

Hiralal Patni vs Sri Kali Nath on 27 January, 1955

Equivalent citations: AIR1955ALL569, AIR 1955 ALLAHABAD 569

JUDGMENT

Agarwala, J.

1. This is a judgment-debtor's appeal arising out of an objection under Section 47, Civil P. C. The facts briefly stated, are as follows:

2. There are certain mills at Agra known as the John Mills, the owners of which belonged to a well-known John family, The appellant wanted to purchase the shares of one of the members of the John family and he wrote a letter to the respondent, Sri Kalinath, on 16-5-1944 from a place called Kishangarh in Rajasthan, and addressed the letter probably to Agra where Sri Kalinath resides. In this letter he made an offer to Sri Kalinath that if he could secure the sale of the shares of the late Major A. U. John in the immoveable properties and the mills at Agra, he would pay to Sri Kalinath a lump sum of rupees one lac on the completion of the transaction.

After this, Letters of Administration were issued in respect of the property of Major A. U. John, to one Mr. Pereira of Bombay. This was on 18-1-1945. Sri Kalinath carried on negotiations for sale and fixed up the transaction with Mr. Pereira and ultimately a sale deed was executed by Mr. Pereira in favour of the appellant and a nominee of his at Bombay on 10-7-1946. It was also registered at Bombay.

Dispute arose between the parties as to the remuneration of rupees one lac which was agreed to be paid to Sri Kalinath, with the result that Sri Kalinath had to bring a suit for the recovery of the sum of rupees one lac on the original side of the Bombay High Court. This was Suit No. 3718 of 1947, In paragraph 10 of the plaint leave of the Court for the institution of the suit in the Bombay High Court was sought and it was alleged that the Court would have jurisdiction to "entertain the suit if leave were granted under Clause 12 of the Letters Patent.

The allegation in the plaint was that the negotiations for the sale were carried on at Bombay, the sale deed was executed at Bombay and the transaction was completed at Bombay. The claim to the relief was based not merely upon the agreed amount under the contract, but also by way of quantum meruit for the work done by the plaintiff for and on account of the defendant and for his labours and exertions in connection with the said transaction. The Bombay High Court granted leave under Clause 12 of the Letters Patent by its order dated 10-11-1947.

3. The appellant raised an objection to the jurisdiction of the Court to entertain the suit on the ground that no part of the cause of action had arisen within the jurisdiction of that Court. Issues were framed and one of the issues was whether the Court had jurisdiction to entertain the suit.

Another issue was whether the plaintiff was entitled to recover any sum as and by way of quantum meruit. Later on the parties agreed to refer all the matters in dispute between them to the arbitration of Mr. Pereira by an agreement of reference dated 23-7-1951.

4. On 25-7-1951 the Court made the order of reference and on 9-8-1951 Mr. Pereira gave his award, decreeing the suit for Rs. 75,000/- with costs and interest. An application to set aside the award was made by the appellant on 19-9-1951, but no objection to the jurisdiction of the Court or of the arbitrator was made. On 12-11-1951 a decree was passed by the Court in terms of the award. Against this decree the appellant filed a Letters Patent appeal without raising any question of jurisdiction of the Court to pass the decree. The appeal, however, was dismissed.

After that the decree-holder made an application to get the decree transferred for execution to the Court at Agra. The application for execution was made at Agra on 4-2-1962. Several objections were raised, but none as to the jurisdiction of the Bombay High Court to pass the decree. The objections were dismissed. There was an appeal to this Court against the dismissal of the objections. Here again no objection was taken as to the jurisdiction of the Bombay High Court to pass the decree. The appeal was dismissed by the Court.

5. When the matter went back to the Court at Agra for execution and the property was advertised for sale, it was then that the appellant raised the objection as to the jurisdiction of the Bombay High Court to pass the decree. The plea taken by the appellant was that on the face of the plaint itself no part of the cause of action had arisen within the jurisdiction of the Bombay High Court and that therefore, that Court had no jurisdiction to grant leave under Clause 12 of the Letters Patent.

The reasoning of the appellant was that the contract between the parties was merely to negotiate and fix up the transaction of the sale and that the remuneration payable to the respondent did not depend upon the completion of the sale deed, and that as such since the offer and the acceptance were both made outside the jurisdiction of the Bombay High Court, no part of the cause of action arose within the jurisdiction of that Court.

6. The Court below dismissed the objection on the ground that it was not open to the appellant to raise the plea as to the jurisdiction of the Bombay High Court at that stage and that the execution Court could not go behind the decree and must execute it as it finds it. Against this order the appellant-judgment-debtor has come up to this Court in appeal.

7. As the relevant documents were not filed by the parties, in the Court below, we permitted them to file certified copies of the documents on which they relied. Documents were taken on the record with the consent of both parties and the formal proof of those documents was dispensed with with their consent.

8. Learned counsel for the appellant has strongly urged; first that the Bombay High Court had no jurisdiction to grant leave under Clause 12 of the Letters Patent of that Court because no part of the cause of action arose within the jurisdiction of that Court; and secondly, that since the lack of jurisdiction is patent upon the face of the plaint itself, the execution Court at Agra was bound to

refuse execution of a decree which was without jurisdiction.

9. It is not necessary for us to determine the question as to whether on the face of the plaint any part of the cause of action arose within the jurisdiction of the Bombay High Court, for we are satisfied, for more reasons than one, that this plea cannot be entertained by the execution Court at Agra.

10. A Court's jurisdiction may depend on several factors:

- (i) the person of the defendant,
- (ii) valuation of the subject-matter of the dispute,
- (iii) the place where the cause of action in whole or in part arose or where the defendant resides or carries on business,
- (iv) the nature of the subject-matter of the dispute,
- (v) other conditions precedent prescribed by law to the exercise of jurisdiction by a Court (not falling within any of the above four conditions),
- (vi) power of the Court to pass a particular order,
- (vii) interest of the Court in the subject-matter of the dispute or in the parties.

11. The general rule is that if the Court rendering a judgment sueters from want of jurisdiction in respect of any one out of the above seven matters its judgment is a nullity and may be ignored, Venkatarama Ayyar, J. in delivering the judgment of the Supreme Court in "Kransingh v. Chaman Paswan", AIR 1954 S.C. 340 (A) observed:

"It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is 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 any decree, and such a defect cannot be cured even by consent of parties."

But this general rule is subject to well defined exceptions. Two of these exceptions were dealt with in the aforesaid case by the Supreme Court itself.

12. Section 11, Suits Valuation Act enacts that an objection that a Court which had no jurisdiction over a suit or appeal had exercised it by reason of over-valuation or under-valuation, should not be entertained by an appellate Court, except as provided in the section. To the same effect is the provision of Section 21, C. P. C. which 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.

After, pointing out these provisions, Venkatarama Ayyar J. in the above case observed that the policy underlying Sections 21, Civil P. C. and 11, 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.

But it will be noted that Sections 21, Civil P. C. and 11 Suits Valuation Act relate to appeals and revisions in the same proceeding in which the judgment was rendered and do not refer to execution proceedings or collateral proceedings. So far as the collateral proceedings are concerned, a stranger to the previous litigation in which the judgment was rendered is not bound by the decree which was passed by a Court which suffered from a territorial or pecuniary defect of jurisdiction, vide '*Rajlakshmi Dasee v. Katyayani Dasee*', 38 Cal 639 (B).

It may also be observed that the pecuniary defect of jurisdiction which falls under Section 11 Suits Valuation Act and which can be waived is a defect of under-valuation or over-valuation of the subject-matter of the dispute, but if there is no under-valuation or over-valuation and if on the valuation given in the plaint itself, the suit was not entertainable by a particular Court, and the Court renders judgment by assuming jurisdiction, the judgment rendered by it will be treated as a nullity, vide '*Shidappa Venkatrao v. Rachappa Subrao*', 36 Bom 628 (C), affirmed by the Privy Council in '*Rachappa Subrao v. Shidappa Venkatrao*', AIR 1918 PC 188 (D).

But when the matter is between the same parties, the principle underlying Sections 11, Suits Valuation Act and 21, Civil P. C. has been applied to execution and collateral proceedings as well, on the ground that these objections are technical and are not defects in the inherent jurisdiction of the Court but are mere matters of procedure and can be waived.

13. In *Clarke v. Knowles*, 1918-1 KB 128 at p. 134 (E) Lush J. while dealing with Section 74 County Courts Act, 1888, which provided that every action or matter may be commenced by the leave of the Judge or Registrar in the Court in the district in which the defendant dwells or carries on business, except in two cases, one of which was that the plaintiff may, by leave of the Registrar, bring the action in a district in which part of the cause of action arose, observed that "the objection that no part of the cause of action arose in the district in which the action is brought is one of procedure rather than of jurisdiction."

14. In *Musa Ji Lukman Ji v. Durga Das*, AIR 1946 Lah 57 (F) Mahajan J., as he then was, observed that "the principle that parties cannot by consent confer jurisdiction on Court or deprive Court of jurisdiction only applies to cases of inherent jurisdiction of a Court over the subject-matter of a suit, but the question of territorial jurisdiction of a Court is not a question of inherent jurisdiction. An objection as regards the territorial jurisdiction of a Court can be waived by a party and if it is not raised at earlier stages of a case it cannot be raised in a Court of appeal. The judgment or decree of a Court having no territorial jurisdiction over the subject-matter of a suit is not a nullity but is a

judgment of a competent Court."

To the same effect are the observations of the Full Bench of the Nagpur High Court, vide 'Firm Jagni Ram Prem Sukh v. Ganpati Damaji, AIR 1941 Nag 36 (C). Two of the questions referred to the Full Bench were :

"Can the rule limiting the territorial jurisdiction of Courts to property situate within their territorial limits be validly waived by submission?"

and Is the rule embodied in Section 21, Civil P. C., limited to appeals and revisions in the same suit or does it also apply to separate suits and to execution proceedings in the same suit as well?" and the answer of the majority of the Full Bench was that the rule limiting the territorial jurisdiction of Courts to property situate within their territorial limits can be validly waived by submission and that the rule embodied in Section 21 C. P. C. is not limited to appeals and revisions in the same suit. Stone C. J. was of opinion that ;

"(1) A defect in jurisdiction may be inherent or procedural. The former cannot be waived the latter can."

"(2) If a defect in jurisdiction is procedural and is waived, whether by absence of objection or otherwise, up to judgment an objection cannot be taken in execution."

The view of this Court in Raghubir Saran v. Hori Lal AIR 1931 All 454 (H) that where a decree has been passed by a Court having no territorial jurisdiction over the matter in controversy, the defendant is entitled to maintain an independent suit for its avoidance has been recently dissented from by the Supreme Court in -- 'Mohanlal Goenkar v. Benoy Kishna Mukerjee', AIR 1953 SC 65 (I) where Ghulam Hasan, J. after pointing out the distinction between inherent lack of jurisdiction of which an example was the case of -- 'Lakhmichand v. Madho Rao AIR 1930 All 681 (O) where a suit had been filed without obtaining a certificate from the Collector as required by the Pensions Act and the case of lack of territorial jurisdiction of the Court passing the decree, observed that though the former could not be waived, the latter could be waived, and that the objection would be barred by the principle of 'res judicata', embodied in Section 11, read with Expl. 4. C. P. C.

15. It may here be observed that the objection that the Bombay High Court had no territorial jurisdiction to pass the decree must be deemed to have been impliedly decided against the appellant, and as such the decision would be binding upon the appellant under Section 11, read with Expln. 4, Civil P. C.

16. Section 44, Evidence Act has no application to an objection based on the ground of lack of territorial jurisdiction. The section runs as follows, "44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under Section 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion."

The words "by a Court not competent to deliver it" refer to the inherent incompetency of the Court and not to a lack of jurisdiction which can be waived, such as want of territorial jurisdiction. Although Section 44, Evidence Act is not referred to in the Supreme Court judgment above-mentioned, it must, be taken that the decision of the Supreme Court implies that Section 44, Evidence Act refers to the lack of inherent jurisdiction in the Court and not to its territorial jurisdiction which can be waived.

17. It has been held that where leave under Clause 12 of the Letters Patent is granted and a decree is passed in favour of the plaintiff, the decree cannot be questioned in the execution Court without the leave being revoked in a proper proceeding, vide '*Amiya Probha v. Jyoti Prakash*', AIR 1947 Cal 364 (K).

18. It was urged that the rule that an objection as to the territorial jurisdiction of the Court will not be entertained by the execution Court, does not apply to lack of territorial jurisdiction in the Court passing the decree when the defect is apparent upon the face of the plaint. We do not think that the contention is sound. Whether the defect is apparent on the face of the plaint or, can be made to appear after evidence has been adduced is wholly immaterial. It was open to the party against whom the decree has been passed to object to the jurisdiction of the Court to entertain the suit before the decree was passed.

If the objection was raised and was decided against him, the decision is binding upon him in subsequent proceedings by virtue of Section 11, C. P. C. If on the other hand the objection was not raised, the very fact that the decree has been passed by the Court implies that the Court held that it had jurisdiction to pass the decree, and, therefore, Explan. 4 of Section 11 comes into play and the decree cannot be challenged on that ground, and the decision would again be binding in subsequent proceedings.

19. The second ground on which the objection of the appellant is not maintainable is that the decree passed by the Bombay High Court has to be deemed to be valid, even though the Court might have had no jurisdiction to pass it, because it is so provided in the Validating Act 5 of 1936. The words 'passed' or 'made' in Section 2 of that Act cannot necessarily be confined to decrees passed or orders made before the Act was passed. If that had been the intention the Legislature could have certainly said so in clear words by the addition of the word 'already' before the word 'passed'. The presumption always is that a statute operates upon facts and events which happen or come into existence after the coming into force of the enactment, vide *Bourke v. Nutt*, (1894) 1 Q.B. 725 (L), In our opinion Act 5 of 1936 embraces within its scope not only decrees which had already been passed by the Courts mentioned in the Act, but also future decrees or orders that might be passed or made thereafter.

20. In this connection it was urged by learned counsel for the appellant that since the matter was referred to an arbitrator, it could not be said that a "decree" was passed under Clause 12 of the Letters Patent of the Bombay High Court within the meaning of Section 52 (Section 2) of the Act, because that section contemplates a decree passed by that Court on a trial held by itself and not on a trial held by an arbitrator. This argument has no force. The trial by an arbitrator in a pending suit,

when the reference is made by the Court, is a procedure provided by law for the decision of a suit. The decision of the arbitrator, after certain proceedings taken in the Court itself is embodied in a decree of the Court. The decree so passed is a decree of the Court and not of the arbitrator.

21. It was urged that the decree is initiated because a question of jurisdiction could not be referred to arbitration. This plea again is unsound. In *Mohammad Aijaz Ali Khan v. Basantrai*, AIR 1932 All 665 (M) it was held that a question of jurisdiction could be referred to arbitration.

22. It was urged that the award could not be challenged by means of objections to the award in the Court in which the award was filed, because, of the observations of the Privy Council in *Chabba Lal v. Kallu Lal*, AIR 1946 P. C. 72 (N) but such objections could have been raised in the appeal against the decree passed by the Court if the decree was without jurisdiction.

As observed by the Privy Council in the same case, the award could not be questioned in any other Court except in the Court in which it was filed under the provisions of the Arbitration Act. The award having been affirmed even in appeal by the Letters Patent Bench of the Bombay High Court, the decision is binding upon the appellant and can no longer be questioned in execution.

23. For all these reasons we hold that the order of the Court below was correct, and consequently we dismiss this appeal with costs. The stay order is discharged. The record of the case shall be sent back to the Court below at an early date.