

**Hem Chandra Dev and ors. Vs. Dhirendra Chandra Das and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/871326](http://sooperkanoon.com/871326)

**Court :** Kolkata

**Decided On :** Jul-06-1959

**Reported in :** AIR1960Cal691,64CWN711

**Judge :** R.S. Bachawat and ;S.N. Guha Ray, JJ.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 16 and 20

**Appeal No. :** C.R. No. 162 of 1958

**Appellant :** Hem Chandra Dev and ors.

**Respondent :** Dhirendra Chandra Das and ors.

**Advocate for Def. :** Lala Hemanta Kumar and ;Sudhir Kumar Dutt, Advs. for Opposite Party No. 1

**Advocate for Pet/Ap. :** Prafulla Kumar Roy, ;Ajit Kumar Dutt and ;Prasun Chandra Ghosh, Advs.

**Judgement :**

**Bachawat, J.**

1. This Rule is directed against the decision on the preliminary issue as to jurisdiction. The suit was instituted in 1950 in the Court of the Subordinate Judge, first Court, Howrah. The plaintiff claims a decree for administration of the estate of

Girish Chandra Das by the Court, for accounts and for Receiver during the pendency of the suit. The particulars of the estate were given in a schedule annexed to the plaint. Two items of property were mentioned. The second item was the fish business carried on at Dobson Road, Golabari, in the district of Howrah. The defendants contended that the court had no jurisdiction to try this suit. The trial court decided the issue in favour of the plaintiff. The matter came up on revision to this Court. By a judgment dated 6-1-1953 this Court decided that a part of the cause of action arose within the jurisdiction of the Howrah court and as such that court had jurisdiction to try the suit. The Court, however, went on to observe:

'Had it been a case where the suit was one for the administration of both movable and immovable properties and the Howrah court had jurisdiction over only some item of movable properties, the question might very well arise whether a suit would lie at Howrah at all and whether the Howrah court could administer effectively the immovable properties outside its jurisdiction'.

Subsequently, the defendants filed an additional written statement contending that inasmuch as all the properties comprised in the estate were not included in the schedule to the plaint, the suit was bad for having asked partial administration. Having regard to this additional written statement, an additional issue on this point was raised,

2. The trial commenced sometime in 1957. In course of the trial the plaintiff moved a petition for amendment of the plaint by including several items of property in the schedule to the plaint as having been comprised in the estate of the testator. One of the items of property is an immovable property situated at Mahabhairab Kalibari Chak in Tezpur in Assam. By an order dated 12-7-1957 the trial court allowed the amendment prayed for. The amended plaint mentions only one item of immovable property and that immovable property, as I have already stated, is situated in Tezpur, Assam. On 10-12-1957 the defendants raised again the preliminary point that the court had no jurisdiction to try this suit having regard to the allegations in the amended plaint. By its judgment dated 11-12-1957 the trial court overruled this objection. This Rule was obtained on 14-1-1958.

3. On behalf of the petitioner it is contended that the suit is a suit for determination of a right to, or interest in, immovable property and as such is within the purview of Section 16(c) of the C. P. C. that the proviso to Section 16 could have no application in the circumstances of the case and that Section 20 being subject to Section 16, the suit must be instituted in the court within the local limits of whose jurisdiction the immovable property is situated and cannot be instituted in the court where a part of the cause of action arose.

4. Now, the proviso to Section 16 clearly does not apply because all the defendants do not reside or carry on business or personally work for gain within the local limits of the jurisdiction of the Howrah court. Again, Section 20 is clearly subject to Section 16 and if the suit were for determination of a right to or interest in immovable property, the suit must be instituted in the appropriate forum in Assam.

5. We have come to the conclusion that the suit is not a suit for determination of any right to or interest in immovable property.

6. On behalf of the petitioners reliance is placed on a decision of the Lahore High Court in Shiv Ram v. Prahlad Rai, AIR 1926 Lah 503. If and in so far that decision decides that a suit for administration of the estate of a deceased person is a suit for determination of a right to or interest in immovable property and as such comes within the purview of Section 16, Clause (d), we are unable to agree with that decision.

7. In the present suit the plaintiff seeks to obtain a decree for the administration of the estate of a deceased person by and under the direction of the court, for accounts and for Receiver during the pendency of the suit. Such a suit is not a suit for determination of a right to or interest in immovable property because the estate comprises one item of immovable property which is situated outside the local limits of the territorial jurisdiction of the court. The cause of action in the suit is the alleged breach of the duty of the executors to administer the estate in due course of law. The plaintiff will be prima facie entitled to a decree for administration if he proves that the defendant executors have committed a breach, of their duty to administer the estate and that the plaintiff as unpaid creditor or unpaid legatee or

otherwise is entitled to complain of this breach of duty. This right of the plaintiff is subject to the overriding power of the court not to grant a decree for administration if there is no necessity for administering the estate under the direction of the court. The form of the preliminary decree in an administration suit is given in form No. 17 of Appendix D of the First Schedule of the Code of Civil Procedure. By the preliminary decree the court directs necessary accounts and enquiries. Where it is necessary for carrying out the objects of the suit, the court may also direct an enquiry as to what immovable property the deceased was seized of or entitled to at the time of his death and may further, if so necessary, direct a sale of the immovable property. The enquiry as to the immovable property is incidental to the main object of the suit. The suit does not become a suit for determination of a right to, or interest in, immovable property because such enquiry is necessary or because in course of such enquiry it is found that the estate comprises one or more items of immovable property situated outside the territorial jurisdiction of the court. The court has jurisdiction to try a suit for administration of the estate of a deceased person if any part of the cause of action arose within the local limits of the jurisdiction of the court. In the exercise of such jurisdiction and where necessary the court has power to decide what the estate consists or and for that purpose to decide questions of title to immovable property. In this case, this Court has already decided that a part of the cause of action arose within the local limits of the jurisdiction of the Howrah Court and as such that court has jurisdiction to try the suit.

8. In this connection the decision in *Nistarini Dassi v. Nundo Lal Bose*, ILR 30 Cal 369 is instructive. In that case the plaintiff instituted a suit on the Original Side of this Court praying for a decree for administration of the estate of a deceased person and also prayed that certain leases of land situated outside the local limits of the jurisdiction of the Court were fraudulent and void and should be set aside and cancelled. Part of the land comprised in the testator's estate was situated within the local limits of the Original Side of this Court. Leave to institute the suit under Clause 12 of the Letters Patent had been obtained on the ground that part of the cause of action arose within the jurisdiction of the Court. Leave under Section 44 of the Code of Civil Procedure, 1882 to join the several claims had not been obtained. One of the issues was whether the plaintiff could maintain the suit

without having obtained leave under Section 44 of the Code of Civil Procedure, 1882 corresponding to Order 2 Rule 4 of the Code of Civil Procedure. Another issue was whether the Court had jurisdiction to set aside the leases or otherwise to entertain a suit affecting immovable property situated wholly outside the local limits of its jurisdiction. The objection relating to Section 44 of the Code of Civil Procedure was overruled on the ground that the suit was not a suit for recovery of immovable property or to obtain a declaration of title to immovable property, and that even if it were, the leave of the Court was obtained to the bringing of the suit. The objection as to jurisdiction was overruled on the ground that the suit was not a suit for land and that the defect, if any, was cured by the leave by the Court. This decision was confirmed on appeal by their Lordships of the Judicial Committee in *Benode Behari Bose v. Smt. Nistarini Dassi*, 32 Ind App 193. With regard to the point of jurisdiction, their Lordships rested their decision on the ground that the primary object of the suit was the administration of the estate of a deceased person resident within the jurisdiction; the principal executors being also resident there and the actual administration going on there, the Court had the right to order administration of the estate and as ancillary to such an order to set aside deeds obtained by the fraud of the executor. Though this is not a direct decision on the construction of Sections 16 and 20 of the Code of Civil Procedure, we think that this decision supports the conclusion to which we have come.

9. We notice that the suit was instituted in 1950 and the trial of the suit has not yet been concluded. It appears that from time to time preliminary issues have been raised and decisions have been obtained on such issues. It is desirable that the trial court will not now try any issue piecemeal and that it will decide all the issues together. The trial court will expedite the trial of the suit and hear it as soon as possible. Let the records be sent down as soon as possible.

10. The Rule is discharged with costs.

**Guha Ray, J.**

11. I agree.

