

Nain Singh And Ors. vs Mahendra Singh on 29 March, 1951

Equivalent citations: AIR1952ALL196, AIR 1952 ALLAHABAD 196

JUDGMENT

Mootham, J.

1. This appeal arises out of certain proceedings for the execution of a decree passed by a learned Munsif.

2. The appellants sued the respondent for Rs. 2,000 as damages resulting from the cutting down by the respondent of certain trees in a grove claimed by the appellants as their property; they sued also for an injunction to restrain the respondent from cutting down any more trees. During the pendency of the suit more trees were cut down by the respondent, and ultimately the parties entered into a compromise whereunder, inter alia, the respondent agreed to pay to the appellants the sum of Rs. 9,650 by way of damages, and a decree was passed by the learned Munsif in the terms of this compromise. Neither party challenged the Court's order directing the compromise to be recorded and the decree, therefore, became final.

3. Subsequently, the appellants sought to execute this decree, and the respondent then for the first time objected that as the pecuniary jurisdiction of the Munsif was restricted to Rs. 5,000 so much of the decree as was in excess of that amount was a nullity and incapable of execution. The execution Court dismissed the objection, but on appeal the learned District Judge reversed this decision. The appellants have come to this Court in second appeal.

4. Two contentions have been advanced on their behalf. It is contended that the Munsif had jurisdiction to pass a decree for Rs. 9,650 notwithstanding the fact that this pecuniary jurisdiction was limited to Rs. 6,000. It is common ground that the jurisdiction of the learned Munsif extended to all original suits cognizable by the civil Courts of which the value did not exceed Rs. 6,000; and there is now no doubt that the pecuniary jurisdiction of a civil Court, on its original or appellate side, is ordinarily governed by the value of the subject-matter of the suit as stated by the plaintiff in his plaint unless it appears that, either purposely or through gross negligence, the true value of the suit has been misrepresented. And this is so even though the plaintiff may not know or be able to ascertain the correct value at the time of filing the plaint, as for example in suits for pre-emption, for the recovery of an amount due on taking unsettled accounts or for mesne profits; and if in such cases the value of the subject-matter of the suit is ultimately found to be in excess of the pecuniary jurisdiction of the Court the latter may nevertheless pass a decree based on the true valuation; Mahabir Singh v. Behari Lal, 13 ALL. 320, Madho Das v. Bamji Pathak, 16 ALL. 286, Muhammad, Abdul Majid v. Ala Baksh 47 ALL. 634, Sudarshan Das v. Ram Prashad 33 ALL. 97. It is therefore, I think, clear that the mere fact that the value of the subject-matter of the suit is found during the course of the hearing to exceed the pecuniary jurisdiction of the Court does not debar the latter from

passing a valid decree for an amount which may be very greatly in excess of that jurisdiction.

5. Had the present suit been one for an injunction and for the recovery of the estimated value (not exceeding Rs. 5000) of an unascertained Dumber of trees cut down by the respondent, and had it been established during the trial that the value of the trees actually out exceeded the pecuniary jurisdiction of the Court the latter would, in my opinion, have been entitled to pass a valid decree either for the full value of the trees which had been out or for such sum as the plaintiffs were prepared to accept from the defendant by way of a compromise. What has however happened in the present case is, in my opinion, something quite different. Apart from the claim for an injunction the suit was for the recovery of a specific sum of money as damages, After the filing of the suit, other trees were out down by the respondent, and the agreed damages amounting to Rs. 9650 were in respect of those trees as well as the trees for the value of which the suit had been brought. In other words, the gum of Rs. 9650 does not represent the real value of the subject-matter of the suit, but includes that value & the value of the additional trees cut down after the suit had been instituted.

6. The damages sustained by the plaintiff as the result of these additional trees being out could have been the subject of a separate suit; but that suit (the value of the additional trees being over Rs. 5000) could not have been brought in the Munsif's Court. What, therefore, the parties have done is to compromise two separate claims for damages; and as the suit for the combined claims could not have been brought in the Munsif's Court the decree passed by him in this case would only be valid if (as in the case of County Courts in England) the parties can by consent confer jurisdiction upon the Court in excess of its pecuniary restrictions. That in India cannot be done, *Ledgard v. Bull*, 9 ALL. 191, and I am of opinion therefore that the Munsif bad in the circumstances of this case no jurisdiction to pass a decree in excess of RS. 5000. It may be observed that when the compromise petition was filed it was the duty of the Court under Order 23, Rule 3, Civil P. C. to do two things; to order the petition to be recorded and thereafter to pass a decree in accordance therewith so far as it related to the suit. The Court acted wrongly in passing a decree for the whole amount specified in the petition because the compromise related also to matters which, in my view, clearly did not relate to the subject-matter of the suit.

7. An analogy sought to be established by learned counsel between the present suit and a suit for mesne profits is not, I think, sound, A suit for mesne profits, like a suit for recovery of an amount due on taking unsettled accounts, stands on a somewhat special footing, and a Court having jurisdiction does not lose that jurisdiction because of a change in the value of the subject-matter during the course of the hearing. A suit for damages, on the other hand, is a suit for an ascertained sum representing a loss sustained prior to the institution of the suit and does not depend on events which occurred subsequently.

8. The learned counsel for the appellants also drew our attention to two cases of this Court in which it was held that if, notwithstanding the provisions of Order 23, Rule 3, a Court includes in the operative portion of the decree terms of a compromise which do not relate to the suit that decree is not a nullity and may be executed. Those cases are *Mohib Ullah v. Imami*, 9 ALL, 229, and *Shyam Lal v. Shyam Lal*, 65 ALL. 775 (F. B.). In the former the plaintiff sued for the recovery of a piece of land. The suit was compromised, and under the decree which was drawn up in accordance with the

compromise the plaintiff was awarded possession of a larger area of land than was the subject of the suit. He subsequently sought to execute the decree but, on objection being taken by the judgment-debtor, the Munsif held that the execution could only be taken out in respect of the land specified in the plaint. Instead of appealing against this order the decree-holder brought a fresh suit for recovery of the additional land referred to in the compromise agreement. Edge C. J. (with whom Oldfield J. concurred) held that the second suit was prohibited by Section 224 (now Section 47) of the Code. That decision was cited with approval in the latter case of *Shyam Lal v. Shyam Lal*. In that case a suit for dissolution of partnership was compromised upon terms which included the hypothecation of certain property to secure the payment of certain sums due by the defendant to the plaintiff; and it was agreed that in default of payment the plaintiff was entitled to recover the amount due to him by the sale of the property. A decree was drawn up embodying in its operative portion the whole of the compromise, and it was held that the Court had jurisdiction to pass the decree and the sale founded on it was therefore valid.

9. It is however to be observed that in these cases the question with which we are now concerned was not discussed. The basis of the earlier decision was stated thus by Edge C. J.

"I known of no law which prevents the parties to an action enlarging by consent or compromise the original claim, and getting or allowing a decree for a greater amount of money or land than originally claimed. By consent of the parties and the leave of the Court an fiction may be amended to cover an increased claim."

It is therefore clear that the learned Judges were dealing with and had in mind that class of case in which the plaint could have been amended to include the matter the entire subject of the compromise. That however is not the case here, for any amendment of the plaint which had the effect of increasing the value of the subject-matter of the suit beyond Rs. 5000 the pecuniary limits of the Munsifs jurisdiction, would not have been permissible. Up to that amount however, notwithstanding the fact that the claim was only for Rs. 2200, the Court must be held to have had jurisdiction to pass a decree.

10. The second contention is that it was not open to the executing Court to question the jurisdiction of the Court which passed the decree. This is a matter which was the subject of a great divergence of opinion, different High Courts taking different views; and so far as this Court is concerned, it was held by a Bench in *Shambhu Singh v. Ram Prasad Singh*, 1945 ALL. L. J. 117 that an execution Court can only go behind a decree which is sent to it for execution where the decree is null and void and that fact is patent on the face of the record. Most of the earlier authorities were discussed in this case but a decision of the Privy Council in *Janendra Mohan v. Rabeendranath*, 60 Cal. 670, appears not to have been brought to the Court's attention. In *Janendra Mahan Bhaduri's* case a decree had been drawn up on an award made in certain arbitration proceedings. That decree was later sought to be executed. An objection was then taken that as the Indian Arbitration Act contains no provision for making a decree on an award the decree sought to be executed was a nullity. That objection was disallowed by the Subordinate Judge and by the District Judge on appeal but upheld by the High Court at Calcutta in second appeal. The matter then went to the Privy Council and their Lordships, agreeing with the view of the Calcutta High Court, said :

"Their Lordships agree with the view taken by the Courts in India that the decree of 14-2-1949, was passed without jurisdiction and was, therefore, incapable of execution as such."

The judgment of the Privy Council was delivered by Sir Dinshah Mulla, and that very learned Judge in his Civil P. C. Edn , 11 at p. 164 after referring to the conflicting views of the High Courts in India, says :

"The point seems to be concluded by the pronouncement by the Privy Council in Janendramohan v. Rabeendranath, that, if the Court which passed the decree had no inherent jurisdiction, the decree is incapable of execution."

The same view has been taken by the Bombay High Court which in Sadashiv Mahadeo v. Mohammad Yakub, I. I. R. (1943) Bom. 665, held that the effect of the Privy Council decision in Janendramohan's case had been to overrule the earlier decisions of the Court in which the view had been taken that an execution Court can in no circumstances enquire into the question of the jurisdiction of the Court which passed the decree. Similarly in Ram Narain v. Lala Suraj Narain, 9 Luck. 435, a Full Bench of the Oudh Chief Court held that where a Court passing a decree has no inherent jurisdiction to pass it, the decree is a mere nullity and is void, inoperative and incapable of execution. In the present case it is apparent on the face of the record that (in the view which I take) the trial Court had no jurisdiction to pass a decree for a sum exceeding Rs. 5,000; and I am of opinion therefore that it was open to the execution Court to go behind the decree. The question whether an executing Court can in other circumstances question the jurisdiction of the trial Court is not now before us, and upon it I express no opinion. Both contentions advanced on behalf of the appellant in my opinion fail, and I would therefore dismiss this appeal. As the respondent was not represented there will be no order for costs. I am free however to confess to a good deal of sympathy for the appellants to whom it is, however, presumably open to sue for the balance due to them on the basis of the compromise agreement.

Agarwala, J.

11. I agree.