

inder Singh Vs. Suba Singh

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Court : Punjab and Haryana

Decided On : Jan-06-1956

Reported in : AIR1956P& H242

Judge : Harnam Singh, J.

Acts : [Suits Valuation Act, 1887](#) - Sections 11

Appeal No. : Ex. Second Appeal No. 552 of 1955

Appellant : inder Singh

Respondent : Suba Singh

Advocate for Pet/Ap. : Roop Chand, Adv.

Disposition : Appeal dismissed

Judgement :

Harnam Singh, J.

1. Chaudhry Roop Chand urges that the decree passed, in Civil Suit No. 16 of 1953 was a nullity for the reason that Shri Gian Chand, Sub-Judge, who passed the decree for possession by pre-emption on payment of Rs. 3,150/- had pecuniary jurisdiction up to Rs. 1,000/- only.

2. In my opinion, on principle and authority the decree passed in Civil Suit No. 16 of 1953 cannot be regarded to be nullity.

3. 'Prima facie' defect of Jurisdiction whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the authority of the civil Court to pass any decree, and such a defect cannot be cured even by consent of parties. In case the defect now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the Court of first instance was coram non iudice, and that its Judgment and decision would be nullities.

4. Section 11, Suits Valuation Act provides inter alia that notwithstanding anything in Section 99, Civil P. C., an objection that by reason of the overvaluation or the under-valuation of a suit the Court of first instance which had no jurisdiction with respect to the suit exercised Jurisdiction with respect thereto shall not be entertained by an appellate Court except as provided in that section.

That being the law, a decree passed by a Court, which would have had no Jurisdiction to hear a suit but for over-valuation or under-valuation, is not to be treated as, what it would be but for the section, null and void. In such a case an objection to Jurisdiction based on over-valuation or under-valuation should be dealt with under Section 11, Suits Valuation Act and not otherwise.

5. In this state of the law the decree passed by the Sub-Judge in Civil Suit No. 16 of 1953 cannot be regarded to be nullity. Plainly, it was not intended to allow a party who had failed to attack a decree passed against him by appeal or application for review to reopen the case in the execution Court in contravention of the provisions of Section 11, [Suits Valuation Act, 1887](#).

6. In India there was some conflict between the High Courts on the point in issue. In this, part of the country the general view was that it was not open to an executing Court to question the validity of a decree on the ground that the Court which made the decree had not pecuniary Jurisdiction to make it. In this connection -- 'Ghulam Mohammad v. Fazal Nishan', AIR 1932 Lah 289 (A), may be seen.

7. In 'Kiran Singh v. Chaman Paswan', AIR 1954 SC 340 (B). Venkatrama Ayyar J. dealing with the point observed-

'With reference to objections relating to territorial jurisdiction, Section 21, Civil P. C., enacts that no objection to the place of suing should be allowed by an appellate or revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11, Suits Valuation Act with reference to pecuniary Jurisdiction.

The policy underlying Section 21 and 90, Civil P. C., and Section 11, Suits Valuation Act is the same, namely, that when a case had been tried by a Court on the merits and Judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of Justice, and the policy of the legislature has been to treat objections to Jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits.'

For the foregoing reasons, I find that the decree for possession by pre-emption passed in Civil Suit No. 16 of 1953 on payment of Rs. 3,150/- was not a nullity though the Sub-Judge who passed the decree had pecuniary Jurisdiction up to Rs. 1,000/- only.

8. No other point arises in Execution Second Appeal No. 552 of 1955.

9. In the result Execution Second Appeal No. 552 of 1955 fails.

10. As respondents have not appeared in these proceedings I make no orders as to costs.

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