Supreme Court of India
Koopilan Uneen'S Daughter ... vs Koopilan Uneen'S Son Kuntalan ... on 6 August, 1981
Equivalent citations: 1981 AIR 1683, 1982 SCR (1) 183
Author: A Koshal
Bench: Koshal, A.D.

PETITIONER:
KOOPILAN UNEEN'S DAUGHTER PATHUMMA & ORS.

Vs.

RESPONDENT:
KOOPILAN UNEEN'S SON KUNTALAN KUTTY DEAD BY LRS. & ORS,

DATE OF JUDGMENT06/08/1981

BENCH:
KOSHAL, A.D.
BENCH:
KOSHAL, A.D.
ERADI, V. BALAKRISHNA (J)
MISRA, R.B. (J)

CITATION:
1981 AIR 1683 1982 SCR (1) 183
1981 SCC (3) 589 1981 SCALE (3)1240

ACT:
Venue-Objection to the place of suing to be entertained by Appellate or Revisional Court, condition to be fulfilled, explained-Code of Civil Procedure, section 21(1).

HEADNOTE:
In a suit for partition of immovable property filed in the Court of Munsiff Parappanangadi in the year 1938 that Court passed a preliminary decree for partition on the 18th February, 1940. The parties to the suit took no further interest in the matter for more than two decades. In the meantime according to the order of the High Court of Kerala dated December 22, 1956 refining the territorial limits of the Courts of Munsiffs functioning in district Calicut, of which the Court of Munsiff at Parappanangadi was one, the suit property came under the territorial jurisdiction of the Munsiff's Court at Manjeri. The plaintiff on the 18th January, 1966 filed an application praying that a final decree the suit be passed. Defendant No. 12 immediately took an objection that the Manjeri Court had no territorial jurisdiction to hear the application and that the matter should have been agitated in the Court of Munsiff at Parappanagadi. The objection was overruled by the Manjeri

Court which proceeded to partition the property metes and bounds and ultimately passed a final decree in that behalf on 9th July, 1968. An appeal filed against the final decree by defendant No. 12 failed, but he succeeded before learned single Judge of the Kerala High Court who ruled that it was only the Parappanangadi Court that had the territorial jurisdiction to entertain the application and the final decree was set aside. Hence the appeal by special leave.

Allowing the appeal, the Court

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HELD: 1:1. In order that an objection to the place of suing may be entertained by any appellate or revisional Court, the fulfilment of the following three conditions is essential, according to the provisions contained in sub-section (1) of section 21 of the Code of Civil Procedure: (i) The objection was taken in the Court of first instance; (ii) it was taken at the earliest possible opportunity and in case where issues are settled, at or before such settlement; (iii) there has been a consequent failure of justice. [185 F-G]

1:2. In the present case conditions Nos. 1 and 2 are no doubt fully satisfied; but before the two appellate Courts below could allow the objection to be taken, it was further necessary that a case of failure of justice on account of the place suing having been wrongly selected was made out. Since the respondents failed to point out even before this Court that a failure of justice had occurred by reason

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of Manjeri having been chosen as the place of suing, the provisions of sub-section (1) of section 21 of the Code of Civil Procedure made it imperative for the District Court and the High Court not to entertain the objection, whether or not it was otherwise well founded. [185 H, 186 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 564 of 1970.

Appeal by special leave from the judgment and decree dated the 3rd April, 1969 of the Kerala High Court in S.A. No. 266 of 1968.

A.S. Nambiyar for the Appellants.

K.T. Harindra Nath, N. Sudhakaran and M.R.K. Pillai for Respondent No. 1.

The Judgment of the Court was delivered by KOSHAL, J. This appeal by special leave is directed against the judgment dated 3rd of April, 1969 of the High Court of Kerala rendered in a Second Appeal arising from a suit for partition of immovable property.

2. The suit was filed in the Court of Munsiff at Parappanangadi in the year 1938. That Court passed a preliminary decree for partition on the 18th February, 1940 and thereafter the parties took no further interest in the matter for more than two decades. In the mean time the High Court passed an order dated December 22, 1956 redefining the territorial limits of the Courts of Munsiffs functioning in district Calicut, of which the Court of Munsiff at Parappanangadi was one. According to that order the territory in which the property disputed in the suit was situated, came under the territorial jurisdiction of the Munsiff's Court at Manjeri and it was in that Court that the plaintiff filed, on the 18th January, 1966 an application (I.A. No. 109 of 1966) praying that a final decree in the suit be passed. Defendant No. 12 (who is now dead and is represented in this appeal by respondents No. 1 and Ors.) immediately took an objection that the Manjeri Court had no territorial jurisdiction to hear the application and that the matter should have been agitated in the Court of Munsiff at Parappananagadi. The objection was overruled by the Manjeri Court which proceeded to partition the property by metes and bounds and ultimately passed a final decree in that behalf on 9th July, 1968. An appeal was filed against final decree by defendant No. 12 in the Court of District Judge before whom the objection to the jurisdiction assumed by the Manjeri Court was again taken but was repelled with the result that the final decree was confirmed.

The third round of litigation in regard to question of jurisdiction took place in the High Court wherein a learned single Judge upheld the objection and ruled that it was only the Parappanangadi Court that had the territorial jurisdiction to entertain the application praying for final decree and that the assumption of such jurisdiction by the Manjeri Court was not justified. The objection being upheld, the final decree was set aside and there was thus no occasion for the High Court to decide the other points arising in this appeal.

3. We have heard learned counsel for the parties on the question of jurisdiction. An unfortunate aspect of this litigation has been that although that question has been agitated already in three courts and has been bone of contention between that parties for more than a decade, the real provision of law which clinches it was never put forward on behalf of the appellant before us nor was adverted to by the learned District Judge or the High Court. That provision is contained in sub-section (1) of Section 21 of the Code of Civil Procedure which runs thus:

> "21 (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

In order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential:

> (1) The objection was taken in the Court of first instance.
>
> (2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.

(3) There has been a consequent failure of justice.

All these three conditions must co-exist. Now in the present case conditions Nos. 1 and 2 are no doubt fully satisfied; but then before the two appellate Courts below could allow the objection to be taken, it was further necessary that a case of failure of justice on account of the place of suing having been wrongly selected was made out. Not only was no attention paid to this aspect of the matter but no material exists on the record from which such failure of justice may be inferred. We called upon learned counsel for the contesting respondents to point out to us even at this stage any reason why we should hold that a failure of justice had occurred by reason of Manjeri having been chosen as the place of suing but he was unable to put forward any. In this view of the matter we must hold that the provisions of sub- section above exracted made it imperative for the District Court and the High Court not to entertain the objection whether or not it was otherwise well founded. We, therefore, refrain from going into the question of the correctness of finding arrived at by the High Court that the Manjeri Court had territorial jurisdiction to take cognizance of the application praying for final decree.

4. In the result we accept the appeal, set aside the judgment of the High Court and remand the case back to it for deciding on merits the appeal which culminated in that judgment. As the proceedings for the final decree have been pending since 1966, we further direct that the High Court shall decide the appeal last mentioned at the earliest possible and, in any case, within three months from the receipt of the records from this Court. The Registry shall take immediate steps to have the records despatched to the High Court. There will be no order as to costs.

S.R. Appeal allowed.