

Ram Kumar Agarwal and Another Vs. District Judge, Mainpuri and Others

Ram Kumar Agarwal and Another Vs. District Judge, Mainpuri and Others

SooperKanoon Citation : sooperkanoon.com/486901

Court : Allahabad

Decided On : Aug-30-1999

Reported in : 1999(4)AWC3394

Judge : D. K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 2(2), 9, 115 - Order 7, Rules 10 and 11, Order 23, Rule 1 - Order XLI, Rule 1 and Order 43, Rule 1; [Motor Vehicles Act, 1988](#) - Sections 94; [Constitution of India](#) - Article 227

Appeal No. : C.M.W.P. No. 36443 of 1999

Appellant : Ram Kumar Agarwal and Another

Respondent : District Judge, Mainpuri and Others

Advocate for Def. : S. C.

Advocate for Pet/Ap. : H. M. Srivastava, Adv.

Judgement :

D. K. Seth, J.

1. The opposite party No. 3 filed a suit for declaration that he is the owner of the disputed bus and for Injunction restraining the defendant-petitioner from interfering with the possession of the plaintiff in respect of the bus and the permit. The said

suit was registered as Suit No. 1 of 1999 in the Court of Civil Judge, Senior Division, Mainpuri. In the said suit, an application was filed by the defendant-petitioner raising an objection as to the maintainability of the suit on account of its bar under Section 94 of the [Motor Vehicles Act, 1988](#) by means of application No. 27C. Admittedly no written statement was filed by the dependent-petitioner. The said application 27C was disposed of by the learned Civil Judge, Senior Division, Mainpuri, by an order dated 27th April, 1999 holding that the suit is barred under Section 94 of the Motor Vehicles Act and is outside the jurisdiction of the civil court and, therefore, the suit be returned. Against this order Misc. Civil Appeal No. 24 of 1999 has since been filed by the plaintiff. The learned District Judge, Mainpuri, by an order dated 18th May, 1999 allowed the said Appeal and set aside the order passed by the learned Civil Judge, Senior Division, Mainpuri, holding that the suit for declaration of title to the disputed bus and for injunction to restrain the defendant-petitioner from interfering with her possession over the disputed bus is triable by the civil court.

2. It is this order dated 18th May, 1999 which has been assailed by Mr. H. M. Srivastava learned counsel for the petitioner. Mr. Srivastava contends that the order passed by the learned Civil Judge was not an order under Order VII, Rule 10 of the Code of Civil Procedure and as such, it cannot be appealable under Order XLIII, Rule 1 (a) of the Code of Civil Procedure. According to him, the said order does not specify the test laid down in Order VII, Rule 10 whereas from the text of the order, it appears to be an order under Order VII, Rule 11 (d) which is not appealable under Order XLIII and, therefore, this Misc. Appeal is not maintainable. According to him, an order passed under Order VII, Rule 11 (d) is a decree within the meaning of the definition of decree contained under Section 2(2) and as such, a regular appeal will lie. On that ground also the Misc. Appeal could not be maintainable. He further contends that even on merits, the order of the learned District Judge cannot be sustained since the jurisdiction of the civil court is barred under Section 94 of the Motor Vehicles Act and as such the suit cannot be maintained before the civil court.

3. I have heard Mr. H. M. Srivastava, learned counsel for the petitioner at length.

4. By an order dated 22nd April, 1999 the learned civil Judge, Senior Division, Mainpuri had held that the civil court has no jurisdiction and that the jurisdiction of the civil court was barred by Section 94 of the Motor Vehicles Act and, therefore, the plaint was directed to be returned. But the said order does not specify that the plaint is to be presented before the Court in which the suit should have been instituted. Order VII, Rule 10 prescribes that a plaint may be returned for being presented to the Court in which the suit should have been instituted. Since the plaint was not returned by the said order for being presented to the Court in which the suit should have been instituted, the said order cannot be treated to be an order under Order VII, Rule 10 as rightly contended by Mr. Srivastava. At the same time, the plaint having not been rejected, the order returning the plaint cannot be treated to be an order within the meaning of Rule 11. Though there was no order rejecting the plaint itself, Mr. Singh had sought to contend, that If the order is not an order within the meaning of Rule 10 even if it is an order for return of plaint, virtually the same is a rejection of the plaint. But the learned Court having not rejected the plaint, by implication, it cannot be considered to be rejection of a plaint. Therefore, it also does not come within the meaning of Order VII. Rule 11 which could be a subject-matter of regular appeal.

5. Admittedly unless the order is an order under Order VII. Rule 10, the same cannot be an appealable order within the meaning of Order XLI, Rule 1 (a). If it is not an order within the meaning of Rule 10, in that event, the Misc. Appeal was not maintainable. Thus, it appears that neither a Misc. Appeal nor a regular appeal would be maintainable. In such case, it would be amenable to the revisional Jurisdiction under Section 115 of the Code of Civil Procedure.

6. The learned District Judge had jurisdiction to entertain the Misc. Appeal as well as a civil revision out of the said order. Therefore, even if the appeal was decided treating the same as an appeal, still then, it cannot be said that the decision was without jurisdiction. It was open to the Court to convert an appeal into a revision and a revision into an appeal. In case on technical ground, the appeal is not maintainable, in that event, it could have been treated to be a revision. Be that as it may, the confusion having been created by reason of the direction to return of the plaint. The opposite parties had accepted the order as an order under Order

VII. Rule 10, Therefore, such appeal was preferred under Order XLIII, Rule 1 (a). Thus, there was a confusion for which the opposite parties cannot be blamed and the appeal cannot be thrown out only on a technical ground.

7. Then again this is a case where it appears that the order that was passed by the learned Court below is wholly perverse on the face of it and is misconceived. It had exercised jurisdiction illegally and irregularly in passing the said order in refusing to entertain the suit though the civil court has its jurisdiction to entertain the same. The perversity is so ex facie that it is a case fit where this Court should invoke its jurisdiction under Article 227 of the [Constitution of India](#) to keep the subordinate court within its bound and set the illegality and irregularity right. It should not refuse to invoke its Jurisdiction in refusing to entertain the order passed by the learned District Judge on appeal merely on the ground of technicalities. On the other hand, this Court treat and converts the appeal into a revision and the order passed by the District Judge be treated as an order passed on revision on account of reasons specified hereafter.

8. Section 94 of the Motor Vehicles Act prescribes as follows :

'Bar on jurisdiction of civil courts.--No civil court shall have jurisdiction to entertain any question relating to the grant of a permit under this Act, and no injunction in respect of any action taken or to be taken by the duly constituted authorities under this Act with regard to the grant of a permit, shall be entertained by any civil court.

9. The jurisdiction of the civil court is barred in respect of question related to the grant of permit and the question of injunction is also barred in respect of question relating to grant of permit. Thus, the bar of jurisdiction is confined only to the question relating to the grant of permit and not beyond. In the present case, from the prayers and framing of the suit as is apparent from the plaint is not related to any question of grant of permit. On the other hand, it is a suit for declaration in respect of ownership of a bus and injunction restraining the defendants from interfering with the possession of the bus and the permit. The possession of the permit which is already granted is not a question related to the grant of permit. Whether permit should be in the possession of one or the other cannot be a matter within the scope and ambit of Section 94 of the Motor Vehicles Act. A plain reading

of Section 94 shows that it does not include anything except the question relating to grant of permit. In the present case, the question of grant of permit is not involved in the suit itself. It is a question as to who would possess the permit or the bus which is subject-matter of injunction and declaration. Thus, the suit is not barred under Section 94 of the Motor Vehicles Act and the civil court has its jurisdiction to entertain the suit as has been rightly held by the learned District Judge. Mainpuri.

10. For all these reasons this writ petition fails and is accordingly dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com