

Surinder Singh Vs. Sohan Singh

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Court : Delhi

Decided On : May-03-1984

Reported in : 1984RLR366

Judge : J.D. Jain, J.

Acts : Code of Civil Procedure (CPC) (Amendment) Act, 1976; [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rules 23, 23(A), 24, and 25; Punjab Courts Act, 1918 - Sections 18, 24, 25 and 26; Provincial Small Causes Courts Act, 1887; Punjab Courts (Amendment) Act, 1963 - Sections 21(2) and (3)

Appeal No. : Civil R. Appeal No. 977 of 1983

Appellant : Surinder Singh

Respondent : Sohan Singh

Advocate for Pet/Ap. : S.N. Mehta and; I.D. Garg, Advs

Judgement :

J.D. Jain, J.

(1) This case has an unfortunate history. It epitomizes the sad plight and suffering of a litigant resulting from an appellate order passed in a rather perfunctory manner and not strictly in conformity with law.

(2) Succinctly the facts germane to the decision of this revision petition are that the parties are real brothers. Way back in 1975 the respondent instituted a suit against the petitioner/defendant for mandatory injunction directing the petitioner to quit and remove himself and his family and belongings from a portion of the ground floor of House No. XVI/4839, Gali No 44 Reharpura, Karolbagh, which was in his occupation as a licensee. The suit was contested by the petitioner inter alia, on the ground that he was a co-owner of the said house Along with his brother. This plea found favor with the learned Sub. Judge who dismissed the suit on merits vide judgment dated 17.8.77. Feeling aggrieved the respondent filed an appeal in court of Senior-Sub-Judge. However, by an administrative order it was transferred to the court of Sh. M.K. Chawla, then Additional District Judge. During the pendency of the appeal the respondent made an application for amendment of the plaint under Order 6 Rule 17 Civil Procedure Code . That application was allowed by the learned A.D.J. vide order dated 14.2.80 in two respects viz. (1) value of the suit for purposes of jurisdiction and (2) relief which was converted from one for mandatory injunction into that for possession of the portion of the property in dispute. The jurisdictional value of the suit was eventually fixed at Rs. 40,000.00 and the following additional issue was framed by the learned A.D.J. on 2.2.81.

'WHETHER plaintiff is entitled to possession of the suit premises

The learned Additional District Judge then made the following order:

'THE parties shall be at liberty to address arguments before the transferee court as to whether they are entitled to lead any evidence on additional issue framed today or not. Learned counsel for the parties agree that the case be sent to the learned Dist. Judge for being assigned to the court of competent jurisdiction for disposal. Parties are directed to appear before the learned Distt. Judge, Delhi on 9.2.1981.'

(3) Accordingly, the case was put up before the District Judge on 9.4.81 who then transferred the same to the court of Shri S.R. Goel, Additional District Judge for trial and disposal according to law.

(4) When the matter came up before Sh. Goel, considering that the appeal was still pending, he observed that in view of the amendment the case was to be

retried by the Sub-Judge who had earlier dismissed the suit of the plaintiff. therefore, he set aside the decree of the trial court vide order dated 25.5.81 and remanded the case to the concerned Sub Judge for retrial of the suit on the basis of the amended plaint. Consequently, the parties appeared in the court of the concerned sub Judge and it would appear that issues were framed afresh on 3.9.81. Lot of evidence was even recorded. Suddenly then, wisdom dawned upon the petitioner and he realised that the learned sub-Judge had no pecuniary jurisdiction to try a suit of the value of Rs. 40,000.00, his jurisdiction being limited to Rs. 25,000.00only. Thereupon, he moved an application to the court u/s 151 of the Civil Procedure Code pointing out that order dated 25.5.81 of Sh. S.R Goel was absolutely void being without jurisdiction for the following reasons:-

1.That the case had been transferred to the court of Sh. S.R. Goel as a trial court and not as an appellant court. Consequently, he had to try the suit himself and he could not remand the same to the sub-ordinate court for retrial (2) That the court of Sub judge did not have the requisite pecuniary jurisdiction and as such was not competent to try. the same.

(5) The said application was rejected by the learned Sub-ordinate Judge on 21.9.83 saying that

'AS a sub-ordinate court, it will be beyond me to comment on the propriety of order passed by the appellate court. If the defendant felt that the order dated 25.5.81 was not proper, he should have approached the higher court'.

(6) The learned Sub-Judge also noticed that the petitioner/defendant had moved an application for review before Sh. S. R. Goel, A.D.J. but the same was rejected on 7.1.83 with the remark that he found no reason for review. Thus, the learned Sub-Judge feeling that he was not competent to reopen the question in view of the order of a higher court, dismissed the application.

(7) Learned counsel for the petitioner has made twofold submission before me. In the first instance, he has urged that the appeal having been disposed of by Sb. M.K. Chawla, the case was transferred to the court of another District Judge for retrial of the suit on the basis of the amended plaint. The order of the District Judge

specifically stated that the case was transferred to the court of Sh. S.R. Goel for trial and disposal according to law. Hence, the order dated 25th May, 1981 of Sh. S.R. Goel setting aside the judgment and decree of the sub-ordinate court afresh and remanding the case was bad in law in as much he had no jurisdiction to hear the appeal and pass an order of remand when the appeal had already been decided by Sh. M.K. Chawla and the case remanded for retrial. It is, further pointed out that the order of Sh. Chawla purported to be one under Order 41 Rule 25 of the Code and as such Sh. Goel slipped into grave error in ordering re-trial of the suit. Secondly, it is contended that the pecuniary jurisdiction of & Sub-Judge 1st Class is Rs. 25,000.00 only and he is not competent to try a suit of higher valuation. In this respect too, the order of Sh. S.R. Goel is bad in law.

(8) I have bestowed my careful thought and consideration on the points raised by learned counsel for the petitioner. It would, no doubt, appear that after framing an additional issue as a sequel to the amendment of the plaint, Sh. Chawla was of the view that the suit be transferred to another court and he left the question of additional evidence open saying that the parties may address the transferee court in that behalf. Unfortunately, however, Sh. Chawla did not reverse the judgment and decree of the trial court. He has nowhere used even the word 'remand' although he forwarded the case to the learned District Judge for being assigned to the court of competent Jurisdiction for disposal. Here again the learned Additional District Judge did not explicitly say whether there was to be a retrial or only disposal of additional issue which, as observed earlier, had arisen out of the amendment of the plaint.

(9) Provisions dealing with the remand of cases are contained in Rules 23, 23-A, 24 and 25 of order 41 of Civil Procedure Code . Rule 23 empowers the appellate court to remand the case only where the lower court has disposed of the suit upon a preliminary point. Rule 23-A, which has been inserted by Amendment Act 104 of 1976, empowers the appellate court to remand the case for re-trial even where the trial court has disposed of the case otherwise than on a preliminary point. In other words, the judgment which may be reversed under Rule 23-A would be one on merits. In the instant case, the suit had not been disposed of by the trial court on a preliminary point only, rather it had been disposed of on merits, So, Rule 23 was

not attracted to the instant case. It would, therefore, follow that an order of remand could be made only under Rule 23-A, especially when the plaint was allowed to be, amended and an additional issue was framed consequent upon the amendment. Further, it may be noticed that both under Rule 23 & 23-A remand is made after the judgment of the trial court is reversed and the case remitted for fresh decision. However, the learned Adj (M.K. Chawla) did not make any order of reversal of the judgment and decree of the trial court, nor did he remand the case in terms for retrial. This omission on his part apparently misled Sh. Goel in treating the, appeal as still pending. So, he felt the necessity of setting aside the judgment and decree of the trial court and order a remand. Obviously, he does not seem to have taken notice of order of District Judge transferring the case to, him for trial and disposal according to law. In other words, the lacuna left by Sh. Chawla in his order dated 2.2.81 appears to be the cause of this confusion. Anyhow, it being settled law that both under Rule 23 and 23-A no remand can be ordered unless the decision of the lower court is reversed in appeal and the order of Sh. M.K. Chawla, being quite vague and silent in this respect, it is difficult to find fault with the order of Shri Goel to that extent. However, as shall be presently seen, he fell into grave error in remanding the case to the court of sub-ordinate Judge for retrial as the jurisdictional value of the suit had been raised to Rs. 40,000.00 which was beyond the pecuniary limits of jurisdiction of a Sub-Judge.

(10) Needless to say that the contention of the learned counsel for the petitioner that the present case fell within the ambit of Rule 15 and as such the trial court was simply required to record evidence on the additional issue and return the same to the appellate court together with its finding thereon is devoid of any merit because in the case of remand u/R 25 the case is retained on the file of the appellate court and only issues are remitted to the lower court for findings. In the instant case there is absolutely nothing to indicate that Sh. Chawla wanted to retain seisen of the appeal, that is why he left the question of the right of the parties to adduce additional evidence open, and it was to be decided by the court trying the suit.

(11) This brings me to the question of pecuniary jurisdiction of a Sub-Judge, 1st Class at Delhi. Before the establishment of a separate High Court for Delhi, in

1966, the judicial administration of Union Territory of Delhi which constituted a civil district for purposes of judicial administration, was under the control and superintendence of High Court of Punjab. Various categories of sub-ordinate Courts were created and were functioning at that time under the Punjab Courts Act 1918 (the Act). Under S. 18 of the Act the Civil Courts were divided into three categories, viz. the Court of the District Judge, the Court of Additional District Judge and the Court of the Sub-ordinate Judge. Of course, it was besides the Courts of Small Causes established under the Provincial Small Causes Courts Act 1887. S. 24 of the Act laid down that the Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district. Under S. 25 of the Act the Court of the District Judge had jurisdiction in original civil suits without limit as regards the value, in other words it had unlimited pecuniary jurisdiction while trying suits etc. of civil nature. As for the pecuniary limits of jurisdiction of Sub Judges, S. 26 provided that the jurisdiction to be exercised in original civil suits as regards the value by any sub Judge, would be determined by the High Court either by including him in a class or otherwise as it thinks fit. It may be pertinent to notice here that no pecuniary limits of jurisdiction were fixed under the provisions of the Act for an Additional District Judge. However, Section 21(2) & (3) as substituted by the Punjab Courts (Amendment) Act, 1963 laid-down that. (2) Additional District Judges shall Have jurisdiction to deal with and dispose of such cases only as the High Court, by general or special order, may direct them to deal With and dispose of or as the District Judge of the District may make over to them for being dealt with and disposed of.' (3) While dealing with and disposing of the cases referred in sub-section (2)., an Additional District Judge shall be deemed to be the Court of the District Judge.' Thus, the Additional District Judge was conferred powers of a District Judge, while dealing with suits entrusted to him.

(12) Vide Notification No. 229. Gaz. XXI. C. 35, dated 12.9.63 High Court of Punjab in exercise of the powers conferred by section 26 of the Act created three classes of Subordinate Judges in respect of the jurisdiction to be exercised by them in original Civil Suits and Sub Judges of the First class were vested with unlimited jurisdiction as to the value of cases. In other words, a Sub Judge, 1st Class could exercise jurisdiction Without limit Of value in Civil Suits. However, with

the establishment of High Court of Delhi on 31.10.66 all suits the value of which exceeded Rs. 25,000.00 stood transferred to High Court of Delhi as it was also vested with ordinary original Civil jurisdiction in respect of such suits. Consequently, the limit of pecuniary jurisdiction of sub-Judges was automatically curtailed and they Could exercise power only up to the limit of Rs. 25,000.00 Subsequently, the lower limit of the ordinary original civil jurisdiction of High Court was raised to Rs. 50,000.00 by Amendment Act 37 of 1980 w.e.f. 1.10.1980 with the result that the suits, the value of which did not exceed 373 Rs. 25,000/ were transferred to the Courts of Sub Judges and they exercised powers up to Rs. 60,000- in respect of the civil suits. 13. It would appear that in the year 1972, High Court thought of making a slight change in respect of the ordinary original civil jurisdiction of Sub-Judges by conferring power on the ADJs to try Civil Suits the value of which exceeded Rs. 25,000.00but did not exceed Rs. 50,000.00. Hence, the High Court issued a Notification dated 18.7.72 in partial modification of Punjab High Court Notification No. 229-Gaz/XXI.C. 35 dated 12.9.63, (supra) and in exercise of the powers, conferred by S. 26 read with S. 21 (2) of the Act, it ordered that with effect from 1.8.72, cases of which the jurisdiction value exceeded Rs. 250,00.00 but did not exceed Rs. 50,000.00 would be presented to the District Judge, who may either himself dispose of them or transfer them to the Court of an ADJ. Obviously, the said Notification is very crucial in determining the jurisdictional limits of the Sub-Judges.

(13) On a plain reading of the said Notification it is manifest that the earlier notification of 1963 was still operative, subject, of course to limits set by Delhi High Court Act, so far as jurisdictional power of the Sub-Judges of different classes were concerned, the maximum pecuniary jurisdiction of a sub-Judge, 1st Class being Rs. 50,000.00. Since, modification in that notification was brought out by Notification of 13th July, 1972, it would obviously, imply that the maximum limit of pecuniary jurisdiction of a Sub-Judge 1st class was reduced to Rs. 25,000.00, at least in respect of suits which were instituted subsequent there to because the fresh suits had to be presented to the District Judge and he could either himself dispose of them or transfer them to the Court of an A.D.J. He was no longer competent to transfer them to the Court of Sub-Judge 1st Class for trial. However, this notification is absolutely silent about the pending suits and it would appear that

the pending suits of the value up to Rs. 50,000.00 continued to be tried and disposed of by Sub-Judges, 1st Class. It is not known whether by a separate administrative order they were transferred to the Courts of ADJs or not. No such notification has been brought to my notice either by the counsel for the parties or by the registry.

(14) The true meaning and scope of the word 'modify/modification' fell for consideration by the Supreme Court in *Puranlal Lakhanpal v. President of India* 1961 Sc 1519 after alluding to the meanings assigned to the same in various dictionaries, their Lordship held, 'The word 'modify' also means 'to make partial changes in' and 'modification' means 'partial alteration.'... But, in law the word 'modify', has even a wider meaning. In 'words and phrases', by Roland Burrows the primary meaning of the word 'modify' is given as 'to limit' or 'restrict' but it also means 'to vary' and may even mean to 'extend' or 'enlarge'. Thus in law the 'modify' may just mean 'vary', i.e.. amend.

(15) It is, thus, manifest that the modification effected by Notification dated 18.7.72 in the earlier Notification of 12.9.63 had the effect of amending the same and as such the pecuniary jurisdiction of a Sub Judge 1st Class stood reduced to a maximum of Rs. 25,000.00 in respect of fresh civil suits. Learned counsel for the respondent has fairly and frankly conceded this proposition.

(16) If that be so, there is no escape from the conclusion that learned Adj, S.R. Goel fell into grave error in remanding the suit to the Sub-Judge 1st Class for retrial and disposal. It was perhaps keeping this legal position in view that Sh. Chawla had earlier sent the case to the District Judge for transfer to another Court of competent jurisdiction for disposal. Of course, he did not specifically state whether the case should be transferred to the court of an Adj or a sub Judge. Unfortunately, however, he did not in terms pass an order of reversal of the judgment and decree of the trial court and this omission on his part apparently caused the whole confusion and led Sh. Goel to make good the deficiency in the appellate order. therefore, while the order of Sh. Goel to the extent of setting aside the judgment and decree of trial court cannot be assailed, the second part of his order remanding the case to court of Sub-Judge is certainly bad in law. It is

well settled that a remand order cannot confer on the subordinate court a jurisdiction which that court would not have had but for the remand. It would be highly anomalous to hold that court not having jurisdiction in the ordinary course becomes competent in consequence of a remand by a superior Court. (See *Ishwar Singh v. Dhanpat Rai* Air 1929 Lah 534).

(17) That being so, the whole trial by the Sub-Judge subsequently to the remand of the case is illegal. Needless to say that even the Sub Judge was competent to decide his own jurisdiction when the defect in the same was brought to his notice and he could have referred the matter to the District Judge for appropriate orders. However, it appears that he preferred to adopt the least line of resistance saying that he had to follow the orders of a superior Court. That was not the right course for him to adopt. Anyhow he may be feeling apprehensive that he might invite an adverse comment by taking up the matter himself and pointing out the flaw in the order of remand to the superior court. Anyhow, it cannot be gain-said that the parties have been put to avoidable hardship, inconvenience and unnecessary expense for no fault of theirs.

(18) To sum up, I allow this Revision Petition, set aside the order of remand dated 25.5. 81 in so far as it directed the suit to be retried and disposed of by the concerned Sub-Judge. In consequence thereof the entire proceedings subsequent to the remand order are quashed. Petition allowed.