Kumar Kant Narain Singh vs Chandrabhal Singh on 21 December, 1950

Equivalent citations: AIR1951ALL603, AIR 1951 ALLAHABAD 603

JUDGMENT

Bind Basni Prasad, J.

1. This is a revision from an order passed by the learned Civil Judge of Banaras refusing permission to the appct. to sue in forma pauperis.

2. The dispute relates to the Banaras State. His Highness Captain Maharaja Sir Aditya Narain Singh was the last ruler of that State. The present ruler of the State is Maharaja Vibhuti Narain Singh. According to the opposite party, Maharaja Sir Aditya Narain Singh adopted him sometime in 1934. On 14-12-1934, this adoption was recognised & confirmed by the Govt. of India. Prior to his adoption, Maharaja Vibhuti Narain Singh's name was Babu Chandrabhal Singh & it is by that name that the appct. has arrayed him as a party in the pauper proceedings as well as in the suit. He assails the adoption & contends that he is the true heir to the Banaras State & as such entitled to all the properties which at present vest in the opposite party as the alleged ruler of that State. He proposes to sue the opposite party for the possession of those properties & for rupees thirty lacs as mesne profits He alleges that he is not possessed of sufficient means to enable him to pay the requisite court-fees for the plaint & so he applied for permission to sue in forma pauperis

3. The opposite party contested this appln., inter alia, on the ground that without the permission of the President, as contemplated by Section 86, C. P. C., neither the appln. for permission to sue as a pauper nor the suit was maintainable against him. Clause (d) of Rule 5 of Order 33, C. P. C., provides that the Ct. shall reject an appln. for permission to sue as a pauper where the allegations do not show a cause of action. This provision is relied upon by the opposite party & he contends that the appln. should be rejected on this ground.

4. Learned Civil Judge accepted the opposite party's contention & has dismissed the appln. for permission to sue as a pauper.

5. The first contention on behalf of the appct. is that Section 86 applied only to suits & that it does not apply to an appln. for permission to sue in forma pauperis. It is argued also that by virtue of Section 141, C P. C., the provisions of Order 33 of the Code do not apply to pauper proceedings. In the F. B. case of Dehra Dun Mussorie Electric Tramway Co., Ltd. v. President, Council of Regency, Nabha State, 58 ALL. 742 : (A. I. R. (23) 1936 ALL. 826 F. B.), the conjoint effect of Sections 86 & 141, C. P. C., was considered. The question in that case was whether Section 86, C. P. C., applies to proceedings under Sections 184, 186 & 187, Companies Act. It was held:

> "Section 86, Civil P. C., confers a special privilege on Sovereign Princes & Ruling Chiefs which entitles them to defend a suit on the mere ground that the previous consent of the Governor-General in Council has not been obtained. The Ct., therefore, under Sections 186 & 187, Companies Act, cannot have jurisdiction to override the provisions of Section 86, C. P. C., & make an order for payment against a Sovereign Prince or Ruling Chief in the absence of the previous consent of the Governor-General in Council. No jurisdiction exists in a British Indian Ct. to enforce any personal liability against a Sovereign Prince or Ruling Chief, unless the case can be brought within the scope of Section 86, C. P.C..... Therefore, no order under Section 186 or 187, Companies Act, could be passed at all.
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> Proceedings under Section 186 or Section 187, Companies Act, are proceedings in a Ct. of Civil jurisdiction to which Section 141, C. P.C., is applicable, & therefore, Section 86 is also applicable."

6. On a parity of reasoning, Order 33 would be applicable even to pauper proceedings. In suits by paupers proceedings under Order 33 are preliminary to the institution of the suit by him. It is the first step of his contemplated suit, the object of which is to impose a personal liability upon the deft. I have no doubt in my mind that the provisions of Order 33 are applicable to pauper proceedings just in the same manner as to a suit itself. When these provisions have been applied even to proceedings under Sections 186 & 187, Companies Act, which are not suits, there can be no doubt that they would apply with greater force to pauper proceedings which are a step towards the institution of a suit by a pauper.

7. Learned counsel for the appct. relies upon Madan Lal v. Reza Ali, A. I. R. (27) 1940 Cal. 244 : (I. L. R. (1940) 1 Cal. 344) in which it was held that by the combined, operation of Section 141, C. P. C. & Section 5, Provincial Insolvency Act, Section 86 cannot be applied to insolvency proceedings. The facts of that case are distinguishable. It was a case under the Insolvency Act & the principles enunciated in it are not applicable to the present case.

8. The second ground is that the question whether or not the suit is barred by Section 86 of the Code is one which should not be considered in the pauper proceedings because it is a plea in bar & in this connection reliance is placed upon certain decided cases :

9. The first case relied upon is Bhajja v. Muhammad Said Khan, 54 ALL. 525: (A. I. R. (19) 1932 ALL. 543). In that case an appln. for permission to sue as a pauper was rejected by the trial Ct. on the ground that the claim, if entertained, would be barred by time. It was held :

> "Order 33, Rule 5 (d), directs the Ct. to reject an appln. for permission to sue as a pauper where the allegations do not show a cause of action. But the question whether the prescribed period of limitation from the date of the cause of action has or has not expired is obviously not a part of the cause of action of a pltf. When a suit is barred by time it cannot be said that the plaint does not disclose a cause of action but lather that it appears that the claim baaed on the cause of action disclosed by the plaint is

> barred by the law of limitation. A pltf. whose right has been infringed may well have a cause of action against the deft., & yet his right to sue in a Ct. of law may have become barred by time after a fixed period. 'Cause of action,' therefore, does not mean or require a claim which is still enforceable under the law of limitation."

10. The case is distinguishable. There is no question of limitation here. The expression "cause of action" has nowhere been defined in the Code. In Read v. Brown (1889) 22 Q. B. D. 128 : (53 L.J.Q.B. 120) Lord Esher, M. R., quoted the definition of "cause of action" as given in Cooke v. Gill, (1873) L. R. 8 C.P. 107: (42 L. J. C. P. 98), with approval & laid down that "cause of action" means "every fact which it would be necessary for the pltf. to prove, if traversed in order to support his right to the judgment of the Ct. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to prove."

Literally, of course, "cause of action" means a cause which gives rise to an action. A right to sue accrues when a right has been infringed & there is a remedy recognised by law. In the present case, assuming that the appct's right was infringed by the opposite party, he cannot have a justiciable remedy in a Ct. of law unless he obtains the permission of the prescribed authority under Section 86, C. P. C. Such a permission is one of the essential facts constituting the cause of action or the right of suit in the present case. Bhajja's case, (54 ALL. 525: A.I.R. (19) 1932 ALL. 543), therefore, far from supporting the appct.'s contention goes against him.

11. In Nawab Bahadur of Murshidabad v. Harish Chandra, 11 I. C. 55 : (13 C. L. J. 593) it was held :

> "Before an appln. for leave to sue in forma pauperis is granted, it is the duty of the Ct. to satisfy itself that the allegations of the petnr. do show a cause of action; & the allegations are not only those made in the plaint, but also include those made in the examination of the appct. before the Ct.
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> It is open to the H. C. to determine at the preliminary stage whether the pltf. is or is not entitled to succeed on the basis of the alleged cause of action."

12. In Jogendra Narayan v. Durga Charan, 46 Cal. 651 : (A. I. R. (6) 1919 Cal. 385) while it was observed that it is not open to a Ct. to take evidence on the merits of the claim it is fully justified in examining the appct. & in considering on the basis of his statement & the allegations in the plaint whether or not any cause of action is disclosed.

13. Reference may also be made to Mt Hira Dei v. Gokul Chand, A.I.R. (29) 1942 Oudh 361: (199 I. C. 364) in which it was held that the Ct. in pauper proceedings can consider the merits of the claim also for determining the existence of the cause of action on the basis of the allegations in the plaint & the examination of the appct. though no elaborate evidence should be taken on the point.

14. If on the allegations in the plaint & the statement of the appct., if any, it is plain that the appct. has no right of suit the appln. for permission to sue as a pauper must be rejected under Rule 5 (d) of Order 33, C. P. C. It is admitted by the appct. that he has not obtained any permission as

contemplated by Section 86 of the Code. In the absence of such a permission he has no right of suit & so no cause of action. Order 33, Rule 7 (s) provides :

> "The Court shall also hear any arguments which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in Rule 5."

In the present case learned Civil Judge has acted according to this provision.

15. The third point taken is that the opposite party is not a Sovereign Prince or a Ruling Chief within the meaning of Section 86 of the Code. A further argument is that, at any rate, after the merger of the State with Uttar Pradesh the opposite party, even if he possessed any such status, has lost it. Reliance is placed upon Kambhai Ajubhai v. Himatsangji, 8 Bom. 415. It is contended that it is for this Ct. to decide whether or not the opposite party is a Sovereign Prince or a Ruling Chief. I am unable to agree with this contention.

16. So far as the Banaras State is concerned it may be stated that on 1-4-1911, the powers of a Ruling Chief were conferred upon the late Maharaja Sir Prabhu Narain Singh & since then he & his successors have enjoyed that Status. The ruling in Kambhai Ajubhai v. Himatsangji, 8 Bom. 415 no longer holds the field. In Duff Development Co. Ltd. v. Govt. of Kelantan, (1924) A. C. 797 : (93 L. J. Ch. 343) the House of Lords held :

> "It is the settled practice of the Ct to take the judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State; & the information so received is conclusive.
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> A Govt. recognized as sovereign by His Majesty's Govt. is not the less exempt from the jurisdiction of our Cts. because it has agreed to restrictions on the exercise of its sovereign rights."

This case was followed by this Ct. in Bishwanath v. Commr. of Income-tax, 1942 A. L. J. 543 : (A. I. R. (29) 1942 ALL 295) in which this Ct. inquired from the Political Department of the Govt. of India whether His Highness the Maharaja of Banaras was recognised by the Govt. of India as the Ruler of a sovereign State. The Secretary to His Excellency the Crown Representative sent the following certificate as regards the status of the Maharaja :

> "Captain His late Highness Maharaja Sir Aditya Narain Singh Bahadur, K. C. S. I., Maharaja of Banaras, has been recognised by His Majesty as the Ruler of the Indian State of Banaras. His Majesty's Govt. did not regard or treat His Highness or his subjects as subjects of His Majesty & they did not regard o treat Banaras State as being part of British India or of His Majesty's dominions Banaras is an Indian State & the late Maharaja was a Ruler as defined in Sub-section (1) of Section 311, Government of India Act, 1935."

17. Their Lordships held in Bishwanath Singh's case, (1942 A. L. J. 543 : A. I. R. (29) 1942 ALL. 295) that the Maharaja of Banaras was, in regard to proceedings in the civil Cts. in India, covered by the provisions of Sections 85 & 86, C. P. C. In face of this authority, it is not open to the appct. to contend that the predecessors of the opposite party never held the status of a Ruling Chief. Nor is it for the Cts. to determine this point. The status conferred upon him by the Govt. of India is conclusive.

18. It appears that on 15-8-1947, an instrument of accession was executed under the provisions of the Govt. of India Act, 1935, as adapted under the Independence of India Act. Paragraph 8 of that instrument runs as follows :

> "Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State ....."

It is clear from the above that even after the accession, the opposite party continues to have the status of the Ruling Chief.

19. On 5-9-1949, the merger agreement was executed by the opposite party. Articles 4 & 5 of the agreement are important. They are as follows :

> "4. The Maharaja & his family shall be entitled to all personal privileges enjoyed by them whether within or outside the territories of the State, immediately before 15 8 1947.
>
> 5. The Dominion Govt. guarantees the succession, according to law & custom to the gaddi of the State & to the Maharaja's personal rights, privileges, dignities & titles."

These guarantees have been given a statutory effect in Article 363, Constitution of India, which runs as follows :

> "363 (1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143 neither the Supreme Court nor any other Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.
>
> (2) In this Article :

(a) 'Indian State' Means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) 'Ruler' includes the Prince, Chief, or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State."

20. Section 86, C. P. C. is still on the Statute book. With the introduction of the New Constitution this section has not been repealed under Article 372.

21. The position thus is that the opposite party has the status of a Ruling Chief & the privilege under Section 86 of the Code is still available to him. His succession to the gaddi of theft State has been guaranteed by the Constitution.

22. The net result is that the appct. has no right of suit as against the opposite party in the absence of permission under Section 86 of the Code & in the face of the guarantee by Clause 5 of the Merger Agreement.

23. The learned civil Judge was quite right in rejecting the appln. under Rule 5 (d) of Order 33.

24. The revision fails & I would dismiss it with costs.

Sankar Saran J.

25. I agree.