

Debendra Nath Bhattacharjee Vs. Amarendra Nath Bhattacharjee and ors.

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Court : Kolkata

Decided On : Aug-25-1954

Reported in : AIR1955Cal159,59CWN369

Judge : K.C. Das Gupta ;and Debabrata Mookerjee, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 17; ;International Law; ;Chandernagore (Application of Laws) Order, 1950

Appeal No. : Civil Revn. Case No. 2013 of 1953

Appellant : Debendra Nath Bhattacharjee

Respondent : Amarendra Nath Bhattacharjee and ors.

Advocate for Def. : Sitikantha Lahiri, Adv.

Advocate for Pet/Ap. : Mukunda Behari Mullick, ;Mahendra K. Ghose and ;Rabindra N. Mitra, Advs.

Judgement :

K.C. Das Gupta, J.

1. The petitioner is one of the defendants in a suit for partition which was instituted on 1-6-1951 by the first opposite-party in the Court of the Fourth Additional Subordinate Judge, 24-Parganas, at Alipore. Besides a plot of land with building

thereupon and some paddy lands in Barisha within the territorial jurisdiction of the Subordinate Judge's Court, the schedule of the properties of which partition was sought included land and building in the town of Chandernagore which was not, on 1-6-1951, comprised within the territory of India. The defendant pleaded 'inter alia' that the Court had no jurisdiction to try the suit as some of the properties were in Chandernagore.

2. An issue was framed on this question and taken up for decision first. The learned Subordinate Judge held that as the Code of Civil Procedure became applicable to Chandernagore from 2-5-1951, his Court had jurisdiction to try the suit.

3. It is contended before us that this decision was wrong, inasmuch as on the date the suit was filed Chandernagore was foreign territory.

4. It may be mentioned that the fact that Chandernagore was foreign territory would not affect the jurisdiction of the Court as regards those lands which were in Barisha (Vide -- 'Nilkanth Balwant v. Vidya Narasinh Bharathi' .

5. The question remains whether the Court had jurisdiction to try the suit as regards the properties in Chandernagore. That Chandernagore was in law foreign territory on that date is not disputed. This appears to be clear on a consideration of the circumstances under which Chandernagore became Indian territory. From the Notification that was published in an Extraordinary issue of the Gazette of India on 19-8-1952 we find that a treaty was signed at Paris on 2-2-1951 by the representatives of the President of India and the President of the French Republic, which in its first Article provided 'France transfers to India, in full sovereignty, the territory of the Free Town of Chandernagore'. Article XII of the treaty provides that this treaty shall come into force on ratification by the Governments concerned, the instruments of ratification being exchanged in Paris. We also find from this Notification in the Gazette of India that the President of India ratified the treaty on 30-5-1952.

From a Notification in the Extraordinary issue of the Chandernagore Gazette published on 16-7-1952, we further find that the instruments of ratification of the

Treaty of Cession of Chandernagore were exchanged in Paris on Monday, the 9th June, 1952. In law, therefore, Chandernagore was foreign territory to India up to 8-6-1952. The recognised rule of international law which the Courts in India, in common with other countries, observe is that they do not exercise jurisdiction in suits directly involving the question of right to immovable property situated in foreign countries. Consequently, the Subordinate Judge's Court could not exercise jurisdiction in the partition suit, as regards the Chandernagore properties, on the date the 'suit was instituted, -- unless there are any special circumstances which make the rule of international law mentioned above inapplicable.

6. The contention on behalf of the plaintiff- which appears to have found favour with the learned subordinate Judge -- is that as The Chandernagore (Application of Laws) Order, 1950, which was promulgated by the Government of India on 1-5-1950, made the Civil Procedure Code, applicable to the Chandernagore Courts from 2-5-1950, the Courts in Chandernagore were 'Civil Courts' within the meaning of Section 17, Civil P. C., and so the Court of the Fourth Additional Subordinate Judge, 24-Parganas, could try a suit for partition of properties part of which was situate within his territory or jurisdiction and part within the jurisdiction of Chandernagore. Section 17 Civil P. C., is in these words:

'Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.'

7. We are not concerned in this case with the proviso as the pecuniary jurisdiction of the Subordinate Judge was unlimited. The real question is whether the provisions of Section 17 of the Code in the circumstances of this case justify this Court to ignore the rule of international law mentioned above.

8. In -- 'Ramabhadra Raju v. Maharaja of Jeypore', AIR 1919 PC 150 (B), the Privy Council observed thus as regards the interpretation of 'Courts' in Section 17, Civil

P. C.

'Their Lordships think that 'Courts' here must be held as meaning Courts to which the Code applies,* * * * *.'

In AIR 1930 PC 188 (A), the Privy Council again considered this question and took the same view but gave some detailed reasons in these words:

'The question remains whether the words 'situate within the jurisdiction of different Courts' does not limit the operation of the section to suits to obtain relief respecting immovable property situate within the jurisdiction of different Courts within British India.

The preamble to the Civil Procedure Code recites that it is expedient to consolidate and amend the laws relating to the procedure of Civil Judicature, and Section 1(3) provides as follows:

This section and Sections 155 to 158 extend to the whole of British India; the rest of the Code extends to the whole of British India, except the Scheduled Districts.

The provisions of the Code are regulations dealing with the jurisdiction and governing the procedure of the Courts in British India, and their Lordships are of opinion that the words in Section 17 'within the jurisdiction of different Courts' must mean within the jurisdiction of different Courts to which the Code applies, that is to say, Courts in British India.'

After the amendment of the Code of Civil Procedure by Civil Procedure Code (Amendment) Act, 1951, Sub-section (3) of Section 1 now reads thus:

'It extends to the whole of India except:

- (a) the Tribal Areas in the State of Assam;
- (b) save as hereinafter provided, the Scheduled Areas in the State of Madras;
- (c) the State of Jammu and Kashmir; and (d) the State of Manipur;

Provided that Sections 36 to 43 and Order XXXIV in the first Schedule shall extend also to the Amindivi Islands and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Madras, and Section 48 shall extend also to the said Agencies.'

The necessary consequence of this provision as regards the application of the Code on the reasoning which was accepted by the Privy Council in 'Ramabhadra's case (B)', and in 'Nilkanth's case (A)', is that 'within the jurisdiction, of different Courts' must mean 'within the jurisdiction of different Courts in India, except the areas as mentioned'. It is, therefore, proper in my judgment to hold that the land within the jurisdiction of the Court in Chandernagore would not be 'within the jurisdiction of a Court' within the meaning of Section 17.

9. The fact that the Chandernagore (Application of Laws) Order, 1950, made the Civil Procedure Code applicable to Chandernagore, did not, in my opinion, change this position. In spite of this Order, Chandernagore continued to be foreign territory, and, in my opinion, it would be arbitrary to hold that The Chandernagore (Application of Laws) Order made by the Government of India in exercise of its powers under the Foreign Jurisdiction Act could have the effect of making the ordinary rule of international law that Courts of a country will not try suits directly involving the question of right in or title to immovable property situated in foreign countries inapplicable. My conclusion, therefore, is that on 1-6-1951 the Subordinate Judge had no jurisdiction to try the suit as regards the Chandernagore properties.

10. As already pointed out, it had, however, jurisdiction to try the suit as regards the Barisha properties. This was the position also on the date when the issues were framed. Long before, however, the date when the issue as regards jurisdiction came up for decision Chandernagore had become part of India, and so under the provisions of Section 17, Civil P. C, the Subordinate Judge's Court would after 9-6-1952, have jurisdiction to try the suit as regards the Chandernagore properties also. If the Chandernagore properties had not been included in the plaint on 1-6-1951, but some time after 9-6-1952 the plaintiff prayed for amendment of the plaint by inclusion of the Chandernagore properties,

the Court would have been bound to allow this amendment.

11. It is contended that as on the date the plaint was filed Chandernagore was foreign territory, the Court should proceed as if these Chandernagore properties were not included in the plaint at all, and that, consequently, it should not try the suit as regards the Chandernagore properties until and unless the Chandernagore properties are included in the plaint by an amendment prayed for and granted.

12. I think it would be hyper-technical to insist on the plaintiff going through the formal procedure of amending the plaint to include the Chandernagore properties. It is, in my judgment, right and proper to hold in the circumstances of this case that the Chandernagore properties have become properly included in the plaint after 9-6-1952, and that, consequently, Chandernagore being from that date Indian territory, the Court below had jurisdiction to try the suit as regards Barisha properties as well as the Chandernagore properties.

13. Schedule B of the plaint mentioned 18 Cycle-rickshaws. The plaint does not state where the rickshaws were at the time of the plaint. Defendant No. 1 pleaded in his written statement that the rickshaws were in Chandernagore. Assuming for the purpose of the present application that this is correct, I hold, for the reasons mentioned in discussing the question of Jurisdiction in respect of the lands and buildings at Chandernagore, that the Court had jurisdiction to try the suit as regards these rickshaws also.

14. I would, therefore, discharge the Rule. But in the circumstances of the case, I would order that the parties would bear their own costs.

Debabrata Mookerjee, J.

15. I agree.