

Pushpa Kapa Vs. Sfflv Kumar

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Court : Delhi

Decided On : Apr-21-1988

Reported in : 35(1988)DLT187; 1988RLR434

Judge : Jagdish Chandra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 24

Appeal No. : Interim Application No. 394 of 1988 and Suit No. 268 of 1984

Appellant : Pushpa Kapa

Respondent : Sfflv Kumar

Advocate for Pet/Ap. : P.N. Kumar and; J.N. Verma, Advs

Judgement :

Jagdish Chandra, J.

(1) In this suit for possession and damages for use and occupation of the property in suit the entire evidence was recorded and concluded and the suit was set for final hearing. Instead of hearing the arguments of parties counsel on all the issues, arguments were heard only on issue No. 1 which dealt with the correctness of the valuation put in the plaint and vide order dated 11th January 1988 it was held that the market value of the property in suit was less then Rs. 100.000 on the date of the filling of .the suit and consequently the High Court was not empowered to

entertain and decide this suit. This fact was conceded by the learned counsel for both the parties. The plaint was, therefore, ordered to be returned to the plaintiff for presentation to the District Judge and for this purpose the plaintiff was directed to appear before the Deputy Registrar on 14th January 1988. On that day i.e. 14th January 1988 the plaintiff filed this application under section 24 read with section 151 of the Code of Civil Procedure who chose not to receive back the plaint for presentation to the court of the District Judge. Notice of this application was issued to the defendant's counsel and the defendant filed the reply.

(2) It was pointed out in this application and also contended by the learned counsel for the plaintiff that if only the plaint were to be returned to the plaintiff for presentation of the same to the court of the District Judge, de novo proceedings would have to be started by the court of the District Judge, which would put the plaintiff to unnecessary harassment culminating into unnecessary delay in the disposal of the suit, and that if the suit is transferred by the High Court to the court of the District Judge, the District Judge would not have to record the evidence afresh and would take up the case from the stage it reaches him and would thus be left only with the task of hearing the final arguments of the counsel for the parties and to decide the suit and in this manner the entire proceedings recorded for about four years since 18-2-1984, the date of the institution of the suit, would not go waste which would necessarily go waste if the suit is not transferred by the High Court and the plaintiff is simply made to receive back the plaint and present the same to the court of the District Judge who would have to start the proceeding de novo. In the face of this extraordinary and exceptional difficulty, this application for the transfer of the suit from the High Court to the court of the District Judge has been made and it is pressed in that light by the learned counsel for the plaintiff.

(3) The relevant portion of section 24 of the Code of Civil Procedure is reproduced below :-

'24. General power of transfer and withdrawal-(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage- (a) transfer any suit, appeal or other proceeding pending

before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same, or Xx Xx Xx Xx Xx Xx Xx Xx Xx (5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.'

(4) SUB-SECTION

(5) of this provision was inserted by Civil Procedure Code (Amendment) Act, 1976 for the first time and its insertion was necessitated for the reason that some of the High Courts in India were of the view that suit/appeal/proceeding pending before a court must be understood in the sense that the same was duly pending meaning thereby that it was pending in a court of competent jurisdiction, and if it was pending in a court without jurisdiction, the same could not be transferred from that court to another court. In order to do away with the mischief caused by the time consumed in recording the evidence sub-section

(5) was inserted in section 24 as a result of which a suit of proceeding can be transferred under this section from a court which has no jurisdiction to try it and the application of this provision of law is most suitable in the circumstances of the case like the suit in hand where, as already pointed out above, a fresh exercise of recording the entire evidence would have to be gone through unnecessarily by the court of the District Judge if the order dated 11th January 1988 directing the return of the plaint to the plaintiff for presentation to the court of the District Judge is kept intact and enforced and which unnecessary harassment can be obviated by ordering the transfer of this suit to the court of the District Judge who, in which contingency, would be able to hear arguments of the parties straight away without recording the evidence afresh. Thus, sub-section

(5) appears to have been inserted in section 24 to do away with this mischief and is a very just provision meant for application in such like cases.

(5) The learned counsel for the plaintiff has cited before me an authority of this very court reported as Shri Rail Chand vs. Shri Alal Chand and others. 2nd (1978) 1 Del 229 wherein the Commercial Sub Judge holding in a suit that he had no jurisdiction to try the same, ordered the placing of the suit before the District Judge for transfer of the same to a court of competent jurisdiction. That suit had been

pending for a period of ten years and there was a long trial before the Commercial Sub Judge. It was held that the order passed by the Commercial Sub Judge directing the placing of the case before the District Judge for transfer to another court was wrong as he had no jurisdiction to give such direction. It was further held that it was not in the interest of justice if the plaint were to be returned to the plaintiff and the case to be tried all over again when there had already been a long trial and the case had been pending for a period of ten years. Ultimately, adverting to sub-section

(5) of section 24 of the Code of Civil Procedure it was held as following (at page 232):- 'This is a new power which can be most usefully exercised in the case. Hence, although the Commercial Sub-Judge did not have jurisdiction to try the suit, this is a suitable case which should be transferred under section 24 of the Code from the Court of Commercial Sub-Judge to the Court of the District Judge.'

(6) The contention of the learned counsel for the defendant that after the passing of the order dated 11th January 1988 ordering the return of the plaint to the plaintiff for presentation to the court of the District Judge this suit cannot be said to be pending in this court for which reason there can arise no question of its transfer by this Court to the court of the District Judge under sub-section 1(a) of section 24, is not correct and cannot be accepted inasmuch as, as already pointed out above, the plaintiff while appearing before the Deputy Registrar on 14th January 1988 did not receive back the plaint but instead filed this application under section 24 for the transfer of the suit by this Court to the court of the District Judge, as a result of which the suit continued pending in the High Court even though the High Court did not have the pecuniary jurisdiction to try it.

(7) In view of what has been stated above, I order the transfer of this suit to the Court of the learned District Judge who shall decide the suit himself or assign it to any other Additional District Judge for this purpose. No order as to costs. This disposes of this application. Parties are directed to appear before the learned District Judge on 16-5-88.