

Tejkumar Vs. Subhashchandra and ors.

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Court : Madhya Pradesh

Decided On : Aug-12-1988

Reported in : AIR1989MP78; 1989MPLJ382

Judge : G.G. Sohani, Actg. C.J., ;R.K. Verma and ;A.G. Qureshi, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 6 - Order 7, Rule 10 - Order 33, Rules 1, 5 and 7

Appeal No. : M.A. No. 33 of 1981

Appellant : Tejkumar

Respondent : Subhashchandra and ors.

Advocate for Def. : M.G. Upadhyaya and ;B.I. Mehta, Advs.

Advocate for Pet/Ap. : M.L. Agrawal, Adv.

Judgement :

A. G. Qureshi, J.

1. The appellant had filed an application under Order 33, Rule 1, Civil Procedure Code seeking permission to sue the respondents in the Court of the 7th Additional Judge to the Court of the District Judge, Indore. It was alleged in the application that the suit property was ancestral property of which the appellant was entitled to

equal share with his father Trilokchand-defendant No. 1 (now dead). According to the applicant, the suit property was sold only for Rs. 15,000/-without a legal necessity. There were old tenants in the said property on a rent of Rs. 100/- per month. The applicant valued the suit at Rs. 15,000/- for the purpose of a declaration of the sale deed as null and void, the valuation of the suit for possession was Rs. 1680/- and the mesne profits were claimed at the rate of Rs. 1200/- per month amounting to Rs. 36,000/- for a period between 8-6-1977 and 7-12-1979. As such, the total valuation of the suit, according to the applicant, was Rs. 51,300/-. On notice to the defendants, the respondent No, 6 contested the application of the applicant. After holding an enquiry pertaining to the right of the applicant to sue as an indigent person, the trial Court held that the suit has been over-valued. Therefore, a direction was issued by the learned trial Court vide its order dated 23-1-1981 in case No. 13-A of 1979 to return the application for presentation before the proper Court of competent jurisdiction.

2. Aggrieved by the aforesaid order, the applicant has filed this appeal which was heard by a learned single Judge of this Court. The learned single Judge after hearing the arguments of both the parties was of the opinion that the questions raised in the case involve points of difficulty and importance including the reconsideration of the case of Channulal Semi v. Shama Ramcharan, AIR 1955 Nag 259. Therefore, the learned Judge formulated two questions and directed the matter to be placed before Hon'ble the Chief Justice for constituting a Full Bench for answering the questions and opinion thereon. Consequently, the following two questions have been referred for answer and opinion of this Bench : --

(1) Whether while determining one's right to sue as an indigent person, the Court can reject the application on the ground other than enumerated in Order 33, Rule 5, CPC? And

(2) Whether the Court can enter upon a trial of issues affecting the merits of the claim in relation to entitlement of relief, jurisdiction, valuation of court-fees or like questions?

3. At the outset it may be mentioned that the order of the learned Additional District Judge has not been passed under Order 33, Rule 5, Civil Procedure Code

but it is an order under Order 7 Rule 10, C.P.C. Therefore, we proceed to examine the questions referred to us in relation to the right of the Court to return the plaint while deciding the question of permission to sue as an indigent person. Order 33 Rule 5, C.P.C. provides for rejection of an application for permission to sue as an indigent person, if the application seeking the permission to sue as an indigent person attracts any of the Clauses (a) to (g) of Rule 5. It is not in dispute that no provision has been made in the aforesaid rule for returning the plaint for presentation to a Court of competent jurisdiction, in case the Court finds that the suit has been over-valued or under-valued and the Court has no pecuniary jurisdiction to decide the suit. This leads us to a question whether an application to sue as an indigent person under Order 33 Rule 1, C.P.C. has to be treated as the plaint. In our view, the interpretation that the application to sue as an indigent person is a plaint has held the field for sufficiently long time in this State. In *Channulal Semi v. Shama Ramcharan* (AIR 1955 Nag 259) (supra), the Division Bench of the Nagpur High Court answering a reference made by a learned single Judge had held that the purport of Order 33 is to enable a pauper to bring a suit without payment of court-fee subject to his establishing that he is a pauper. If he is able to establish his claim of being an indigent person, then the Court shall allow to continue that suit and the application to sue in forma pauperis shall be deemed to be a plaint presented on the date on which the application was made. However, if he fails to establish his pauperism, then he is relegated to the same position in which an ordinary litigant would be as if he brought his suit on a plaint insufficiently stamped. The Division Bench, therefore, was of the opinion that during the time the pauperism is being enquired into there is a plaint but insufficiently stamped. The Division Bench of the Nagpur High Court while deciding this question had followed the decision of their Lordships of the Privy Council reported in (1879) ILR 2 All 241 (PC) (*Stuart Skinner v. William Orde*). Differing with the view expressed by the Patna High Court in *Gupteshwar v. Chaturanand*, AIR 1950 Pat 309 wherein it was held that while the question of pauperism was being considered, the Court had no right to consider any other question including its own jurisdiction to try the case. The Nagpur High Court has held as under : --

'With all due respect to the Division Bench, we do not find ourselves in agreement. The question of jurisdiction is bound up with other matters besides the Code.

Under the Courts Acts which are prevalent in all States, some courts have jurisdiction to try suits only up to a particular value. In our opinion, it would lead to endless confusion if even in a case, which on its face is beyond the pecuniary jurisdiction of the Court, the question of pauperism has to be decided and the plaint or application not returned for presentation to the proper Court.'

4. In view of the aforesaid decision of the Division Bench of the Nagpur High Court with which we respectfully agree, it is manifest that the application filed under Order 33, Rule 1, C.P.C. seeking permission to sue as an indigent person cannot be treated only as an application seeking permission to sue as an indigent person but from the moment of the presentation of that application there is a plaint plus an application for permission to sue in forma pauperis. It, therefore, follows that while deciding an application submitted under Order 33, Rule 1, C.P.C. the Court has a right to consider the question of its own jurisdiction to try the case.

5. In *Vijai Pratap Singh v. Dukh Horan Nath Singh*, AIR 1962 SC 941, the Supreme Court has not taken a view contrary to that of the Nagpur High Court. The Supreme Court has held as under : --

'An application to sue in forma pauperis is but a method prescribed by the Code for institution of a suit by a pauper without payment of fees prescribed by the Court fees Act. If the claim made by the applicant that he is a pauper is not established the application may fail. But there is nothing personal in such an application. The suit commences from the moment an application for permission to sue in forma pauperis as required by Order 33 is presented, and Order I, Rule 10 would be as much applicable in such a suit as in a suit in which court-fee had been duly paid.'

(Emphasis on underlined portion by us).

A plain reading of the aforesaid dictum of the Supreme Court admits only of one interpretation that the suit commences from the moment an application for permission to sue as an indigent person is filed before the Court under Order 33, Rule 1, C.P.C. In the aforementioned judgment, the Supreme Court has also considered the scope and ambit of the Court to pass an order rejecting the application under Order 33, Rule 1, C.P.C. It has been held that while rejecting the

application seeking permission to sue as an indigent person, in exercise of the powers of the Court under Order 33, Rule 5, C.P.C, the Court is concerned to ascertain whether the allegations made in the petition are such which attract any of the clauses of Rule 5. The Court at that time has not to see whether the claim of the petitioner is likely to succeed. It has merely to satisfy itself that the allegations made in the petition if accepted as true would entitle the petitioner to the relief he claims. If after accepting the allegations made in the plaint to sue, the court finds that the application is liable to be rejected in view of any of the provisions contained in Clauses (a) to (g) of Rule 5 of Order 33, C.P.C, then it can reject the application. However, the Court cannot take into consideration the defences which the respondents may raise upon the merits nor is the court competent to make elaborate enquiry into doubtful or complicated questions of law and fact. The jurisdiction of the Court at that stage does not extend to trial of issues which must fairly be left for decision at the hearing of the suit.

6. In view of the aforesaid decision of the Supreme Court, as soon as an application for seeking permission to sue as an indigent person is filed before the Court under Order 33, Rule 1, C.P.C., it has to be treated as a plaint with a permission to sue without payment of court-fees. The same is the view of the Nagpur High Court in Channulal Semi v. Shama Ramcharan (AIR 1955 Nag 259) (supra). Therefore, if even before the notice to the non-applicants and the State under Order 33, Rule 6, C.P.C. the Court on the basis of allegations made in the plaint and treating them as true, comes to the conclusion that the suit is beyond its pecuniary jurisdiction, then it can always pass an order for return of plaint for presentation before a court of competent jurisdiction. The civil court is not debarred from exercising any of the powers given to it under the Civil Procedure Code. It will be anomalous to hold that although the court finds that it has no jurisdiction to try the suit still embarks upon an enquiry to decide whether the plaintiff is an indigent person or not. The question of pecuniary jurisdiction is closely linked with the valuation of the suit.

7. If we look to the provisions of the Civil Procedure Code, we find that Section 6 of the Civil Procedure Code postulates that the courts shall exercise jurisdiction over the suits which fall within its pecuniary limits. Section 15 of the Civil

Procedure Code contemplates that every suit has to be instituted in the court of the lower grade competent to try it. Order 7 Rule 10, C.P.C. lays down that a plaint at any stage of the suit can be returned to be presented to the Court in which the suit should have been instituted. It, therefore, follows that when an application for seeking permission to sue as an indigent person is treated as a plaint and if the Court finds that it has no pecuniary jurisdiction to try that suit, it can return the plank for presentation to the proper court in exercise of the powers contained under Order 7, Rule 10, C.P.C. Order 7 Rule 10, C.P.C. says that the plaint can be returned at any stage of the proceedings. Therefore, even while considering the application under Order 33, Rule 1, C.P.C. before issuance of the notice to the non-applicants and the State, the court if on the allegations made in the plaint finds that the suit is beyond its pecuniary jurisdiction it can always pass an order for return of plaint. However, since the question referred to us being different, that is, being about the right of the Court, about the dismissal of the application seeking permission to sue as a pauper on any other grounds than the ones enumerated in Clauses (a) to (g) of Rule 5 of Order 33, C.P.C. we may answer the question by saying that before issuance of the notice to the non-applicants and the State, the order under Order 33, Rule 5, C.P.C. has to be passed only on the grounds enumerated in Clauses (a) to (g) of Rule 5 of Order 33, C.P.C. but the court shall not be precluded from passing any order pertaining to return of plaint for presentation to the proper Court.

8. The Court has power to order the return of the plaint for presenting it before the court of competent jurisdiction even while passing the order under Order 33, Rule 7, C.P.C. At that stage the non-applicant is before the Court with a liberty to resist the application submitted under Order 33, Rule 1, C.P.C. Order 33, Rule 6, C. P. C. reads as under :--

'Where the Court sees no reason to reject the application on any of the grounds stated in Rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof.'

According to the aforesaid provision of law the non-applicants are entitled to lead evidence in disproof of the claim of the applicant for his indigency. According to us the non-applicant can always show that the, suit is over-valued and if the valuation would have been proper then the applicant is in a position to pay the required court-fee. We may quote an example. An applicant values his suit at Rs. 50,000/- and says that he is an indigent person in respect of payment of courtfee on that valuation, then the other party can demonstrate that the valuation of the suit is not Rs. 50,000/- but much less and that the applicant is in a position to pay that amount of court-fees. There also the question of pecuniary jurisdiction of the court is closely linked with the valuation of the suit and the civil court is empowered at that stage to hold that the suit is not within the pecuniary jurisdiction of that Court. Consequently an order for return of plaint can be passed at that stage also. However, in doing so, the court has to always keep in view that the valuation of the suit depends upon the relief claimed therein and the plaintiffs valuation of the suit, as given in his plaint, determines the pecuniary jurisdiction of the Court, but the plaintiff is debarred from invoking the jurisdiction of a court by grossly over-valuing or grossly under-valuing a suit to bring it within the jurisdiction of a particular court. The Supreme Court in *Nandita Bose v. Ratanlal Nahata*, 1988 MP WN 26 : (AIR 1987 SC 1947) had held that although the plaintiffs' valuation in the plaint determines the pecuniary jurisdiction of the Court, still grossly over-valuing or under-valuing of a claim to bring a suit within the pecuniary jurisdiction of a particular Court shall tantamount to the abuse of the process of the court and the court can always correct it by passing an order under Order 7, Rule 10, C.P.C.

9. In the result, the answers to the questions referred to us are that the court while passing an order under Order 33, Rule 5, C.P.C. can reject the application only on the grounds enumerated in Order 33, Rule 5, C.P.C. however, the court is not precluded from returning the plaint for presentation to the proper Court, if on the basis of the allegations made in the application/plaint it finds that the suit has been grossly over-valued or under-valued and as a result the suit is not within the pecuniary jurisdiction of that Court. The court is also not precluded from examining the question of its pecuniary jurisdiction and pass orders under Order 7, Rule 10, C.P.C. even while deciding the question of indigency under Order 33, Rule 7, C.P.C.

10. The present miscellaneous appeal shall now be placed before the learned single Judge for decision on merits. Parties to bear their own costs of this reference, as incurred.

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