its jurisdiction as was held in the case Nilkanth Balwant Nattu and others v. Vidya Narasinh Bharathi Swami and others . Ramdhin and others v. Thakuran Dulaiya and others, AIR 1952 Nag 303 (FB), Kubra Jan v. Ram Bali and another, 1908 XXX ILR 560 (FB) and Smt. Janki Deviv. Mannilal and others : AIR1975 All91 . The section is intended for the benefit of Suitor and to prevent the multiplicity of suit. In the case of Ram Lal Dutt Sarkar v. Dhirendra Nath Roy and others , it was held that once the Court is seized of jurisdiction in a case, such jurisdiction would continue till the disposal of the suit. In the case of Debendra Nath Bhattacharjee v. Amarendra Nath Bhattacharjee and others : AIR1955 Cal159 , it was held that the words 'within the jurisdiction of different Courts' in Section 17 mean 'within the jurisdiction of different Courts in India'. In the case of Sundar Lal v. Gur Saran Lal and others, AIR 1938 Oudh 65 (DB), it was held that even when a suit in respect of the two properties was filed in one Court having jurisdiction of over one of the properties, the plaintiff having abandoned relief in respect of the property situated within that Court would not preclude the Jurisdiction of that Court to pass a decree in respect of the property situated outside its Jurisdiction and such an appeal would be maintainable in a Court where appeal ordinarily lies from the decree of such Court.

7. Section 21 of the Code of Civil Procedure prescribes that objection as to the place of suing shall not be allowed by any appellate or revisional court unless such objection was taken in the Court of first instance at the earliest possible opportunity and In all cases where issues are settled at or before such settlement,

and unless there has been a consequent failure of Justice. Thus, it appears that the absence of jurisdiction would not be fatal unless such objection is taken before the issues are settled. In the present case, no such objection was ever taken at any point of time and neither any Issue was settled on this question. Then again, there would not be any consequent failure of justice if the decree is passed in respect of the property outside its jurisdiction. In the present case, absence of jurisdiction in respect of the otherproperty is not an absence of jurisdiction. Had it been an absence of jurisdiction in that event, if taken in the trial court before the issues were settled, the Court should have decided it. But when the absence of jurisdiction is not objected to in the manner as discussed above, the Court cannot look into it. Even then, in the present case, the Court having jurisdiction in terms of Section 17, no such objection could at all be maintained. Admittedly even if objection is not raised, if it is apparent that the Court did not have jurisdiction. In that event, the Court is not precluded from examining the question and passing appropriate orders. Whereas if the parties join issue and go to trial upon merits without objection to jurisdiction, subsequently the question cannot be gone into with regard to the irregularities in the initial procedure and in such cases, it is assumed that irregularity as to jurisdiction is waived if no objection is taken on time. It was so held in the case of Bahrein Petroleum Co. Ltd. v. P. J. Pappu and another : (1966)11LLJ144SC . The question of objection as to the place of suing can be entertained only when two conditions are fulfilled (i) the objection is taken at the earliest possible opportunity and in cases where issues were settled at or before such settlement and that (ii) there has been a consequent failure of justice. It was so held in the case of Hari Shanker Verma v. Fourth Additional District Judge, Agra and others. 1977 ALD LR 739. Even if objection is not raised, if there is a consequent failure of justice, the objection can be examined and entertained even in an appeal or revision.

8. The question whether trial in the wrong court has led to a failure of Justice must be answered on a consideration of the merits of the case, that is to say, on a consideration of the question whether in spite of such a trial, the evidence which the parties wanted to call had been called and the hearing and the trial was satisfactory as a matter of procedure and whether the decision appears to be right in fact. In the present case, no such objection has been taken and that since part

of one of the properties situated within the jurisdiction of the Court, it had jurisdiction to decide the suit in respect of whole of the property including that part of the property situated outside its jurisdiction.

9. Thus, it is apparent that the place of suing would not be fatal in respect of a case or suit the subject-matter whereof or part of it is located within the jurisdiction of the Court. Thus, in the present case, the Court could not have refused to pass decree in respect of the property outside its jurisdiction and could not have excluded the said property from the decree on the ground that he did not have territorial jurisdiction in respect thereto.

10. Having regard to the facts and circumstances of the case as observed above, a suit can be filed in any of the Court where one or the other immovable property is situated. If one of the properties is situated at Muzaffarnagar in that event, the suit could have been filed in respect of the property at Muzaffarnagar as well as those situated outside Muzaffarnagar, the Court had every jurisdiction to pass the decree In respect of the property situated at Delhi when another suit property is situated at Muzaffarnagar. In such circumstances, the Court had every jurisdiction to grant relief as a whole.

11. In such circumstances, this appeal is allowed on admission by decreeing the suit and declaring that the title of the suit property situated at Delhi as described in item No. (1) of the Schedule be also declared in addition to the decoration of 1/5th share in respect of the suit property described in item No. (2) of the Schedule since been granted by the learned trial court.

12. The appeal is thus allowed and the suit is decreed in full.