

Tirkha Vs. Ghasi Ram

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SooperKanoon Citation : sooperkanoon.com/479355

Court : Allahabad

Decided On : May-01-1935

Reported in : AIR1935All842; 158Ind.Cas.516

Appellant : Tirkha

Respondent : Ghasi Ram

Judgement :

ORDER

Kendall, J.

1. This is a defendant's application for the revision of an order and decree passed by the judge of the Small Cause Court of Muzaffarnagar, decreeing the plaintiff's suit, which was based on a bahikhata account which had been adjusted and a balance struck on 24th June 1931. The suit was filed by the plaintiff on 2nd July 1934, a date which immediately followed the Civil Court vacation, so that if everything had been in order the suit would not have been barred by limitation on that date. The suit however was one for a sum of Rupees 553-8-0, that is to say, it was beyond the pecuniary jurisdiction of the Court. If it had been returned to the plaintiff then and there for presentation to the proper Court, and he had amended the plaint so as to bring it within the pecuniary jurisdiction of the Court and filed it again on the same day, he would in fact have been entitled to succeed. What happened however was that the suit was registered, and it was stated in defence

that the Court had no jurisdiction to deal with it. A written statement was filed on 17th August in which the defendant raised a plea that the Court had no jurisdiction, and the plaintiff then made an application for an amendment of the plaint by reducing the sum claimed to Rs. 500. This application was allowed on 10th September, and the Court then proceeded to try the suit. Questions of jurisdiction and limitation were raised by the defendant, but the Court has decided these in the plaintiff's favour by the argument that the effect of amending the plaint on 10th September 1934 was to give the Court jurisdiction with retrospective effect from 2-7-34, when the plaint was originally filed. It will be observed that this argument is circular because the Court had no jurisdiction to allow the amendment of the plaint on 10th September 1934, until it had first passed the order of that date by which it provided itself with jurisdiction with effect from 17th July 1934.

2. The law appears to be quite clear. The order allowing the amendment of the plaint was passed without jurisdiction, and there is some authority for holding that in such circumstances the order must be vacated. In *Varada Pillai v. Thillai Govindaraja Pillai* 1931 Mad. 8 and *Ramanna v. Amireddi* 1931 Mad 67 a very similar matter has been dealt with. In the case before the Bench it was remarked:

If a Court finds that it has no jurisdiction then to say that it has jurisdiction, to ask the plaintiff to amend his valuation with a view direct him to pay additional court-fees and then return the plaint would seem to suggest that the Court not having jurisdiction has got jurisdiction to do something which is *prima facie* the duty and function of the proper Court.

3. In *Govindaraja Naicker v. Kassim Sahib* 1928 Mad. 384, a similar decision was given by a single Judge of the Madras High Court. I have not been shown any authority of this Court, and for the opposite party Mr. Shastri has only been able to point to such cases as that of *Karumbar Pandrapandram v. Audimula Ponnappandaram* (1910) 33 Mad 262 where a plaintiff to whom a plaint was returned for a proper valuation altered the valuation as directed and struck out some of the property in order to bring the suit within jurisdiction of the Court, and it was held that there was nothing illegal in the amendment and that it was competent to the Court to accept such amended plaint. There is no doubt that the

plaintiff has a right to amend his plaint when it has been returned to him by the Court. But the question here is whether a Court has any right to direct the amendment of a plaint when it has no jurisdiction over the subject matter of the plaint.

4. If it could be held that the order passed by the Court on 10th September 1934 was not an order to amend the plaint, but an order directing the plaint to be returned to the plaintiff, that might possibly have been allowed, but the result would have been that the plaint after amendment would take its date from the date when the plaintiff presented it after amendment, and not from the date on which it was originally filed in a Court which had no jurisdiction to accept it.

5. The only argument on behalf of the opposite party which has impressed me at all is that there are equities in favour of the plaintiff opposite party land that the High Court will not always interfere in revision under Section 25, Small Cause Courts Act, merely on the ground that the trial Court has made some technical error or may even have violated some provision of the Limitation Act. The question here is not only one of limitation, but of jurisdiction, and it is by no means a trivial one. To refuse to allow the application would be to lay down by implication at any rate an extremely dangerous and illegal rule of procedure. I therefore allow the application for the reasons given and direct that the decree and order of the trial Court be set aside and the plaintiff's suit be dismissed with costs in both Courts. Mr. Shastri has asked that the plaint may be returned to the trial Court, which may return it to the plaintiff for presentation to the proper Court, and this may be done.