

Anil Kumar Roy Vs. Mansanath Shaw

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Court : Kolkata

Decided On : May-07-1975

Reported in : AIR1975Cal293

Judge : Salil Kumar Datta, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 21 - Order 2, Rule 3;
; [Provincial Small Cause Courts Act, 1887](#) - Sections 15 and 16

Appeal No. : C.R. No. 1086 of 1974

Appellant : Anil Kumar Roy; Mansanath Shaw

Respondent : Mansanath Shaw; Anil Kumar Roy

Advocate for Def. : Arun Kishore Das Gupta, Adv.

Advocate for Pet/Ap. : Radhakanta Bhattacharya and ;Madan Mohan Ghosh,
Advs.

Judgement :

ORDER

Salil Kumar Datta, J.

1. This Rule was obtained against order No. 113 dated January 10, 1974 in Money Suit No. 209 of 1963. It appears that the plaintiff instituted the suit on December

12, 1963 claiming (a) a sum of Rupees 4981.09 for removing silted earth; (b) an amount of compensation for Rs. 500/- as defendant's employee and (c) a salary for two months from June 6, 1962 to August 6, 1962 at the rate of Rs. 120/- for Rs. 240/-. In all the claim thus was laid at Rs. 4572.34 giving a credit of Rs. 1142 towards payment of claims (a) and (b) above. It appears that the trial of the suit commenced as early as February 4, 1967 and thereafter on the defendant's application in course of hearing two new issues were framed on February 12, 1973. Issues Nos. 6 and 7 so framed are as follows; '(6) Is the plaintiff's claim regarding Rs. 500/-and Rs. 120/- (?) mentioned in paragraphs 3 and 5 of the plaint are cognizable by this Court (7) Is the plaint liable to be returned.' This order framing additional issues was not challenged by the plaintiff and the issues were taken up for hearing on January 10, 1974 and by the impugned order the learned Munsif held that the two claims mentioned in issue No. 6 are also cognizable by him. The defendant petitioner, as already stated, has obtained this Rule again against this order.

2. Mr. Radhakanta Bhattacharya appearing for the defendant petitioner submitted that the claims noted in issue No. 6 are not excepted from cognizance of the Small Causes Court under provisions of Section 15 of the [Provincial Small Cause Courts Act, 1887](#). Accordingly this claim can only be tried in a Small Cause Court and not by the Court of the learned Munsif which court has been trying this suit also on these claims. We referred to the decision in Karam Singh v. Kunwar Sen, reported in ILR (1942) All 862 at p. 865 = (AIR 1942 All 387 at p. 389) where it was held that different causes of action can be joined in any suit but subject to the condition that the Court has jurisdiction in respect of all the causes of action involved. In Maharaja Bahadur Singh v. Felani Mai, reported in AIR 1947 Cal 407 in was observed by a Division Bench of this Court that 'The provisions of Section 16 cannot be allowed to be evaded by the plaintiff adding to his plaint a claim based on another cause of action which cannot be entertained by the Court of Small Cause.' It may be mentioned here that Section 16 of the Act provides that except as expressly provided in law a suit cognizable by a Court of Small Causes shall not be tried by any other court having jurisdiction within the local limits of the Jurisdiction of the Court of Small Causes by which the suit is triable. Mr. Bhattacharya accordingly contended that, in view of the position that the two

claims of issue No. 6 were not excepted by the Second Schedule, such claim could only be tried by a court of Small Causes.

3. Mr. Arun Kishore Das Gupta, Advocate, appearing for the plaintiff opposite party has submitted that the suit was filed as early as in 1963 and came up for peremptory hearing after protracted adjournments caused by the defendant. At no point of time the objection as to jurisdiction was taken. Even in the written statement there was no whisper about it and accordingly the defendant should not be permitted to take this objection at this stage. In support he relied on a decision in *Ranjit Kumar Pal Choudhury v. Murari Mohan Pal Choudhury*, reported in : AIR1958 Cal710 in which it was held that omission of the defendants to raise the plea of multifariousness for a period of more than twelve years from the date of the framing of the issues was fatal to their claim. Mr. Das Gupta also relied on a decision of *Rai Yatindra Nath Chaudhury v. Hari Charan Choudhury*, reported in 20 Cal LJ 426 = (AIR 1915 Cal 87) in which it was held that neither Order 41, Rule 2 of the Code of Civil Procedure nor Order 15, Rule 3 (1) has any application for trial of certain issues without evidence long after the date fixed for first hearing.

4. I may at once say that the dispute raised herein about court's lack of jurisdiction is not on ground of multifariousness. Further, as we have seen, the additional issues were framed by the court to which no exception was taken by the plaintiff opposite party. Accordingly the authorities cited by Mr. Das Gupta have no application.

5. It may be that the defendant did not take the objection earlier but the objection relates to the court's jurisdiction to try the suit. Even if such averment is not there, if on the facts the court finds that the position relating to jurisdiction should be examined and appropriate orders passed, I am of the view that there is no legal impediment to pass appropriate orders at any stage of the suit. The learned Munsif therefore was within his powers to examine the question of jurisdiction even though at that belated stage, and even when there no specific objection was taken in the written statement.

6. Coming to the question of jurisdiction it is clear that the claims referred to in issue No. 6 are not excepted by Schedule II. As such if the claim is not above Rs.

500/- as laid down in Section 16 of the Act suit for such claims can only be tried by the court of small causes. To hold otherwise would be to allow a party to evade the provisions of law as has been held in Maharaja Bahadur Singh's case referred to above. The learned Munsif was in error in thinking that since the Civil P. C. allows a joinder of causes of action under Order 2, Rule 3 the plaintiff at his option can join different causes of action and if the claim exceeds the jurisdiction of the Small Cause Court it may be tried by ordinary courts. The learned Munsif overlooks the provisions of Order 2, Rule 3 which starts with the words 'save as otherwise provided.' We find that the provisions in Sections 15 and 16 bring out the claims from the operation of Order 2, Rule 3 for uniting causes of action and accordingly it appears that the learned Munsif would not be in a position to try claims for wages and commission which are not excepted items under the schedule. In that view of the matter the impugned order has to be set aside.

7. The rule is accordingly made absolute and the order under challenge is set aside.

8. Mr. Das Gupta appearing for the opposite party has submitted that his client is ready and willing to relinquish the claim referred to in issue No. 6. If these claims are relinquished it appears and there is no dispute that the remaining claim for removing silted earth would be triable by the learned Munsif as it is obviously a claim in excess of Rs. 500/-. If any application relinquishing the claim as aforesaid is made in the trial court the same would be considered by it in accordance with law.

9. I feel that the suit should be heard with utmost expedition, preferably within three months from the date of the arrival of the records in the court below.

10. Let the records be sent down as early as possible.

11. There will be no order for costs in this Rule.