

Ranulal Vs. Daudas and ors.

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Court : Rajasthan

Decided On : Feb-28-1957

Reported in : AIR1957Raj241

Judge : Modi, J.

Acts : Rajasthan Civil Courts Ordinance, 1950 - Sections 7 and 27(1); Rajasthan Territorial Divisions Ordinance, 1949; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 15, 20 16 and 150

Appeal No. : Civil Revn. No. 225 of 1956

Appellant : Ranulal

Respondent : Daudas and ors.

Advocate for Def. : B.N. Chanda, Adv.

Advocate for Pet/Ap. : Ratanlal, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Modi, J.

1. This is a revision by the defendant Ranulal in a case which is pending in the Court of the Additional Civil Judge, Jodhpur, and raises a question of jurisdiction.

2. The contesting opposite parties instituted a suit against the petitioner and opposite party No. 3 for recovery of money in the Court of the Civil judge Jodhpur, on the 28th September 1954. This was later transferred to the Court of the Additional Civil Judge, Jodhpur, where it is pending at the moment. On the 26th July 1956, the petitioner made an application before the trial Judge contending that he had no jurisdiction to try the case. There is no dispute that the cause of action for the suit arose at Pokaran and defendant opposite party No. 3 is also a resident of Pokaran.

The petitioner lives in Balotra, and it is urged that Pokaran as well as Balotra are outside the territorial limits of the Civil Judge, Jodhpur, and consequently the Additional Civil Judge can have no jurisdiction to try this case. It was, therefore, prayed that the plaint be returned to the plaintiffs for presentation to the proper Court. This application was opposed in the trial Court, and the learned Judge held that he had and has jurisdiction to try the suit. The present revision has been filed from the above order.

3. Learned counsel for the petitioner relies on two grounds in support of his contention that the Court of the Additional Civil Judge, Jodhpur, has no jurisdiction to try the present case. The first contention is put in this way. It is conceded by learned counsel for the defendant petitioner that Pokaran was within the territorial limits of the Civil Judge, Jodhpur, before the 1st June 1954, according to a notification issued under Section 7 of the Rajasthan Civil Courts Ordinance (No. VII) of 1950. There is a note at the end of this notification according to which the expressions 'district', 'subdivision' and 'tehsil' in the notification refer respectively to the districts, sub-divisions and Tehsils formed under the Rajasthan Territorial Divisions Ordinance, 1949.

The contention is that by a notification dated the 31st May 1954, issued under Section 7 of the Rajasthan Territorial Divisions Ordinance, 1949, Jaisalmer was formed into a district by itself, and the town of Pokaran was taken out of the Jodhpur district and included in the Jaisalmer district, and consequently, the Civil

Judge, Jodhpur, has no territorial jurisdiction over Pokaran. This point is, however, concluded by a Bench decision of this Court in *Gopilal v. Hirachand*, 1956 Raj LW 337 (A). On a similar question having arisen in that case it was held that the jurisdiction of civil Courts was fixed by the Government under Section 7 of the Civil Courts Ordinance, 1950. Section 7 (1) is in these terms:--

'The Government may, by notification in the Rajasthan Gazette, fix and alter the local limits of the jurisdiction of any civil Court under this Ordinance.'

It was held that the jurisdiction having once been fixed by the Government under Section 7 can only be altered by another notification under that section, and that it cannot be altered by any notification issued under the Territorial Divisions Ordinance, as the latter Ordinance has nothing to do with the jurisdiction of the civil Courts. Learned counsel for the petitioner admits that no notification was issued by the Government up to the end of the year 1954 altering the territorial jurisdiction of the Civil Judge, Jodhpur.

As respects the note appended to the notification dated the 2nd June 1950, issued under Section 7 of the Civil Courts Ordinance, the learned Judges were of opinion that the note merely described Tehsils, Sub-Divisions and Districts as they existed on the date of the notification, and that if a note had not been appended in the manner done it would have been necessary in that case to mention all the villages included in the Tehsils, Sub-Divisions or Districts in the notification itself.

It was further pointed out that the said note did not say that any change in the revenue districts, sub-divisions or Tehsils under the Territorial Divisions Ordinance would also change the jurisdiction of the civil Courts as fixed under the notification referred to above in 1950. In this view of the matter, I overrule this contention, and hold that the suit was properly filed in the Court of the Civil Judge, Jodhpur, on the 28th September 1954, and that Court had jurisdiction to entertain it at the time it was brought before it.

4. The next argument on which learned counsel for the defendant-petitioner relies is that notwithstanding the position arrived at in the foregoing part of this Judgment, there is an additional difficulty in the way of the learned Additional Civil

Judge exercising his jurisdiction over the present case at this date which arises in this way.

It is argued that the Government have since issued a notification No. F I (33) Jud/54, dated the 20th July 1955, under Section 7 of the Civil Courts Ordinance itself by which the jurisdiction of the Civil Judge, Jaisalmer, has been extended from Jaisalmer Sub-Division to Jaisalmer District, and Pokaran has been taken out of the jurisdiction of Civil Judge, Jodhpur, with respect to suits within the pecuniary jurisdiction of a Civil Judge, and the result is that the Civil Judge, Jaisalmer, now has jurisdiction to entertain a suit over the value of Rs. 2,000 with respect to a cause of action arising in Pokaran or against a defendant residing therein.

In other words, the position at this date is, and this is not disputed before me, that if the suit out of which this revision arises, was to be filed at any time after the 20th July 1955, it would have to be filed in the Court of the Civil Judge, Jaisalmer, and not in the Court of the Civil Judge, Jodhpur. The contention of learned counsel for the defendant-petitioner then is that even though the Additional Civil Judge had jurisdiction to entertain the suit at the time it was filed in 1954, he has no jurisdiction to try the suit at this date on the principle that the Court must have jurisdiction not only at the time of the institution of the suit but also at the time it disposes of it, that is, throughout its pendency in that Court.

The question for determination therefore is whether in these circumstances the Additional Civil Judge is lawfully seized of the case and can still try it, or it must be transferred to the Civil Court, Jaisalmer.

5. It appears to me that there is some conflict of judicial opinion on this question. One view is that a Court to be properly seized of a case must have jurisdiction not only at the time it was filed but also at the time it would be disposed of.

This view has been upheld in *Dineshwari Kuer v. Ram Narain Singh*, AIR 1936 Pat 546 (B), and the other decisions which have taken the same view, and among these my attention was drawn to *Veerappa Chetti v. Ramaswami Chetty*, 53 Ind Cas 579: (AIR 1920 Mad 505) (C). Learned counsel for the petitioner also placed his reliance on *Jyotish Prokas v. Bagla Kanta*, AIR 1922 Cal 274 (D) in support of

his argument.

The other view is that once a suit is validly commenced in any Court, a subsequent change in the matter of jurisdiction does not affect the jurisdiction of the Court trying it, unless of course there is a clear provision of law which robs the Court of its jurisdiction to decide such a case expressly or by necessary implication.

This school of opinion is represented by decisions in *Chokkalinga v. Velayudha*, AIR 1925 Mad 117 (E), *Ramier v. Muthu Krishna*, AIR 1932 Mad 418 (FB) (F), *Makhanlal v. Panchamlal*, AIR 1933 Nag 318 (G) and *Iswar Mahto v. Naipal Singh*, AIR 1956 Pat 280 (H). The question is which of these two rival views is the better one. I have given my earnest consideration to the matter and have come to the conclusion that the second view mentioned above should be preferred and is the correct view. I now proceed to state my reasons for the view which I have felt persuaded to accept.

6. The first and foremost consideration which has weighed with me is the scheme of Sections 16 to 20 relating to territorial jurisdiction in the Code of Civil Procedure. These sections generally and Section 20 in particular are a pointer in the direction, that a suit must be filed in the Court which has jurisdiction at the time of its commencement.

Section 20 specifically provides that every suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant or each of the defendants where there are more than one, actually and voluntarily resides, or carries on business or personally works for gain at the time of the commencement of the suit, or where there are more defendants than one and none of the defendants actually resides or carries on business or personally works for gain at the commencement of the suit provided that in such a case the leave of the Court is given, or the defendants who do not reside or carry on business or work for gain, acquiesce in such institution. Now it would lead to endless confusion and unnecessary expenditure and harassment to a party if a suit which is validly instituted in a Court which has jurisdiction at the commencement thereof has to be transferred to another Court either because the defendant may change his residence, which is merely a matter

of his sweet will or pleasure, or, because the territorial jurisdiction of the Court happens to be altered as a matter of administrative convenience during the pendency of the suit.

It would be of course open to the Legislature to deprive a Court of its jurisdiction even in the matter of the suits which have already been validly instituted therein; but in the absence of any such clear provision, the Court where a suit has been validly instituted would and should continue to exercise its jurisdiction over it irrespective of any change in its territorial limits during the pendency of the suit.

7. It therefore, seems to be that a notification issued by the Government altering the local limits of the jurisdiction of a civil Court should not have the result of the Court losing its jurisdiction on matters already pending before it.

A contrary view was taken in *Dineshwari Kuer v. Ram Narain Singh (B)*, where it was held that once a new Court is established and the territorial limit of an existing Court is curtailed by a notification of Government, the latter Court ceases to have jurisdiction over the area which is taken away from its jurisdiction and placed under the jurisdiction of the newly-established Court, and, similarly, if an area is taken out of the jurisdiction of one existing Court and placed under that of another, the former Court ceases to have jurisdiction over the cases of the area so taken out of its jurisdiction, and it was further held that the pending cases are automatically placed under the jurisdiction of the latter Court.

The principle on which this view was based was that it was not sufficient that a Court should have jurisdiction over the suit at the time of its institution but that its jurisdiction must continue till the case is finally disposed of, subject of course to any order of transfer which may be passed by a competent authority. This view was not followed by the learned Judges of the Patna High Court in *Ishwar Mahto v. Naipal Singh (H)*, although the learned Judges in this last-mentioned case decided the matter before them on another point.

To my mind, unless the language of a notification affecting the change of venue is plain, it cannot and should not be interpreted as affecting the transfer of past business which was validly instituted in the Court in which it may be pending at the

time when the notification is issued.

What I desire to emphasise is that the jurisdiction of a Court consists primarily in its power to entertain a suit or any other proceeding at the time it may be brought to it, and when once such a proceeding has been validly entertained, there can be no reason why that jurisdiction should be considered to have been lost unless a competent authority specifically says so. Normally speaking, the question of jurisdiction arises only at the time a proceeding is brought to a Court and at the time of the commencement thereof, and what it does subsequently is, truly speaking, not a matter of jurisdiction but is a matter of the exercise of the powers vested in the Court.

It also appears to me that if the view contended for on the other side is accepted as correct, it would be really giving a retrospective effect to such a notification, and I see no clear warrant for giving a retrospective operation to a notification which is primarily intended to be effective for the future.

Looking at the notification in the present case from this angle, all that is said is that with effect from a certain date which is mentioned, the Government is pleased to re-define the jurisdiction of the Court of Civil Judge, Jaisalmer, as mentioned in the notification. It would be reading too much into the notification to hold that this should mean that all the pending work in other Courts with reference to the area now placed under the Civil Judge, Jaisalmer should be transferred from those Courts to his Court.

8. So far as the view taken in *Jyotish Prokas v. Bagla Kanta (D)* is concerned, I wish to point out that that was a case which was concerned with jurisdiction relating to subject-matter and not territorial, and it was held therein that for the validity of a Judgment in a suit, the jurisdiction of a Court over the subject-matter of the suit must exist throughout the proceedings, that is, at the time of its institution as well as at the time of its disposal. That case is, therefore, clearly distinguishable.

I also desire to emphasise in this connection that territorial jurisdiction under the Code of Civil Procedure is not a matter which would go to the root of a trial, and

that is the principle on which Section 21, C. P. C., is obviously based, and that section emphatically lays down that no objection as to the place of suing shall be entertained by any appellate or revisional Court unless such objection is taken in the Court of first instance at the earliest possible opportunity and unless there has been a consequent failure of justice.

9. I should also like to point out that Section 150, C. P. C., also does not help the petitioner. Section 150 says that where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred. The question is when a particular area is transferred from the jurisdiction of one Court to that of another, does it mean a transfer of business from the first Court to the second Court? To my mind, there is no transfer of business involved in such re-arrangement of the territorial jurisdiction of the two Courts.

In the first place the notification on which learned counsel for the petitioner relies does not transfer any business from the Court of the Civil Judge, Jodhpur, to the Court of the Civil Judge, Jaisalmer. Secondly, the general principle of law undoubtedly is that where a Court has jurisdiction to entertain a suit or proceeding at the time of its institution, such jurisdiction is not lost simply by the subsequent transfer of the area or territory with reference to which the suit or proceeding was instituted.

That being so, it would be going too far to hold that a suit or proceeding pending in one Court at the time of the transfer of the local area is automatically removed or transferred. The correct position, to my mind, is that in such a case there is no transfer of business, at any rate, so far as pending suits and proceedings are concerned, for the simple reason that the Court wherein such business is in existence was validly seised of that business at the time of its commencement and still continues to have the power to deal with such business.

I have, therefore, no hesitation in saying that there is no warrant in the language of Section 150 for the view that when the territorial jurisdiction of a Court is re-

arranged, the business pending therein is necessarily transferred to another Court.

10. Lastly I might refer to Section 27 of the Rajasthan Civil Courts Ordinance. Section 27 (1) is in these terms:--

"Where any civil Court under this Ordinance has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.'

This section, in my opinion, also affords no help to the petitioner. In the first place, the consequences mentioned in this section would arise only where the civil Court wherein a particular suit was pending ceases to have jurisdiction with respect to it, and the section says that in such a case the Court to which the business of the former Court has been transferred would have jurisdiction to deal with it in the same manner as the Court where it formerly was.

There is no justification for holding, however, that the Court of the Additional Civil Judge wherein the suit is pending has ceased to have jurisdiction with respect to it. All that the notification of 1955 states is that the Civil Judge, Jaisalmer, will have his jurisdiction over an extended area including Pokaran, and this must obviously take effect from the date of the notification. The notification does not say anything about the cases already pending in the Court of the Additional Civil Judge, Jodhpur, in relation to the area now sought to be transferred under the notification to the Civil Judge, Jaisalmer.

It is difficult to hold, therefore, that the Court of the Additional Civil Judge, Jodhpur, has by any lawful authority been deprived of his jurisdiction to deal with the present suit. It must, therefore, follow that the consequences mentioned in Section 27 do not come into play at all. I am, therefore, definitely of the opinion that Section 27 of the Rajasthan Civil Courts Ordinance of 1950 also does not come to the aid of the petitioner.

11. For the foregoing reasons, my conclusion is that the view contended for on behalf of the petitioner, namely, that a Court must have territorial jurisdiction not only at the time of the commencement of the suit but also at the time of its disposal in order to be able to deliver a valid and binding Judgment therein is not sound and the correct position is that it is enough if the suit was validly instituted in that Court at the time of the commencement of the suit, and that once it is thus validly seised of the jurisdiction to entertain it, it would and should continue to have its jurisdiction over the suit, even if the place where the cause of action arose or where the defendant resided at such commencement ceases to be situate within its jurisdiction by reason of any change made by the Government in the territorial limits of the Court.

This must indeed be subject to any order made under competent authority depriving the Court wherein the suit is pending of the jurisdiction to try it in which case of course such Court would have no jurisdiction to try it and the suit will have to be transferred to another Court as may be specified or returned for presentation to the proper Court as the case may be, and then such latter Court would alone have jurisdiction to dispose of it.

12. In this view of the matter, I hold that the Additional Civil Judge, Jodhpur, had and still retain the jurisdiction to proceed with the trial of the suit and to dispose of it and deliver Judgment therein. Consequently this revision fails, and I hereby dismiss it with costs to the contesting opposite party,