

## Man Pal vs Birja And Anr. on 23 January, 1951

**Equivalent citations: AIR1951ALL611, AIR 1951 ALLAHABAD 611**

ORDER

Mootham, J.

1. This is a pltf s appln. in revn.

2. The pltf. who is an occupancy tenant, filed a suit against the defts., the opposite parties in this Ct. upon the allegation that they had wrongfully entered upon his land, & upon this ground he sued for recovery of possession & for damages. He also alleged -- & it is not disputed--that he had been wrongfully dispossessed by the defts. on two previous occasions & that on each of these occasions he had had to recover possession through the Ct. The present suit was, therefore, the third which he had had to institute against these defts. & accordingly he also asked for a permanent injunction to restrain the defts. from interfering with his possession. This suit he filed in the civil Ct. A preliminary issue was framed as to whether the civil Ct. or the revenue Ct. had jurisdiction & was answered in favour of the latter. & that finding was upheld by the learned Dist. J. on appeal.

3. A preliminary objection was taken in this Ct. that no revn. lies. It is true, & it has repeatedly been laid down, that a Ct. has jurisdiction to decide a ease wrongly as well as rightly, but as was pointed out by the Judicial Committee in Joy Chand v. Kamalaksha, 76 I. A. 131 : (A. I. R. (36) 1949 P. C. 239).

"Although error in a decision of a subordinate Ct. does not by itself involve that the subordinate Ct. has acted illegally or with material irregularity so as to justify interference in revn. under Sub-section (c) of Section 115, C. P. C.) nevertheless if the erroneous decision results in the subordinate Ct. exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revn. arises under Sub-section (a) or Sub-section (b) & Sub-section (c) can be ignored." There can be no doubt that the Ct. in this case had jurisdiction to decide whether the suit should have been filed before it or in a revenue Ct. & it had jurisdiction to decide that question erroneously. It has decided that the suit ought to have been filed in a revenue Ct. & it was then bound, as it has in fact done, to direct that the plaint be returned; but if in so directing the Ct's decision on the question of jurisdiction was wrong then it has failed to exercise a jurisdiction vested in it by law. I am, therefore, of opinion that the preliminary objection fails.

4. It was then contended that the suit was not one which came within the ambit of Section 180, U. P. Tenancy Act, 1939, as it was a suit by a tenant against a trespasser. In D. N. Rege v. Muhammad Raider, A. I. R. (33) 1946 ALL. 879 : (I. L. R. (1946) ALL. 692 F. B.) a F. B. of this Ct. said:

"We do not think that Section 180 applies at all to cases in which the deft. has never given the pltf. reason to think that he is setting up a claim to be the proprietor of the land, & conversely that a suit in a civil Ct. does not lie when the deft. has given reason to think that he is claiming interest as a tenant."

The Ct. further pointed out that the jurisdiction of a Ct. depends upon the state of affairs which existed at the time of the institution of the suit, & that the pltf. should as far as possible ascertain on what ground the deft. claimed to occupy the land before he filed his plaint. In *Baur v. Deo Kali*, 1950 A. L. J. 861 : (A.I.R. (38) 1951 ALL. 610) it was held that for the pltf. merely to allege in his plaint that the defts. were trespassers was not of itself enough to give the civil Ct. jurisdiction. In the case before me, I am informed that in each of the two earlier suits the defts. set up a plea of tenancy, & that is the defence which is raised in this case. In the absence of anything to suggest the contrary the circumstances indicate that the pltf. must have known that that was the ground on which the deft. claimed possession of the land; and I observe that in the trial Ct. it was not in dispute that had the Suit been limited to one for possession & damages it ought to have been filed in the revenue Ct. I am of opinion that this objection also fails.

5. The substantial question is whether the addition of a prayer for an injunction, in circumstances such as obtain in this case, is sufficient to oust the jurisdiction of the revenue Ct.

6. Section 242, U. P. Tenancy Act, provides that (subject to a proviso with which we are not now concerned) all suits & applns. of the nature specified in Schedule 4 to the Act shall be heard & determined by a revenue Ct. & that no Ct. other than a revenue Ct. shall, except by way of appeal or revn. as provided in the Act, take cognizance of any such suit or appln. or of any suit or appln. based on a cause of action in respect of which any relief could be obtained by means of any such suit or appln. It is clear, therefore, that if in a suit for possession & damages a prayer for injunction be added which is based, on the same cause of action the jurisdiction of the revenue Ct. will not be ousted, & it was so held in *Ananti v. Chhannu*, 52 ALL. 501: (A. I. R. (17) 1930 ALL. 193 F.B.).

7. But that is not the position in the present case in which it appears to me that the claims for possession & damages on the one hand, & for an injunction on the other, are based on different causes of action, the cause of action in the former case being the last dispossession of the pltf. & in the latter being the two earlier acts as well as the last act of dispossession. The injunction asked for by the pltf. cannot be granted by a revenue Ct. But I do not see in Section 242 any bar to that relief (if the circumstances are found to justify it) being granted by a civil Ct. It will be observed that the words used in Section 242 are "cause of action" & not "cause of action or part of a cause of action." Cause of action means the bundle of facts which is material to be proved to establish the pltf's claim. Considered, as I think it must be considered, as one collection of facts the cause of action upon which the claim for an injunction is in this case based is one, in my view, in respect of which no relief can be obtained by means of a suit in a revenue Ct. & the pltf. is not, therefore, debarred from seeking that relief in a civil Ct.

8. The position, therefore, is that the plaint in this case discloses two distinct causes of action, the relief based upon one being within the jurisdiction of the revenue Ct. & on the other within the

jurisdiction of the civil Ct. This is of course subject to this qualification, that although it is not an uncommon practice for a pltf. to sue for possession & for an injunction to restrain the deft. from interfering with his possession the injunction cannot be granted until after an order that possession be restored to the pltf. has been made.

9. In *Ram Rup v. Ram Dhari*, 47 ALL. 770: (A. I. R. (12) 1925 ALL. 683), the view was expressed by a Bench of this Ct. that in a case where some of the reliefs claimed in a suit were reliefs which the Ct. in which the plaint had been filed was competent to grant while others were beyond its jurisdiction the proper procedure was for the Ct. either to call upon the pltf. to amend his plaint by striking out the reliefs which the Court had no jurisdiction to grant or wait until judgment was delivered & dismiss the claims relating to such reliefs. This case was followed by Braund J. in *Latu v. Maha Laxmi Bai*, 1941 R. D. 1214, a case in which the pltf. had filed a suit in a civil Ct. which gave rise to issues in respect of some of which the civil Ct. had jurisdiction & in respect of others exclusive jurisdiction was vested in the revenue Ct. The learned Judge there pointed out in addition to the alternatives to which reference has been made in *Ram Rup Goshain's* case, 47 ALL. 770: (A. I. R. (12) 1925 ALL. 683) a further alternative would be to apply Order 6, Rule 16, C. P. C., for the Ct. to dismiss at once that part of the suit in respect of which it had no jurisdiction as tending to prejudice, embarrass or to delay a fair trial of the suit.

10. The civil Ct. could not in the present case give the pltf. any relief, for it had no jurisdiction with regard to the claims for possession & damages, & the claim for an injunction was premature. As, however, it had jurisdiction so far as the second claim was concerned it ought, in my judgment, to have dismissed the suit & left it to the pltf. to file a fresh suit for possession & damages in the revenue Ct. Instead, however, of doing this it returned the plaint for presentation in the revenue Ct. & that order has been upheld by the lower appellate Ct. Substantial justice has accordingly been done, & in the circumstances I do not propose to interfere in revn. The appln. is accordingly dismissed, with costs.