

Bindesri and anr. Vs. Ganga Prasad

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Court : Allahabad

Decided On : Nov-26-1919

Reported in : (1920)ILR42All195

Judge : Lindsay, J.

Appellant : Bindesri and anr.

Respondent : Ganga Prasad

Judgement :

Lindsay, J.

1. I have listened to the arguments in this case and have made up ray mind that the application should be dismissed. I may say at once that the case being a case under Section 25 of the Provincial Small Cause Courts Act, I should not be disposed to interfere unless the law obliges me to. The suit was a suit for Rs. 47-4-0. It was tried in the court of a Munsif who admittedly was possessed of Small Cause Court powers up to a limit of Rs. 50. The Munsif, however, tried the suit as a regular suit and gave a decree in favour of the defendants. The plaintiff appealed and the appeal was heard by the Subordinate Judge of Mirzapur, He reversed the decision of the court below and gave a decree in favour of the plaintiff. Now we have this application in revision in which it is contended on behalf of the defendants that no appeal lay to the court below and that the order of the Subordinate Judge is void as having been passed without jurisdiction. The way the

case was put on behalf of the petitioners is this. It is said that the suit as framed was a suit exclusively cognizable by a Court of Small Causes and that the Munsif who decided the case being a Munsif invested with the powers of the Small Cause Court, it ought to be taken that his decision was- the decision of a Court of Small Causes and was not therefore open to appeal. I take it as admitted that the suit was a suit ordinarily cognizable by a Court of Small Causes and that to this extent the case put forward by the petitioners is correct, Even then I should not be disposed to interfere in those proceedings in view of the fact that the case has been fully tried out and has not been disposed of in the summary way in which Small Cause Court cases are usually dealt with. The learned Counsel for the petitioners, however, referred me to a judgment of this Court, Abdul Majid v. Bedyadhar Saran Das (1916) I.L.R. 39 All. 101. That case follows a full bench decision of the Madras High Court--Kollipara Seetapathy v. Kankipati Subbayya (1909) I.L.R. 33 Mad. 323. The view taken in this latter case was that where a Small Cause suit is tried by a Munsif on the original side and his decision is reversed in appeal by the subordinate court the High Court is bound to set aside the decree in appeal as having been passed without jurisdiction.

2. The learned Counsel for the opposite party, however, has been able, in my opinion to put a different complexion on the facts, and after some argument it has been admitted before me that the statements of facts made by the learned Counsel for the opposite party are correct. It seems that this suit was filed on the 6th of August, 1918, and it was filed in the court of the Munsif of Mirzapur. At that time the permanent incumbent had gone on leave and there was officiating in his place one Mr. Charu Chandra who admittedly was not invested with the powers of a Small Cause Court Judge. The case was instituted in his court and was necessarily registered as an ordinary suit. The case came on for trial in the month of November, 1918, By that time Mr. Raj Rajeshwar Sahai, the permanent Munsif, had returned from leave. It is not disputed that this gentleman was invested at that time with the' jurisdiction of a Court of Small Causes up to the pecuniary limit of Rs. 50. Mr. Raj Rajeshwar Sahai, as I have said, tried the case as an ordinary suit and in my opinion that was the proper course for him to adopt. The suit was filed while his locum tenens, who was not invested with the Small Cause Court powers, was the presiding officer and conse-sequently, under the provisions of Section 32,

Sub-section (2), of the Provincial Small Cause Courts Act, I think it was the duty of the Munsif who finally dealt with the case to try the case as a regular suit. If any authority on this proposition is required it will be found in a ruling of this Court which appears to me to be exactly in point. That is the decision ' of a single Judge of this Court (1911) 9 Indian Cases, 264. I cannot distinguish the facts of that case from the facts of the case before me. Apart from this authority of this Court there are at least three other cases which support this view; Mahima Chandra Sirdar v. Kali Mandol (1907) 12 C.W.N. 167, Hari Kamayya v. Hari Venkayya (1903) I.L.R. 26 Mad. 212, Sambhu Dhanaji v. Ram Vithu (1903) I.L.R. 28 Bom. 24. It seems to me, therefore, that it is not any longer possible to contend that there was any irregularity in the trial of the first court. On the contrary, the procedure of the Munsif was perfectly correct, and if he tried the suit out as a regular suit and did not exercise his powers in this particular instance as a Court of Small Causes, it follows that the petitioners here are not entitled to argue that the agree of 'the first court was a final decree as provided by Section 27 of Act IX of 1887, On the authorities to which I have referred an appeal certainly lay to the District Judge, and the result, therefore, is that I hold that there was no want of jurisdiction in the court below to hear the appeal. The application fails and is dismissed with costs to the opposite party.