ALLAHABAD HIGH COURT

Sri Sheonath Prasad

Vs

City Magistrate Varanasi

Civil Misc. Writ No. 407 of 1959

(Jagdish Sahai, J.)

09.03.1959

ORDER

Jagdish Sahai, J.

1. On plots Nos. 113/62 and 113/63 situate in Chauka Ghat in the city of Varanasi stand certain constructions, This property was the sub-fact of dispute between the petitioner Sheonath Prasad and the respondent No. 4 Sita Ram both of whom alleged themselves to be the representatives of the Lohar Community of Varanasi and claimed to be in possession of the property in dispute with the result that proceedings under Section 145, Criminal Procedure Code, were initiated in the court of the City Magistrate, Varanasi, on an application made by the respondent No. 4. The case was transferred to Sri R.L. Tiwari, Special Magistrate 1st Class, Varanasi, who after perusing the affidavits filed by the parties recorded a finding that he could not decide as to which of the two parties was in possession over the property in dispute at the date of the preliminary order or two months next preceding the date of the preliminary order, and referred the case to the learned Munsif of Varanasi for recording a finding as to any and which of the parties was in possession of the property in dispute at the date of the order as explained in Sub-Section (4) of Section 145, Criminal Procedure Code, by his order dated 9-4-1958. On 14-4-1958 an application was made by the petitioner that the case be referred to the learned Civil Judge, Varanasi, and not to the learned Munsif of Varanasi because the value of the plots and the constructions on them, i.e., the property in dispute, was over Rs. 5,000/- and the annual value of the property shown in the municipal records was Rs. 1.020/-. The learned Magistrate recorded the order "File" on this application. The learned Munsif recorded the evidence produced by the parties and after perusing the oral evidence as also the affidavit filed in the case recorded a finding that the respondent No. 4 was in possession over the property in dispute at the date of the preliminary order, as also within two months next preceding that date. Thereupon the present writ petition has been filed in this Court. The prayer in the petition is that the order of the learned Magistrate dated 9-4-1958 referring the case to the learned Munsif and that of the learned Munsif dated 23-12-1958 be quashed.

2. I have heard Mr. S.C. Khare the learned counsel for the petitioner. He has made two submissions before me. His first submission is that the findings recorded by the learned Munsif

are not correct. The second submission of the learned counsel is that the learned Magistrate had no jurisdiction to refer the case to the learned Munsif who in his turn had no jurisdiction to record the necessary findings because the value of the property in dispute was more than Rs. 5,000/- and the case was beyond the pecuniary jurisdiction of the learned Munsif.

3. I will first take the first submission of the learned counsel for the petitioner. It is not open to a petitioner in a writ petition to challenge findings of fact recorded by a Court or a Tribunal unless it is shown that those findings of fact are not based on any evidence or that in arriving at those findings any of the principles of natural justice have been infringed. The petitioner's complaint is not in either of these two directions. The contention made on behalf of the petitioner is that the evidence has not been correctly appraised and in any case the inferences drawn by the learned Munsif from the evidence on the record are not correct. In my opinion on the basis of a ground like this no notice can be issued.

4. The second submission of the learned counsel is a more substantial one. If a Magistrate is unable to determine as to which of the parties before him was in possession of the property in dispute at the date of the preliminary order or whether any party was forcibly and unlawfully dispossessed within two months next preceding the date of that order he has to submit the record to "a civil court of competent jurisdiction" which is required to decide that question. The words "civil court of competent jurisdiction" have been defined in the Code of Criminal Procedure. In civil cases we generally come across four kinds of jurisdiction. They are as follows : (1) jurisdiction with regard to the nature of the suit, e.g., exemption of certain suits from the cognizance of Small Cause Courts; (2) territorial jurisdiction; (3) pecuniary jurisdiction; and (4) jurisdiction with regard to persons, e.g., the jurisdiction of courts over foreign Princes. Whether or not a court is competent to entertain and decide a case would depend upon the provisions of the law relating to that case, e.g., a suit which will be governed by the Code of Civil Procedure must be filed in a court which has both territorial as well as pecuniary jurisdiction, and if more than one court have pecuniary and territorial jurisdiction in respect of that matter then in the court of the lowest grade competent to try it. The provisions of the Civil Procedure Code, relating to the institution of suits do not apply to proceedings under Sections 145 and 146, Criminal Procedure Code, and no part of the Civil Procedure Code, is made applicable to those proceedings. It may also be added that proceedings under Sections 145 and 146, Criminal Procedure Code, are not civil proceedings and cannot fall within the expression "suit" as contemplated by Section 6 of the Civil Procedure Code, nor can such a proceeding be a proceeding under Section 141, of the Code. Therefore, what is mentioned in the Civil Procedure Code, in order to determine as to which would be a court of competent jurisdiction for the purpose of instituting or deciding a case of civil nature can be of no help to us in determining as to what does the expression "a civil court of competent jurisdiction" occurring in Section 146, Criminal Procedure Code, mean. Besides, the bar against a court not being competent to try a case the subject-matter of which is beyond its pecuniary jurisdiction is created by Section 6 of the Code of Civil Procedure . The said section runs as follows :

> "Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction." What is barred by Section 6 is a suit or, at best for the petitioner, proceedings which are in continuation of suits or arise therefrom Section 6 does not bar other proceedings. No doubt the word

> "suit" has not been defined but it must be held to be a proceeding arising in a civil court with a view to obtain a decree and initiated by the filing of a plaint. Proceedings under Section 145, Criminal Procedure Code, are instituted in the court of a Magistrate and the Magistrate may make a reference to the civil court only for the purpose of deciding about possession.

The proceedings therefore are not instituted in the civil court. The findings recorded by the civil court are themselves inoperative and have got to be transmitted under Section 146 (1-B), Criminal Procedure Code, to the Magistrate who on receipt thereof has to proceed to dispose of the proceeding under Section 145 in conformity with the decision of the civil Court. Even while the proceedings are pending before the civil court the Magistrate can withdraw the attachment and drop the proceedings finally under Section 146(1), Criminal Procedure Code. The result of a study of the provisions of Section 146 is that the proceeding even on reference made to the civil Court retains its old moorings and does not change its character from criminal proceeding to civil proceeding and does not become a proceeding instituted in that court. The criminal court in fact alone has jurisdiction over the matter both with regard to its institution as also with regard to its final decision and the function of the civil court is only of a very limited nature confined to the deciding of the question of possession on the date of the preliminary order "without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute." For this reason, apart from others, it cannot be, said that the proceeding before the civil court under Section 146, Criminal Procedure Code, is a proceeding of the nature of a suit as contemplated by Section 6 of the Civil Procedure Code. These proceedings cannot also partake of the nature of proceedings contemplated by Section 141 of the Civil Procedure Code, because there is abundant authority for the proposition that a proceeding as provided in Section 141 is meant to include original matters in the nature of suits, namely matters which originate in themselves and not those which spring up from a suit or from some other proceeding or arise in connection therewith : (see *Thakur Prasad v. Fakir Ullah*[1], and *Sarat Krishna Bose v. Bisheshwar Mitra*[2],). In the case of *Nandalal v. Nrityakali Devi*[3], it was held that proceedings before the President of the Calcutta Improvement Tribunal is not a suit and Section 6, Civil Procedure Code, does not apply to an order passed in such proceedings. It was also held that though the decree was for a sum of Rs. 15,000/- it could be executed by the Munsif whose pecuniary jurisdiction was only Rs. 2,000/- and that such a proceeding was not barred by Section 6, Civil Procedure Code.

If a proceeding of that nature could not be included in the expression "suit" occurring in Section 6, Civil Procedure Code, the proceeding under Section 146f Criminal Procedure Code, cannot also be included in the expression "suit" within the meaning of Section 6. In the case of *Bidyadhar Bachar v. Manindra Nath Das*[4], a Full Bench of the Calcutta High Court took the view that it is open to a court to pass a final decree for an amount exceeding its pecuniary jurisdiction if the original valuation of the suit was within its pecuniary jurisdiction.

These cases would show that all that is prohibited by S, 6, Civil Procedure Code, is the institution or decision of suits the value of which exceeds the pecuniary jurisdiction but not of other proceedings. In my opinion therefore even if the Code of Civil Procedure) were applicable (though I have held that it is not applicable), the reference to the learned Munsif could not be held to be invalid on the ground that the alleged value of the property is more than Rs. 5,000/-.

5. I have already said above that the jurisdiction of a court in respect of a particular matter has

got to be called out from the provisions of the law relating to that case: Sections 145 and 140 find place in the Criminal Procedure Code. We have therefore to look to the provisions of that Code for determining as to what does the expression "civil court of competent jurisdiction" in Section 146(1) mean. It would be noticed that the conception of pecuniary jurisdiction is unknown to the Criminal Procedure Code; it is the territorial jurisdiction alone which determines as to in which court a case can be filed and decided. Part VI. Ch. XV of the Criminal Procedure Code deals with the place of inquiry or trial. Section 177 which falls in that chapter provides that every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed. Section 178 gives the State Government power to direct a case or class of cases to be tried in any particular district, Section 179 provides that when a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued, such offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued. Section 180 also gives the court, within the local limits of whose jurisdiction the act contemplated by that section has been committed, the jurisdiction to try it. Similarly Sections 181 to 183 also determine the jurisdiction of a court on the basis of territorial jurisdiction. In Part IV, Ch. VIII of the Criminal Procedure Code, i.e., with regard to the preventive sections, also, the consideration that determines the jurisdiction diction of the court to try such cases is the territorial jurisdiction. Again, in Ch. X which deals with public nuisances it is the territorial jurisdiction which determines which court would be competent to decide a dispute arising under the various sections falling under that Chapter. It is the District Magistrate or a Sub-Divisional Magistrate or a Magistrate of the first class in whose territorial limits a nuisance takes place who would be competent to try it. The same is the position with regard to cases under Section 147, Criminal Procedure Code. Even with regard to Section 145 it has been clearly laid down that only a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction there is a dispute likely to cause a breach of the peace, has jurisdiction to entertain and decide the case under that section.

6. As I have said above a close study of the various provisions of the Criminal Procedure Code, would reveal that the competency of a court to decide a proceeding arising under the provisions of that Code is determined by territorial jurisdiction and conceptions of pecuniary jurisdiction are unknown I to that Code and therefore the expression "competent jurisdiction" occurring in Section 146(1) means competence on the basis of territorial jurisdiction.

It must therefore be held that when the Legislature provided in Section 146 that the case shall be referred to a civil Court of competent jurisdiction it had in its mind only territorial and not pecuniary jurisdiction.

7. The second reason why I say so is that it is impossible to determine the pecuniary value of the matter which has got to be decided by the Civil Court under Section 146, Criminal Procedure Code. The civil court has not to decide as to which party is the owner of the property in dispute or has a right to possession; it has simply to decide as to any, and if so which, of the parties, irrespective of merits, was in possession of the property in dispute at a particular time. A matter like this is incapable of pecuniary valuation. The provisions of the Suits. Valuation Act do not apply to proceedings under Section 146, Criminal Procedure Code. Even in a case governed by the Civil Procedure Code, if a suit is incapable of valuation e.g., a suit for accounts or one for restitution of conjugal rights or a suit for the removal of a trustee, it is open to the plaintiff to fix

any value and choose his own forum. In the first place the question as to who was in possession on a particular date is incapable of having any money value; in the second place there is no provision under which its value can be determined even if it be assumed that its value is capable of determination. There is nothing in the Criminal Procedure Code, which gives the method of valuing it. It is well settled that an issue which incidentally determines the ownership of property the value of which is more than the pecuniary jurisdiction of the court can be decided by that court: See *A.M. K.M. Chettyar Firm v. Ma Shwe Ein*[6], In a case for the recovery of rent the amount of rent claimed in the plaint will determine the jurisdiction of the court and if the amount does not exceed the pecuniary jurisdiction of the court the suit can be filed in that court even though the value of the property is much more than the pecuniary jurisdiction of the court, and if the defendant denies the title of the plaintiff to the property in dispute an issue about the ownership thereof can be framed and decided by that court even though the value of the property may be much more than the pecuniary jurisdiction of the court.

8. Under Section 146, Criminal Procedure Code, all that a civil court has to decide is practically an issue. The Magistrate has to draw up a statement of the case and ask the civil court to decide as to which of the parties was in possession at a particular time. It is true that the Magistrate is not required to frame an issue but the reference to the civil court is for the determination of only one particular point in the case. Therefore for all practical purposes what the civil court has to decide is only something in the nature of an issue. For the trial of such an issue the consideration of the pecuniary jurisdiction of a court is quite immaterial.

9. I have already said that the matter which the civil court has to decide is incapable of valuation and therefore the question of pecuniary jurisdiction does not and cannot arise while deciding as to which civil court will be deemed to be a court of competent jurisdiction and that matter will have to be decided only on the basis of territorial jurisdiction. Yet another reason why I have come to the conclusion that it is only the territorial and not the pecuniary jurisdiction which is contemplated by Section 146(1) Criminal Procedure Code, is that if the intention of the Legislature was that pecuniary jurisdiction should also be taken into consideration then a provision would have been made in the Criminal Procedure Code, for deciding as to which particular civil court the Magistrate should refer the matter. In other words, something would have been said either in Section 145 or 146, Criminal Procedure Code, or in any other part of the Cri. P.C. to indicate a procedure for the enquiry about and the determination of the value of the property and for deciding as to which particular Court would be a Court of competent jurisdiction for the purposes of Section 146(1).

10. Lastly, under the provisions of the Civil Procedure Code the question of pecuniary jurisdiction or territorial jurisdiction is relevant only for the purpose of institutional decision of a case. In the present case proceedings under Section 145, Criminal Procedure Code, are instituted before a Magistrate and are also decided by him. The function of the Civil Court is a very limited one and though the decision given by it is binding upon the Magistrate, it is inoperative in itself. At no time is the Civil Court seized of the whole case. As already shown above, even when the matter is pending in reference before the Civil Court the Magistrate has full jurisdiction to terminate the proceedings and quash the attachment. In other words, even at the time when the reference is before the Civil Court the Magistrate is seized of the case and it is he alone who can give a final decision in the case. Therefore, to my mind, considering the nature of the proceedings and the nature of the part played by the Civil Court in deciding the reference under

Section 146, Criminal Procedure Code, it is not possible to say that in that Court cither a proceeding has been instituted or the same has been decided by it. That being so neither the analogy nor the provisions of the Civil Procedure Code can support the submission of the learned counsel for the petitioner that the value of the property has also to be considered in determining to which Civil Court the case is to be referred under Section 146(1), Criminal Procedure Code.

11. It would also be seen that under the provisions of Section 146 (1-E), Criminal Procedure Code, the order of the Civil Court mentioned in Clause (1) of Section 146 shall be "subject to any subsequent decision of a Court of competent jurisdiction." In other words, the decision recorded by a Civil Court under Section 146, Criminal Procedure Code, cannot operate as res judicata and is subject to an ultimate decision of a Court of competent jurisdiction in a regular, proceeding. That Court may be a Civil Court or a Court other than a Civil Court. If it was intended by the Legislature that the Civil Court of competent jurisdiction contemplated by Section 146(1) Criminal Procedure Code, was a Court of full-fledged jurisdiction, both pecuniary as, also territorial, then the decision of that Court would not have been made subject to a subsequent decision given by another Court. It would be noticed that Section 146(1), Criminal Procedure Code, before the latest amendment, stood as follows : Section 146(1). "If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof;

> Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute".

It would be seen that the expression "a competent Court" did find place in Section 146 even before the amendment. The competent Court contemplated by Section 146 (1-E), Criminal Procedure Code (as it now stands) is the same competent Court as the one contemplated by Section 146(1) as it stood before the amendment. It would also be seen that this competent Court need not necessarily be a Civil Court. It was held in the case of *Sesha Reddi v. Narasimha Reddi*[6], that an order passed by the Hindu Religious Endowments Board recognizing a certain person to be a trustee was an order passed by a competent Court within the meaning of Section 146, Criminal Procedure Code (as it stood before the amendment) and such a person is entitled to possession.

In the case of *Ambler v. Sami Ahmad*[7] it was held by the Calcutta High Court that an order, passed by a survey authority was an order passed by a competent Court within the meaning of Section 146, Criminal Procedure Code (as it stood before the amendment). Similarly in the case of *Surendra v. Emperor*[8], it was held that the decision by a revenue Court was a decision by a competent Court. In *Mt. Ram Sri v. Sri Kishun*[9], this Court took the view that an order of a revenue Court in mutation proceedings is the order of a competent Court within the meaning of Section 146, Criminal Procedure Code (as it stood before the amendment).

12. I have already said that by the expression "competent Court" occurring in Section 146(1-E) the same Court is contemplated as the one by Section 146(1), Criminal Procedure Code (before the amendment). In some matters relating to land the revenue Courts alone are competent to

decide and the Civil Court has no jurisdiction. In such a case the decision contemplated by Section 146(1), Criminal Procedure Code would be subject to the decision by a revenue Court.

If the idea was that the Civil Court of competent jurisdiction contemplated by Section 146(1), Criminal Procedure Code was a Civil Court with full-fledged jurisdiction, both pecuniary and territorial, then it does not stand to reason that its decision would have been made subject to the decision by a revenue Court or by a survey authority, by the Legislature. After reading Section 146, Criminal Procedure Code carefully it appears to me that the Civil Court of competent jurisdiction" contemplated by Section 146(1) has been given an inferior status to that of the competent Gourd contemplated by Section 146(1-E); otherwise the decision of the former could not be subject to the decision of the latter, and the only conceivable explanation apart from the fact that proceedings under Section 146(1), Criminal Procedure Code are of a summary nature for this appears to me to be that the competent Civil Court contemplated by Section 146(1) is not a Court with full-fledged jurisdiction i.e., it has only territorial and not pecuniary jurisdiction. The Patna High Court in the case of *Bodh Narain v. Deo Narain*[10], held that it is only territorial and not pecuniary jurisdiction which has got to be looked into while deciding as to which Court a reference should be made by a Magistrate under Section 146(1), Criminal Procedure Code.

For the reasons given in this judgment I am in respectful agreement with the decision of the Patna High Court. The learned counsel has not been able to urge anything to justify the conclusion that the Civil Court of competent jurisdiction contemplated by Section 146(1), Criminal Procedure Code, is a Court having both territorial and pecuniary jurisdiction. I may add that if there are more than one Court having territorial jurisdiction it is open to a Magistrate to send the reference to any one of those Courts.

Just as it is open to a party in a suit incapable of calculation to put any valuation and choose its own forum, similarly it is open to a Magistrate to choose the Court to which he would make a reference. It will be noticed that the words "a Civil Court of competent jurisdiction" did not find place in Section 145 or 146 before the amendment. The only words used were "a competent Court". I am of the opinion that when the Legislature mentioned the words "a Civil Court of competent jurisdiction" they were only thinking of getting the question of possession decided by an experienced Court and a rough and ready method of getting it so decided was to refer it for decision to a Civil Court having territorial jurisdiction. It was not intended that that Court must be a Court having territorial and pecuniary jurisdiction both for, amongst others, the reason that that Court had not to determine any question of title and not even the question as to who was entitled to possession but had simply to determine as to who was in possession on the date of the preliminary order irrespective of the merits. The order passed by that Court was not final and was subject to the decision of a competent Court. Besides, it was in itself inoperative and could only provide a basis for the order of the May be subsequently pas decision of the Civil Court the Magistrate can render it useless by terminating the proceedings under Section 145, Criminal Procedure Code, acting under the proviso to Section 146, Criminal Procedure Code. Thus considering the nature of the question that had to be decided by the Civil Court and the fact that its findings are inoperative in themselves, neither was it necessary nor was it intended that the Court which has to decide it should be a Court having the trappings of a full fledged Court of jurisdiction, both territorial and pecuniary. I therefore overrule this contention of the learned counsel also.

13. It may also be noticed that proceedings under Section 145 Criminal Procedure Code must be concluded with, great dispatch. The decision in those proceedings does not affect the rights of any of the parties; it only makes an interim arrangement in order to prevent a breach of the peace, and the order passed under Section 145 or Section 146 is always subject to the decision by a competent Court. On that ground also I do not think there is any justification for admitting this writ petition. The petitioner has clearly got an alternative remedy of filing a regular suit and public interest demands that these proceedings must not be kept pending endlessly. The Legislature has expressly barred an appeal, review or revision against the findings of the Civil Court by enacting Section 146(1)(D) which indicates that it is the legislative intention to give finality to that finding and that being so that finding should not be disturbed even by means of an order passed by this Court under its writ jurisdiction.

14. For the reasons mentioned above the petition is rejected. The interim stay order passed on 13-2-1959 is vacated.

Petition rejected.

Cases Referred.

122 Lid App 44 (PC)
2AIR 1927 Cal 534
3AIR 1926 Cal 853
4AIR 1925 Cal 1076
5AIR 1937 Ran 219
6AIR 1941 Mad 803(2)
7ILR 37, Cal 331
8AIR 1922 Oudh 300
9AIR 1924 All 777
10AIR 1955 Pat 308