

Nainsingh vs Koonwarjee And Others on 2 April, 1970

Equivalent citations: 1970 AIR 997, 1971 SCR (1) 207, AIR 1970 SUPREME COURT 997, 1970 CURLJ 488, 1970 MPLJ 568, 1970 SCD 774, 1970 JABLJ 544

Author: K.S. Hegde

Bench: K.S. Hegde, J.C. Shah

PETITIONER:

NAINSINGH

Vs.

RESPONDENT:

KOONWARJEE AND OTHERS

DATE OF JUDGMENT:

02/04/1970

BENCH:

HEGDE, K.S.

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SHAH, J.C.

CITATION:

1970 AIR 997

1971 SCR (1) 207

1970 SCC (1) 749

ACT:

Code of Civil Procedure (5 of 1908) s. 151-No appeal against order of remand-Scope of Appellate Court's power on appeal on findings after remand.

Jagir Abolition. Act, 1951-Rights of Jagirdar to property in respect of which suit filed before enactment of the Act.

HEADNOTE:

The tenant of the appellant-a Jagirdar, died without leaving any male issues. His distant relations-the respondents, took possession of his properties. Thereupon the appellant brought a suit claiming possession of the properties as he was the owner. The trial court dismissed the suit holding that the civil court has no jurisdiction to entertain the suit, and that in view of the Jagir Abolition Act, 1951 which was enacted during the pendency of the suit and with the vesting of the suit properties in the State, the

appellant was not entitled to claim. The first appellate court reversed these findings and held that though the suit properties had vested in the State, it was for the State to get itself impleaded, and as the State had not got itself impleaded, it was open to the appellant to press the suit. In view of these conclusions, the appellate court demanded the suit to decide the other undecided issues. After the remand, the trial court negatived the respondents-defendants contention and decreed the suit. In appeal that decree was affirmed. In second appeal, the High Court agreed with the courts below on all issues except that relating to the effect of abolition of Jagirs. It held that under the Jagir Abolition Act, the appellant lost his title to the suit properties. In its view that issue was not concluded by the decision of the appellate court made before remand as the same had not been appealed against, since the court had inherent power to consider the correctness of that order. In appeal, this Court:

HELD : The case must be remanded for determination of the right of all the parties after impleading the State as a party.

The correctness of the remand order was not open to review by the High Court. The order in question was made under rule 23, Order 41, Civil Procedure Code. That order was appealable under Order 43 of that Code. As the same was not appealed against, its correctness was no more open to examination in view of s. 105 (2) of the Code which lays down that where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom he shall thereafter be precluded from disputing its correctness. The High Court has misconceived the scope of its inherent powers. Under the inherent power of courts recognised by s. 151, Civil Procedure Code, a court has no power to do that which is prohibited by the Code. Inherent jurisdiction of court must be exercised subject to the rule that if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be involved. In other words the court cannot make-use of the special provisions of s. 151 of the Code where a party had his remedy provided elsewhere in the Code and be neglected

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to avail himself of the same. Further the power under s. 151 of the Code cannot be exercised as an appellate power. The appellant-Jagirdar had not lost all rights in the suit properties. The suit properties vested in the State in view of the Jagir Abolition Act. But it was conceded at the bar that if the appellant was proved to have been the owner of the suit properties on the day the Jagir Abolition Act came into force, he was entitled to the compensation provided in that Act. Therefore the appellant was interested in establishing that on the date Jagir Abolition Act came into force, he was the full owner of the suit properties. [210 C]

Himatrao v. Jaikishandas and Ors. [1931] 3 S.C.R. 815; followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1460 of 1966. Appeal by special leave from the judgment and decree dated April 30, 1965 of the Madhya High Court, Indore Bench in Second Appeal No. 209 of 1962.

G. L. Sanghi, P. C. Bhartari, for the appellants. Rameshwar Nath, for respondents Nos. 1 to 4. The Judgment of the Court was delivered by Hegde, J. The only question, that falls for decision in this appeal by special leave is as to the application of s. 151, Civil Procedure Code to a remand order falling within s. 105(2) of that Code.

The facts leading upto the point under consideration may now be stated. The appellant was the Jagirdar of the suit pro- perties. One Bhagirath was his tenant. The said Bhagirath died in the year 1947 leaving behind no male issues. His wife had predeceased him. He had two daughters who were living at the time of his death. After his death, defendants Nos. 1 to 5 who are his distant relations took possession of the suit properties and I got the revenue records changed in their names. Thereafter the appellant brought the suit under -appeal seeking the following reliefs (1) to declare that he is the owner of the suit properties; (2) to quash the order of the Tehsildar dated November 8, 1949 transferring the khata relating to the suit properties to the names of Defendants 1 to 5; (3) to grant possession of those properties to him and (4) other usual incidental reliefs.

The defendants resisted the plaintiff's claim. They contended inter alia that (1) the civil court had no jurisdiction to entertain ,the suit; (2) the plaintiff had lost right over the suit properties in H view of the Jagir Abolition-Act, 1951 which came into force on December 4, 1952 during the pendency of the suit and (3) the 1st defendant being the adopted son of Bhagirath is entitled to the possession of the suit properties. In the suit several issues. were raised. it is not necessary to refer to them in view of the limited scope of this appeal. The trial court dismissed the suit upholding the contention of the defendants on two issues viz. (1) that the civil court had no jurisdiction to entertain the suit and (2) that in view of the Abolition of Jagirs and the vesting of the suit properties in the State, the plaintiff can claim no relief. The first appellate court reversed the findings of the trial court on those issues. It came to the conclusion that the civil court had jurisdiction to entertain the suit. It further held that though in view of the abolition of the jagirs, the suit properties had vested in the State, it was for the State to get itself impleaded if it is interested in this litigation and as the State had not chosen to get itself impleaded, it was open to the plaintiff to press the suit. In view of those conclusions, the appellate court set aside the decree of the trial court and remanded the suit to the trial court for deciding the other issues left undecided. After the remand, the trial court negatived every one of the contentions taken by the defendants and decreed the suit as prayed for. In appeal that decree was confirmed. In second appeal the High Court of Madhya Pradesh agreed with the trial court and the appellate court on the findings given on all issues excepting the issue relating to the effect of abolition of the jagirs on the suit. On that issue, it came to the conclusion that in view of the

abolition of jagirs under the Jagir Abolition Act, the plaintiff had lost his title to the suit properties and therefore he could not get a decree for possession of the suit properties. It rejected the contention of the plaintiff that that issue is concluded by the decision of the appellate court made before remand as the same had not been appealed against. It opined that the court had inherent power to consider the correctness of that order. It accordingly allowed the appeal and dismissed the suit. The High Court, in our opinion, erred in holding that the correctness of the remand order was open to review by it. The order in question was made under rule 23, Order 41, Civil Procedure Code. That order was appealable under Order 43 of that Code. As the same was not appealed against, its correctness was no more open to examination in view of s. 105 (2) of the Code which lays down that where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom he shall thereafter be precluded from disputing its correctness. The High Court has misconceived the scope of its inherent powers. Under the inherent power of courts recognised by s. 151, Civil Procedure Code, a court has no power to do that which is prohibited by the Code. Inherent jurisdiction of the court must be exercised subject to the rule that if the Code does' contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked. In other words the court cannot make use of the special provisions of s. 151 of the Code where a party had his remedy provided elsewhere in the Code and he neglected to avail himself of the, same. Further the power under S. 151 of the Code cannot be exercised as an appellate power.

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We are also of the opinion that the High Court is not right in holding that in view of the abolition of the Jagirs, the plaintiff had lost all rights in the suit properties. It is true that in view of the provisions of the Jagir Abolition Act, the suit properties vested in the State. But it was conceded at the bar that if the plaintiff is proved to have been the owner of the suit properties on the day the Jagir Abolition Act came into force, he is entitled to the compensation provided in that Act. Therefore the plaintiff is interested in establishing that on the date Jagir Abolition Act came into force, he was the full owner of the suit properties. The facts of this case fall within the rule laid down by this Court in *Himatrao v. Jaikishandas and Ors.* (1). On the facts of this case the interests of justice would have been better served if the High Court had ordered the impleading of the State of Madhya Pradesh in the appeal before it and determined the rights of all the parties finally. Hence we set aside the decree of the High Court and remand the case to that Court with a direction that the State of Madhya Pradesh should be impleaded and the rights of all the parties decided in accordance with law., In the circumstances of the case we make no order as to costs of this appeal.

Y. P.

Case remanded.

(1) [1963] 3 S.C.R., 815