Sneh Lata Goel vs Pushplata on 7 January, 2019

Equivalent citations: AIR 2019 SUPREME COURT 824, 2019 (3) SCC 594, 2019 (2) AJR 46, (2019) 197 ALLINDCAS 233 (SC), (2019) 127 CUT LT 601, (2019) 134 ALL LR 257, (2019) 144 REVDEC 66, (2019) 197 ALLINDCAS 233, (2019) 1 ALL RENTCAS 590, (2019) 1 ANDHLD 158, (2019) 1 CLR 565 (SC), (2019) 1 ICC 1144, 2019 (1) KCCR SN 37 (SC), (2019) 1 ORISSA LR 394, (2019) 1 PAT LJR 454, (2019) 1 RECCIVR 808, (2019) 1 SCALE 536, (2019) 2 CIVILCOURTC 96, (2019) 2 CIVLJ 210, (2019) 2 RAJ LW 1546, (2019) 3 CAL HN 295, (2019) 3 CIVLJ 84, (2020) 1 MAH LJ 147, (2020) 1 MPLJ 67, AIR 2019 SC (CIV) 1138, AIRONLINE 2019 SC 55

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Bench: Hemant Gupta, Dhananjaya Y Chandrachud

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 116 OF 2019
(@SLP(C) No(s). 26932/2018)

SNEH LATA GOEL Ap

VERSUS

PUSHPLATA & ORS. RESPON

JUDGMENT

DR DHANANJAYA Y CHANDRACHUD, J.

1 Leave granted.

2 This appeal arises from a judgment and order of the High Court of Jharkhand at Ranchi dated 15/17 July 2018.

The facts lie in a narrow compass:

> On 9 May 1985, a partition suit 1 was instituted by Smt. Saroja Rani, daughter of Late 1 154/1985 Rai Sri Krishna (since deceased), in respect of her 1/4 th share in the suit property which comprises of properties at Ranchi and Varanasi. The suit was instituted at Ranchi in the Court of the Special Subordinate Judge. The defendant in that suit (since deceased) filed a petition before the High Court of Judicature at Patna questioning the jurisdiction of the Ranchi Courts. The petition was disposed of by the High Court on 10 May 1989 with the direction that any objection to jurisdiction would be decided by the Special Subordinate Judge at Ranchi as a preliminary issue. A preliminary decree was passed ex-parte on 13 June, 1990 granting the Petitioner her extent of 1/4 th share in the schedule property. A final decree was passed on 5 April 1991 confirming the preliminary decree passed on 13 June, 1990.

One of the defendants in the partition suit filed a title suit 2 before the Court of Subordinate Judge, Ranchi. On 22 July 2003, the suit was dismissed for non- prosecution. The first respondent filed a title suit 3 before the Court of Subordinate Judge at Varanasi which was dismissed under Order VII, Rule 11 of the CPC on 12 April 2005 on the ground of being barred under Section 21A of the Code of Civil Procedure 1908 ("CPC"). The first respondent filed an application under Order IX Rule 13 in respect of the title suit filed at Ranchi which was also dismissed as withdrawn on 19 February 2008.

Since the mother of the appellant was alive when the suit was instituted, the claim was confined to a 1/4th share. During the pendency of the suit, the mother died. As a result, there was a modification in the share of the three sisters at 1/3 rd each. On 18 December 2013, the Subordinate Judge at Ranchi passed a supplementary final decree in view of 2 114/1998 3 176/2000 the death of the mother of the appellant and the first respondent on 9 February 1996. 4 On 12 May 2014, the appellant filed proceedings for the execution of the final decree at Ranchi.4 On 1 January 2015, the first respondent filed an objection under Section 47 of the Code of Civil Procedure contending that the decree dated 13 June 1990, the final decree dated 5 April 1991 and the supplementary final decree dated 18 December 2013, were without jurisdiction and therefore, a nullity. On 10 March 2015, the first respondent challenged the decree dated 13 June, 1990 in appeal under Section 96 of the CPC.5 The appeal is pending.

5 On 10 March 2016, the executing court dismissed the objections of the first respondent under Section 47 of the CPC with the following observations:

> "The decree holder is entitled to get the fruits of the decree and the executing court cannot go behind the decree. When a decree is made by a court which has no inherent jurisdiction, an objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. Where the objection as to the jurisdiction of the court to pass the decree does not appear on the face of the record

> and requires examination of the questions raised and decided at trial, which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree on the ground of jurisdiction." Aggrieved by the order of the executing court, the first respondent initiated proceedings under Article 227 of the Constitution of India. The High Court by its impugned judgment and order came to the conclusion that the executing court was in error in holding that it lacked jurisdiction to entertain the objection as to the validity of the decree on ground of an alleged absence of territorial jurisdiction.

6 The High Court observed that the plea that the decree could not be executed on the ground that it had been passed by a court which had no territorial jurisdiction to entertain the partition suit could have been raised under Section 47 of the CPC. The High Court held thus:

> "The executing court fell in serious error in law where it has observed that the executing court will have no jurisdiction to entertain an objection as to the validity of the decree on the ground of jurisdiction. Under Section 47 CPC, the petitioner has not challenged the validity of the decree on merits, rather the plea taken by her is that the decree cannot be executed for it has been passed by a court which had no territorial jurisdiction to entertain Partition Suit No.154 of 1985." The application raising the objection was hence restored to the file of the executing court for disposal.

7 Assailing the judgment of the High Court, these proceedings have been instituted.

Mr Mukul Rohatgi, learned senior counsel appearing on behalf of the appellant submitted that an objection to territorial jurisdiction does not relate to the inherent jurisdiction of the civil court. Such an objection has to be addressed before that court and in the event that the court rejects such an objection, it must be raised before the competent court in appeal. Consequently, the High Court was in error in directing the executing court to deal with such an objection. Moreover, it was urged that the respondent was aware of the proceedings which were taking place, which is evident from the following circumstances:

> (i) The respondent had filed a title suit before the Court at Ranchi which was dismissed for non-prosecution on 22 July 2003;
>
> (ii) The respondent filed a title suit before the Court at Varanasi which was dismissed under Order VII, Rule 11 of the CPC on 12 April 2005; and
>
> (iii) The respondent filed an application under Order IX Rule 13 in respect of the title suit filed at Ranchi which was also dismissed as withdrawn on 19 February 2008.

Based on these circumstances, it was urged that the objection which has been allowed to be raised in execution is merely an effort to delay and obstruct the implementation of the decree which has been passed in the suit for partition. 8 On the other hand, Mr. S. R. Singh, learned senior counsel appearing on behalf of the respondents, has urged the following submissions:

(i) An objection to the lack of territorial jurisdiction is an objection to the subject matter of the suit and hence of a nature that can be raised before the executing court. In support, reliance is placed on the decisions of this Court in Kiran Singh v Chaman Paswan6 and Harshad Chiman Lal Modi v DLF Universal Ltd.7;

(ii) The impugned order of the High Court is an interlocutory order and hence it is not appropriate at this stage to entertain a proceeding under Article 136 of the Constitution of India; and

(iii) The case of the respondents all along has been that the property on the basis of which jurisdiction was founded at Ranchi did not belong to the common ancestor and in which event, the civil court at Ranchi had no jurisdiction to entertain the suit for partition.

9 In assessing the merits of the rival submissions, it would, at the outset, be necessary to advert to the provisions of Section 21 of the CPC.

"Section 21(1) postulates that no objection as to the place of suing shall be allowed by any appellate or revisional court 6 AIR 1954 SC 340 7 (2005) 7 SCC 791 unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled on or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice." Sub-section (1) of Section 21 provides that before raising an objection to territorial jurisdiction before an appellate or revisional court, two conditions precedent must be fulfiled:

i) The objection must be taken in the court of first instance at the earliest possible opportunity; and

ii) There has been a consequent failure of justice.

This provision which the legislature has designedly adopted would make it abundantly clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. Hence, it has to be raised before the court of first instance at the earliest opportunity, and in all cases where issues are settled, on or before such settlement. Moreover, it is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained. Both these conditions have to be satisfied. 10 The learned

counsel appearing on behalf of the respondents has submitted that the objection as to the lack of territorial jurisdiction was raised in the written statement before the trial court. But evidently the suit was decreed ex-parte after the respondents failed to participate in the proceedings. The provisions of Section 21(1) contain a clear legislative mandate that an objection of this nature has to be raised at the earliest possible opportunity, before issues are settled. Moreover, no such objection can be allowed to be raised even by an appellate or revisional jurisdiction, unless both sets of conditions are fulfilled.

11 Learned counsel appearing on behalf of the respondent has placed a considerable degree of reliance on the judgment of four Judges of this Court in Kiran Singh (supra). In that case, there was a dispute in regard to the valuation of the suit. The issue would ultimately determine the forum to which the appeal from the judgment of the trial court would lie. If the valuation of the suit as set out in the plaint was to be accepted, the appeal would lie to the district court. On the other hand, if the valuation as determined by the High Court was to be accepted, the appeal would lie before the High Court and not the District Court. It was in this background that this Court held that as a fundamental principle, a decree passed by a court without jurisdiction is a nullity and that its validity could be set up wherever it is sought to be enforced or relied upon, even at the stage of execution in a collateral proceeding. Moreover, it was held that a defect of jurisdiction, whether pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at the very authority of the court to pass the decree and cannot be cured even by the consent of the parties.

The Court then proceeded to examine the effect of Section 11 of the Suit Valuation Act 1887 on this fundamental principle. This Court held thus:

> "7. Section 11 enacts that notwithstanding anything in Section 578 of the Code of Civil Procedure, an objection that a court which had no jurisdiction over a suit or appeal had exercised it by reason of overvaluation or undervaluation, should not be entertained by an appellate court, except as provided in the section...a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for overvaluation or undervaluation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on overvaluation or undervaluation, should be dealt with under that section and not otherwise. The reference to Section 578, now Section 99 CPC, in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the courts which passed them lacked jurisdiction as a result of overvaluation or undervaluation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it. With reference to objections relating to territorial jurisdiction,

Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or Revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits." (Emphasis supplied) 12 Dealing with the question of whether a decree passed on appeal by a court which had jurisdiction to entertain it only by reason of undervaluation or overvaluation can be set aside on the ground that on a true valuation that court was not competent to entertain the appeal, the Court held that a mere change of forum is not 'prejudice' within Section 11 of the Suits Valuation Act. This Court held thus:

"12. ...it is impossible on the language of the section to come to a different conclusion. If the fact of an appeal being heard by a Subordinate Court or District Court where the appeal would have lain to the High Court if the correct valuation had been given is itself a matter of prejudice, then the decree passed by the Subordinate Court or the District Court must, without more, be liable to be set aside, and the words "unless the overvaluation or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits" would become wholly useless. These words clearly show that the decrees passed in such cases are liable to be interfered with in an appellate court, not in all cases and as a matter of course, but only if prejudice such as is mentioned in the section results. And the prejudice envisaged by that section therefore must be something other than the appeal being heard in a different forum. A contrary conclusion will lead to the surprising result that the section was enacted with the object of curing defects of jurisdiction arising by reason of overvaluation or undervaluation, but that, in fact, this object has not been achieved. We are therefore clearly of opinion that the prejudice contemplated by the section is something different from the fact of the appeal having been heard in a forum which would not have been competent to hear it on a correct valuation of the suit as ultimately determined." (Emphasis supplied) The Court disallowed the objection to jurisdiction on the ground that no objection was raised at the first instance and that the party filing the suit was precluded from raising an objection to jurisdiction of that court at the appellate stage. This Court concluded thus:

"16. If the law were that the decree of a court which would have had no jurisdiction over the suit or appeal but for the overvaluation or undervaluation should be treated as a nullity, then of course, they would not be stopped from setting up want of jurisdiction in the court by the fact of their having themselves invoked it. That, however, is not the position under Section 11 of the Suits Valuation Act." Thus, where

the defect in jurisdiction is of kind which falls within Section 21 of the CPC or Section 11 of the Suits Valuation Act 1887, an objection to jurisdiction cannot be raised except in the manner and subject to the conditions mentioned thereunder. Far from helping the case of the respondent, the judgment in Kiran Singh (supra) holds that an objection to territorial jurisdiction and pecuniary jurisdiction is different from an objection to jurisdiction over the subject matter. An objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit.

13 In Hiralal v Kalinath8, a person filed a suit on the original side of the High Court of Judicature at Bombay for recovering commission due to him. The matter was referred to arbitration and it resulted in an award in favour of the Plaintiff. A decree was passed in terms of the award and was eventually incorporated in a decree of the High Court. In execution proceedings, the judgment-debtor resisted it on the ground that no part of the cause of action had arisen in Bombay, and therefore, the High Court had no jurisdiction to try the cause and that all proceedings following thereon where wholly without jurisdiction and thus a nullity. Rejecting this contention, a four judge Bench of this Court held thus:

"The objection to its [Bombay High Court] territorial jurisdiction is one which does not go to the competence of the court and can, therefore, be waived. In the instant case, when the plaintiff obtained the leave of the Bombay High Court on the original side, under clause 12 of the Letters Patent, the correctness of the procedure or of the order granting the leave could be questioned by the defendant or the objection could be waived by him. When he agreed to refer the matter to arbitration through court, he would be deemed to have waived his objection to the territorial jurisdiction of the court, raised by him in his written statement. It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a court can be waived 8 AIR 1962 SC 199 and this principle has been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure." (Emphasis supplied) In Harshad Chiman Lal Modi v DLF Universal Ltd.9, this Court held that an objection to territorial and pecuniary jurisdiction has to be taken at the earliest possible opportunity. If it is not raised at the earliest, it cannot be allowed to be taken at a subsequent stage. This Court held thus:

"30. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it

cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity." In Hasham Abbas Sayyad v Usman Abbas Sayyad10, a two judge Bench of this Court held thus:

"24. We may, however, hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure, and a decree passed by a court having no jurisdiction in regard to the subject-matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with." Similarly, in Mantoo Sarkar v Oriental Insurance Co. Ltd11, a two judge Bench of this Court held thus:

9(2005) 7 SCC 791 10 (2007) 2 SCC 355 11 (2009) 2 SCC 244 "20. A distinction, however, must be made between a jurisdiction with regard to the subject-matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject-matter of claim...in our opinion, the court should not have, in the absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal." 14 The objection which was raised in execution in the present case did not relate to the subject matter of the suit. It was an objection to territorial jurisdiction which does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. An executing court cannot go behind the decree and must execute the decree as it stands. In Vasudev Dhanjibhai Modi v Rajabhai Abdul Rehman12, the Petitioner filed a suit in the Court of Small Causes, Ahmedabad for ejecting the Defendant-tenant. The suit was eventually decreed in his favour by this Court. During execution proceedings, the defendant-tenant raised an objection that the Court of Small Causes had no jurisdiction to entertain the suit and its decree was a nullity. The court executing the decree and the Court of Small Causes rejected the contention. The High Court reversed the order of the Court of Small Causes and dismissed the petition for execution. On appeal to this Court, a three judge Bench of this Court, reversed the judgment of the High Court and held thus:

"6. A court executing a decree cannot go behind the decree:

between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

> 8. If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the

12 (1970) 1 SCC 670 jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding." 15 In this background, we are of the view that the High Court was manifestly in error in coming to the conclusion that it was within the jurisdiction of the executing court to decide whether the decree in the suit for partition was passed in the absence of territorial jurisdiction.

16 The respondent has filed a first appeal (First Appeal No. 43/2015) where the issue of jurisdiction has been raised. We must clarify that the findings in the present judgment shall not affect the rights and contentions of the parties in the first appeal. 17 The High Court has manifestly acted in excess of jurisdiction in reversing the judgment of the executing court which had correctly declined to entertain the objection to the execution of the decree on the ground of a want of territorial jurisdiction on the part of the court which passed the decree.

18 We have also not found merit in the contention that the impugned order of the High Court, being an order of remand, is in the nature of an interlocutory order which does not brook any interference. By the impugned order, the High Court has directed the executing court to entertain an objection to the validity of the decree for want of territorial jurisdiction. Such an objection would not lie before the executing court. Moreover, the objection that the property at Ranchi did not belong to the common ancestor is a matter of merits, which if at all, has to be raised before the appropriate court in the first appeal.

19 For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court. The executing court shall conclude the execution proceedings expeditiously. There shall be no order as to costs.

……J. [DR DHANANJAYA Y CHANDRACHUD]
.....J. [HEMANT GUPTA] New Delhi, January 7, 2019