

Rakesh Kumar vs Saraswati Devi on 1 April, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 14th November, 2024

Pronounced on: 01st April, 2025

CM(M) 3824/2024

RAKESH KUMAR

.....Petitioner

Through: Mr. Nipun Arora, Ms. Ananya,
Mr. Aman Singh and Mr.
Shivender Gupta, Advocates.

versus

SARASWATI DEVI

.....Respondent

Through: Ms. Vibha Walia, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. Present petition has been filed under Article 227 of the Constitution of India, challenging the order dated 14.05.2024, passed by the learned trial court in Civil Suit No. 267/2023, titled "Saraswati Devi Vs. Rakesh Kumar", whereby, the application of the petitioner herein (defendant before the trial court) filed under Order 7 Rule 10 of the Code of Civil Procedure, 1860 ["Code"] was dismissed. Petitioner herein, has prayed for setting aside the impugned order filed by the trial court mainly on the following two grounds:-

(i) firstly, that the impugned order itself records that trial court does not have the jurisdiction over the suit as undisputedly, the suit properties are not located within the territories of East District, however, the application of the petitioner has been dismissed by the trial court erroneously relying upon Section 21 of the Code and construing it as a bar upon the trial court, even though, Section 21 only applies to appellate proceedings, and

(ii) secondly, the application of the petitioner has been erroneously dismissed by the learned trial on the ground that objections had been raised at a belated stage, without appreciating the fact that power under Order 7 Rule 11 can be exercised at any stage.

2. The facts relevant to the present petition are that respondent (plaintiff before the trial court) had executed two registered gift deeds dated 21.11.2012 and 04.12.2012 in favour of the petitioner. The said deeds were executed and duly registered with the Sub Registrar on 21.11.2012 and 04.12.2012. The said gift deeds pertain to the properties situated at IX/214 and IX/215, Saraswati Bhandar, Ghas Mandi, Gandhi Nagar. The suit has been filed by the respondent, inter alia, seeking cancellation of the said two registered gift deeds dated 21.11.2012 and 04.12.2012, executed by her in favour of the petitioner, alleging that her signatures have been obtained on the gift deeds by

misrepresenting the nature of documents to her.

3. The only dispute pertains to the subject properties within the jurisdiction of Shahdara District, which the petitioner contends fall outside the territorial jurisdiction of the learned trial court. Petitioner raised objection before the trial court regarding the lack of jurisdiction by filing an application under Order 7 Rule 11 of the Code. However, the learned trial court vide impugned order, rejected the said contention of the petitioner and passed the impugned order. Aggrieved by the same, petitioner has approached this Court seeking relief.

4. Learned counsel has relied on the statutory provisions governing the territorial jurisdiction specifically Section 16 of the Code, which mandates that suits relating to immovable property must be instituted in the court within whose jurisdiction the property is situated. Section 16 of the Code reads as under:-

"Section 16. Suits to be instituted where subject-matter situate subject to the pecuniary or other limitations prescribed by any law, suits;

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) or the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain."

5. Section 16 recognizes well established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situated has no power to deal with and decide the rights or interests in such property. Thus, in other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment.

6. It is contended that trial court's jurisdiction is restricted through properties situated within the territorial limits defined under the law but the subject property admittedly lies beyond those limits. Learned counsel for the petitioner further contends that the trial court's assumption of jurisdiction has caused great prejudice to the petitioner, as the proceedings before a court lacking jurisdiction are inherently null and void. In support of his contentions, reliance has been placed on the Hon'ble Supreme Court in *Kiran Singh & Ors. Vs. Chaman Paswan & Ors.* AIR 1954 SC 340 & *Harshad Chiman Lal Modi Vs. DLF Universal Ltd. & Anr.* (2005) 7 SCC 791 & *Auto Engineering Works Vs. Bansal Trading Company & Ors.* (2001) 10 SCC 630.

7. The learned counsel for respondent, in rebuttal, supports the order passed by the learned trial court, arguing that the trial court was justified in entertaining the matter. It is submitted that the petitioner's objection regarding jurisdiction is belated and thus misconceived and therefore the impugned order has been passed in accordance with law. Learned counsel for the respondent has further argued that petition is an attempt to delay the proceedings.

8. The scope of supervisory jurisdiction under Article 227 of the Constitution of India is limited. The Supreme Court, recently in *M/s. Puri Investments Vs. M/s. Young Friends & Co. & Ors.*, Civil Appeal No. 1609/2022, decided on 23.02.2022, has held that the High Court while exercising powers of a supervisory court under Article 227 of the Constitution of India cannot act as an appellate body to re-appreciate evidence. The High Court, under Article 227, can interfere with the decisions of a fact finding forum only when findings are perverse i.e. A. Erroneous on account of non-consideration of material evidence;

B. Being conclusions which are contrary to the evidence, or C. Based on inferences that are impermissible in law.

9. In the light of scope of supervisory jurisdiction of this Court, I have gone through the entire record. Further, I have also considered the submissions made by the learned counsels for the parties.

10. No doubt, the question of jurisdiction is a fundamental issue which goes to the root of the matter. In the present case, it is evident from the impugned order of the trial court that subject properties are situated outside the territorial jurisdiction of the trial court. The finding of the trial court in this regard is extracted below:-

"The plaintiff's counsel argues that this court holds jurisdiction since the cause of action originates within its territorial boundaries, given that the gift deeds were executed and registered within its jurisdictional limits. Conversely, the defendant's counsel contends that this court lacks territorial jurisdiction because the properties in question are situated outside the court's jurisdictional area. In my assessment, Section 16 of the Civil Procedure Code (CPC) would be applicable in the present case, as the gift deeds pertain to immovable properties.

Section 20 of the CPC, which addresses the cause of action, is not applicable here, as Section 20 is subordinate to Section 16. When a case falls under Section 16, Section 20 does not apply. Therefore, it is my opinion that the subject matter of the suit does not fall within the territorial jurisdiction of this court."

11. Once having concluded that the subject properties are situated outside its territorial jurisdiction, the trial court while relying on Section 21 of the Code, has clearly erred in assuming jurisdiction over the matter, stating that the challenge to the jurisdiction had not been taken at the earliest opportunity. Even though, the said provision only applies to the proceedings before the appellate or revisional court and not when the issue of jurisdiction is raised before the trial court, which is contrary to the clear mandate of law.

12. The law is quite well settled. The Hon'ble Supreme Court in *Kiran Singh & Ors. Vs. Chaman Paswan & Ors.* (supra), has categorically held that any decree passed by the court without jurisdiction is nullity and can be challenged at any stage. Similarly, In *Harshad Chiman Lal Modi Vs. DLF Universal Ltd.* (supra), it was held that a court cannot assume jurisdiction over a matter outside its territorial limits. These judgments referred to by the learned counsel squarely apply to the facts of the present case.

13. In view of the above, the impugned order dated 14.05.2024, passed by the learned trial court, is liable to be set aside.

14. Order 7 Rule 11 of the Code provides that the plaint, at any stage of the suit, be returned to be presented to the Court in which the suit should have been instituted. Upon return of the plaint under Order 7 Rule 10 of the Code on its presentation before the appropriate court of jurisdiction, the suit would be treated as a fresh suit and would have to start de novo and all proceedings before the earlier court would be rendered a nullity.

15. In order to avoid such consequences of loss of all proceedings that may have taken place before the earlier court, either of the parties may take recourse to Section 24 of the Code, which empowers the High Court or the District Court, on its own motion or otherwise to transfer any suit, appeal or other proceedings pending before it for trial or disposal to any court subordinate to it, or withdraw any suit, appeal or proceeding pending in any court subordinate to and inter alia transfer the same for trial for disposal to any court subordinate to it and competent to try and dispose of the same. Sub Section 5 of Section 24 states that such power of transfer can be exercised to transfer the suit or proceeding from a court which has no jurisdiction to try it.

16. Learned Single Judge in *Namita Gupta Vs. Suraj Holdings Ltd.*, 2024 DHC 122, succinctly, explained the difference between Section 24 and Order VII Rule 10 of the Code in Para No. 58 of the judgment as under:-

"58. The difference between Section 24 and Order VII Rule 10 of the CPC is that in terms of Sub-Section (2) of Section 24, where any Suit or proceeding has been transferred or withdrawn, the Court which is thereafter to try or dispose of such Suit

or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn. Therefore, all proceedings that were undertaken before the Court where a Suit was earlier instituted, though it lacked jurisdiction to try the same, can be saved, and the Suit on its transfer can be proceeded from the point at which it was transferred."

17. Similarly, in the case of Mahesh Gupta Vs. Ranjit Singh & Ors. 2009 SCC On-Line Del. 1418, the Division Bench of this Court was considering the challenge to the order returning the plaint on the ground of lack of pecuniary jurisdiction to be filed before the appropriate court having pecuniary jurisdiction over it. The Court, while upholding the order passed by the learned Single Judge therein, provided that instead of return of the plaint, the Suit be transferred to the competent Court of civil jurisdiction. The court observed as under:-

"11. During the course of hearing of the appeal, the counsel for the appellant/plaintiff contended that the appellant will be caused grave prejudice if the order returning the plaint is sustained in as much as considerable evidence has already been recorded in the suit and, there was also an order of injunction against the respondents/defendants by the consent of the counsel for the parties. Taking into account the considerable time invested by this court in this suit, we have decided to suo moto exercise our powers under Section 24(1) read with Section 24(5) of the Code of Civil Procedure, 1908 and instead of the order returning the plaint as passed by the learned Single Judge, we modify the order of the learned Single Judge and direct that, in the facts of the case, the suit itself be transferred to the competent court of civil jurisdiction. The effect of exercising of powers under Section 24 CPC would mean that the suit would be taken up by the transferee court from the stage at which it was pending before the impugned order dated 16.2.2009 was passed. The learned counsel for the respondents has stated that the respondents wanted to move an application for vacation of the interim order of injunction, but, which he did not do in as much as the matter was heard on the aspect of the lack of pecuniary jurisdiction of the court. Therefore, while directing the transfer of the suit, we further order that the interim order of injunction operating against the respondent in the suit will continue only till the date when the matter is taken up on the first date by the concerned Civil Judge. The Civil Judge will decide afresh the issue of grant or denial of an ad interim/ex-parte injunction on the first date and he will also decide expeditiously, and preferably within four weeks from the first hearing, the injunction application as filed by the plaintiff in the suit. The learned Single Judge should take up the issue of granting or denying of injunction (ex parte/ad interim or pendent lite) entirely uninfluenced by the any observations of this court or the fact that earlier an injunction order was passed by the consent of the parties."

18. This Court has sufficient power under Section 24 of the Code to transfer the suit to the court of competent jurisdiction. Since the case before the trial court has already reached the stage of defendant's evidence, denovo trial upon the return of the plaint would further delay the plaintiff's

case and would cause serious prejudice to the plaintiff, interest of justice therefore demands that in the exercise of powers vested in this Court under Section 24 of the Code, the suit be transferred from the court of learned District Judge-05, East, Karkardooma to the court of learned Principal District & Sessions Judge, Shahdara, Karkardooma, where the suit property is situated with direction that the case be tried from the stage it is transferred from the transferor court.

19. Parties shall appear before the learned transferee court on 17.04.2025.

20. The petition and the pending applications are disposed of in above terms.

RAVINDER DUDEJA, J.

APRIL 01, 2025 RM