

ORIGINAL CIVIL.

Before Panckridge J.

1937

July 19, 20, 21.

SHAILESH KUMAR SINGH

v.

NARSING PANDEY.*

Jurisdiction—Suit for land—Administration suit—Claim for possession against person in possession under invalid grant of letters of administration—Letters Patent, 1865, cl. 12.

The plaintiff, claiming to be the true owner, sued the defendant for the recovery of possession of immovable properties, no part of which was situated within the jurisdiction of the Original Side. It was alleged that the defendant had obtained possession under an invalid grant of letters of administration by the High Court. There were alternative prayers for the removal of the administrator and for administration by and under the direction of the High Court.

Held that the prayers for removal and for administration by the Court were inconsistent with the plaintiff's case that under the grant of administration the defendant acquired no right or title and that the suit, so far as the immovable properties were concerned, was a suit for land within the meaning of cl. 12 of the Letters Patent and that the Court had therefore no jurisdiction to entertain it.

ORIGINAL SUIT.

The facts of the case appear fully from the judgment.

P. C. Ghosh and *S. P. Chowdhury* for the plaintiff. This is a suit for administration and so not a suit for land. It may mean handing over possession to the plaintiff but that does not make it a suit for land within the meaning of cl. 12 of the Letters Patent. *P. M. A. Velliappa Chettiar v. Saha Govinda Dass* (1); *Nistarini Dassi v. Nundo Lall Bose* (2); *Benode Behari Bose v. Nistarini Dassi* (3); *Srinivasa Moorthy v. Venkata Varada Ayyangar* (4); *Srinivasa Moorthy v. Venkata Varada Aiyangar* (5);

*Original Suit No. 570 of 1936.

(1) 1928) I. L. R. 52 Mad. 809.

(2) (1899) I. L. R. 26 Cal. 891.

(3) (1905) I. L. R. 33 Cal. 180;

L. R. 32 I. A. 193.

(4) (1906) I. L. R. 29 Mad. 239.

(5) (1911) I. L. R. 34 Mad. 257;

L. R. 38 I.A. 129.

Mt. Amir Bi v. Abdul Rahim (1) and *Vedabala Debee v. Official Trustee of Bengal* (2).

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S. N. Banerjee and *S. N. Banerjee (Jr.)* for the defendant. This is clearly a suit concerning land and the claim is for possession. Therefore it is a suit for land within the meaning of cl. 12 of the Letters Patent. *Hara Lall Banerjee v. Nitambini Debi* (3); *Ganoda Sundary Chaudhurani v. Nalini Ranjan Raha* (4); *Proras Chandra Sinha v. Ashutosh Mukherji* (5); *Hatimbhai Hassanally v. Framroz Eduljee Dinshaw* (6).

PANCRIDGE J. In this case an order has been made by Ameer Ali J., that the question of the jurisdiction of the Court be tried as a preliminary issue.

The defendant's contention is that the Court has no jurisdiction to entertain the suit, because it is a suit for land within the meaning of cl. 12 of the Letters Patent, such land being situated wholly outside the local limits of the territorial jurisdiction of the Original Side.

The words "suits for land or other immoveable "property" in cl. 12 have given rise to a number of divergent decisions in the High Courts of Calcutta, Bombay and Madras, which exercise original civil jurisdiction under their respective charters.

The plaintiff has framed his case in the following manner:—

In para. 1 of the plaint he states that he is the only son and sole heir of one Ram Kishore Singh, a Hindu governed by the *Mitāksharā* school of Hindu law, who died intestate on February 2, 1919. He then alleges that many years prior to his death, Ram Kishore Singh separated from his three half-brothers, including the defendant, Narsing Pandey, and thereafter carried on a separate business in the

(1) [1928] A. I. R. (Mad.) 760.

(2) (1935) I. L. R. 62 Cal. 1062.

(3) (1901) I. L. R. 29 Cal. 315.

(4) (1908) I. L. R. 36 Cal. 28.

(5) (1929) I. L. R. 56 Cal. 979.

(6) (1927) I. L. R. 51 Bom. 516, 606.

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district of Darjeeling and acquired considerable properties out of its profits.

In para. 2 he pleads that on the death of Ram Kishore Singh, his properties devolved absolutely and exclusively on the plaintiff, who was then a minor of the age of two years, and that the said properties were taken possession of by the defendant. He goes on to state that in August, 1919, the defendant applied to this Court for letters of administration to the estate of Ram Kishore Singh and obtained a grant.

Para. 2 concludes with a reference to schedule A to the plaint in which the particulars of these properties are given. From the schedule it appears that no part of the immoveable properties is situated within the local jurisdiction of the Original Side.

Para. 3 states that the grant was obtained without notice to the plaintiff, who was not properly represented in the proceedings, and submits that under the grant the defendant acquired no right or title.

The succeeding paragraphs set out various acts of waste and misappropriation with which the plaintiff charges the defendant.

Para. 7 is as follows:—

The plaintiff states that since about the year 1921 there remained nothing further to be done relating to the administration of the said estate and that there were and are no debts or legacies of the deceased to pay, and that the plaintiff became entitled to possession thereof. The plaintiff attained majority in the year 1935, and since then called upon the defendant to make over the said estate to him and to render accounts of his dealings but the defendant has not yet done so.

In para. 9 the plaintiff states that his cause of action arises partly within the jurisdiction of this Court which granted the letters of administration referred to, wherein the defendant took possession of and undertook to administer the estate.

He also states that the cause of action arose in or about the month of March 1936, when the defendant refused to make over possession of the estate to the plaintiff, or alternatively, on the plaintiff's obtaining majority, in or about the month of April, 1935.

Paragraph 8 also alleges that the plaintiff institutes the suit with leave under cl. 12 of the Letters Patent. There should, strictly speaking, be a prayer that such leave be granted. I am, however, willing to treat the allegation as the equivalent of a prayer.

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Leave under cl. 12 has been endorsed on the plaint by the Judge dealing with interlocutory matters.

The relief prayed is, first, possession of the estate; secondly, an account of the defendant's dealings with the estate on the basis of wilful default and neglect; thirdly, and alternatively, the removal of the defendant as such administrator, and administration by and under the direction of the Court; fourthly, discovery and all necessary enquiries and directions; fifthly, accounts, sixthly, damages; seventhly, a receiver; eighthly, mesne profits, and ninthly, costs.

The plaintiff maintains that this suit is an administration suit and accordingly not a suit for land within the meaning of cl. 12. That an administration suit is not a suit for land is a proposition which is supported by authority. In *P. M. A. Velliappa Chettiar v. Saha Govinda Dass* (1), a Full Bench of the Madras High Court held that a purchaser's suit for specific performance of a contract for the sale of land outside Madras made in Madras, by parties resident therein, is not a suit for land, within the meaning of cl. 12 of the Letters Patent. "The decision is at variance with decisions of this Court, and I merely mention it in order to refer to certain *obiter dicta* of Venkatasubba Rao J., where he says:—

Some Judges have construed the words as meaning "suits relating to or concerning the land." It seems to me that this construction, at any rate, is no longer open to the Indian Courts, having regard to two decisions of the Privy Council, which must be deemed to have held that administration suits are not suits for land.

(1) (1928) I. L. R. 52 Mad. 809, 823.

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And he continues :—

Now, where in a suit for administration, land is involved, it is in a sense "a suit relating to or concerning land;" but such a suit has now been authoritatively held not to be a suit for land.

One of the Privy Council decisions on which the learned Judge relies is *Benode Behari Bose v. Nistarini Dassi* (1) where it was held that as ancillary to an order for administration this Court had jurisdiction to set aside a lease of land outside the territorial limits which had been obtained as an incident to the fraud of certain executors on which the administration decree was founded.

The other decision is *Srinivasa Moorthy v. Venkata Varada Aiyangar* (2). I do not consider that that decision throws much light on the question of administration suits generally, because so far as I can see it was never argued that that suit was a suit for land, the Madras Court holding that it had jurisdiction because the grant of letters of administration by it was part of the cause of action within the meaning of cl. 12, and also because the defendant was dwelling within the jurisdiction within the meaning of that clause. This view was affirmed by the Judicial Committee.

The judgment of the Madras High Court against which the appeal to His Majesty in Council was preferred is to be found reported at I. L. R. 29 Mad. 239. It is not possible from the report to discover exactly what reliefs were asked for in the plaint, but it appears from the order made by the trial Judge that the immoveable property of the deceased was not directly affected at all, the only directions with regard to it being that, if necessary, a portion of it should be sold and the proceeds paid into Court.

My attention has been also called to *Krishnadoss Vithaldoss v. Ghanshamdoss* (3) where the Madras

(1) (1905) I. L. R. 33 Cal. 180 ;
L. R. 32 I.A. 193.

(2) (1911) I. L. R. 34 Mad. 257 ;
L. R. 38 I. A. 129.

(3) [1925] A. I. R. (Mad.) 1084.

High Court held that a suit for an account of the management of a trust was not a suit for land, the trust properties being immoveable properties situated in the *mofussil*.

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Now, accepting the view of Venkatasubba Rao J., that the authorities show that an administration suit is not a suit for land, I am of opinion that this suit is not in essence an administration suit at all. The main relief asked for is possession of the estate. The schedule sets out the immoveable properties in the estate and they are all situated in the *mofussil*. There are certain moveable properties also specified and where their situation is given, it is also outside the jurisdiction.

The prayer for removal of the administrator and for administration by and under the direction of the Court are alternative prayers and are really inconsistent with the submission of the plaintiff in para. 3 that under the grant of administration the defendant acquired no right or title. In my opinion, the suit, so far as the immoveable properties are concerned, is a suit for their recovery from the defendant on the allegation that he is a trespasser. In other words, the plaintiff's case is that the defendant, under colour of an invalid grant of letters of administration, has obtained possession of the immoveable properties and has refused to make them over when called upon to do so by the plaintiff as the true owner. As far as the moveable properties are concerned the suit must in my opinion be regarded as a claim in detinue, the plaintiff's case being that the defendant is now in possession of these properties and has refused to deliver them to the plaintiff on demand. In so far as the suit is a suit for land, the questions of the residence of the defendant and of the place where the cause of action or any part of it arose, are irrelevant, and as regards the claim to the moveable property there is no allegation that the defendant dwells within the local limits of the jurisdiction of the Court, in fact he is described as residing in the district of Darjeeling. The method

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by which he obtained possession of the moveable property is no part of the plaintiff's cause of action. What the plaintiff has to prove is that the moveable property is his and is now in the possession of the defendant who has refused to deliver it on demand.

The defendant has relied on *Hara Lall Banerjee v. Nitambini Debi* (1) where Harington J. held that where the plaintiff asked for a declaration that he was entitled to immediate and absolute possession of certain moveable and immoveable properties and also for construction of the testator's will and for administration of the testator's estate and for accounts, the suit was a suit for land. That case was decided in 1901 and it may be questioned whether in view of the subsequent decisions of the Privy Council it is now authoritative.

The present case, however, is to my mind far clearer, because the principal prayer is for possession of the estate, and the prayer for administration is an alternative prayer; moreover the removal of the defendant as administrator is a relief to which the plaintiff is only entitled upon the hypothesis, which he repudiates, that the grant of letters of administration is initially valid.

I decide the issue of jurisdiction in favour of the defendant and I hold that the Court has no jurisdiction to entertain this suit, which is accordingly dismissed with costs, including reserved costs, as of a hearing.

Suit dismissed.

Attorneys for plaintiff: *Mitra & Ghose.*

Attorneys for defendant: *N. C. Mandal & Co.*

S.M.