

MANU/BH/0162/1991

Equivalent Citation: 1992(1)BLJR188, 1991(2)PLJR783

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Revision No. 144 of 1990

Decided On: 31.10.1991

Appellants:**Gobardhan Lal Soneja**
Vs.

Respondent:**Binod Kumar Sinha and Ors.**

Hon'ble Judges/Coram:

S. Roy, B.N. Agrawal and N. Pandey, JJ.

JUDGMENT

S. Roy, J.

1. The plaintiff filed Title Suit No. 31 of 1985 in the court of Subordinate Judge, Begusarai for declaration of his title, confirmation of possession and permanent injunction with regard to the suit property The value of the suit Rs. 10,025. Opposite parties No. 1 to 7 filed their written statement contesting the suit. Opposite parties No. 8 to 10 filed an application under Order I, Rule 10 of the Code of Civil of Procedure for adding them as parties in that suit. That was allowed. The order was challenged by the petitioner in Civil Revision No. 151 of 1987 which was disposed of on 31-10-1987 with the direction that the suit be disposed of within three months from the date of receipt of the order. The suit was pending in the court of Munsif. Second, Begusarai, from 30-10-1987. It was ordered that the Title Suit No. 219 of 1985 filed by the opposite parties No 8 to 10 should be heard analogous with the Title Suit No. 31 of 1985.

2. By order of the District Judge, the Court of Munsif received on transfer the Title Suit No. 31 of 1985, as his pecuniary jurisdiction was raised to Rs. 30,000 by an amendment in the Begal, Agra, Assam Civil Courts Act, 1887 (hereinafter referred to as the 1887 Act) with effect from 8-8-1987. In the court of the Munsif, the suit was re-numbered as title suit No. 120 of 1985. The Munsif took up hearing of the suit and the parties closed their evidence. At that stage, the suit was transferred to the court of the Subordinate Judge-I. On 31-8-989, the opposite party No. 1 filed a petition in that Court that as the Munsif had no pecuniary jurisdiction to try the suit when it was filed, the evidence recorded by him was without jurisdiction and all orders passed by him were void. The petitioner filed rejoinder. The court below by order dated 4-1-1990 relying on Kartik Nath Jha v. Seela Thakur 1988 BBCJ 767 : 1987 PLJR. 1126, held that as 1987 Act was amended with effect from 8-8-1987 and as the Munsif had than the pecuniary jurisdiction to entertain the suit valued at Rs. 5,000 all actions taken by the Munsif were void, This order has been challenged by the petitioner in this civil revision application. The case was listed for admission before a learned single Judge. He was of the opinion that the case be heard by a Division Bench, The learned single Judge also observed that the record, be placed before the Hon'ble the Chief Justice, who, if thinks fit, may constitute a larger Bench. The Chief Justice ordered for listing of this case before a special Bench of three judges and this is how

the case has been listed before this Bench.

3. The admitted facts are that the suit valued at Rs. 10,025 was filed in the court of the Sub-Judge in 1985. The suit was filed before a court having pecuniary jurisdiction. In 1985, the pecuniary jurisdiction of the Munsif was Rs. 5,000. With effect from 8-8-1987, the pecuniary jurisdiction of the Munsif was raised to Rs. 50,000 by Bihar Amendment of 1887 Act. On 16-9-1987, the District Judge ordered for transfer of the case to the court of the Munsif. When the order was passed by the District Judge, the pecuniary jurisdiction of the Munsif was Rs. 30,000. None of the parties filed any application before the Munsif that he had no jurisdiction to hear the suit. The hearing of the suit was taken up by the Munsif, The parties closed their evidence before that court. This suit was thereafter transferred to the court of Subordinate Judge. In the court of the Subordinate Judge, opposite party No. 1 took an objection that as in 1985, the Munsif had no pecuniary jurisdiction to entertain a suit valued at Rs. 10,000, the hearing of the suit by him, even if it was after 8-8-1987, was without jurisdiction. As noticed above, the court below accepted the contention of the opposite party No. 1 relying on Kartik Nath Jha, (supra) and held that all action taken by the Munsif was void.

4. A number of points were framed by the learned single Judge. The point involved in this case is whether on the basis of the admitted facts as noticed above, the District Judge could have transferred the suit valued at Rs. 10,025 to the court of the Munsif after 8-8-1987, the date from which the pecuniary jurisdiction of the Munsif has been raised to Rs. 30,000 and the Munsif had the jurisdiction to hear such suits. As will appear from the facts stated hereinafter, the legal position is that prior to 25-5-1987, the Munsif had no jurisdiction to entertain and hear a suit valued at more than Rs. 5,000 and if such a suit was filed in the court of Munsif and was heard by him, it was without jurisdiction. In this case, the suit was filed before the Subordinate Judge, who had the pecuniary jurisdiction to entertain the suit. Therefore, there was nothing wrong in the filing of the suit.

5. It appears that there is some confusion with regard to the recent amendments made in 1887 Act with effect from 23-5-1987. Relevant portion of original Section 21 of 1987 Act reads as follows:

Section 21 : "Appeals from Subordinate Judges and Munsifs.---(1) Save as aforesaid an appeal from a decree or order of a Subordinate Judge shall lie--

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed rupees five thousand, and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge;

(3) ...

(4) ...

This section was amended by the Bengal, Agra and Assam Civil Courts (Bihar Amendment) Act, 1939 with effect from 25-11-1959 and the District Judge was empowered to entertain appeal valued less than Rs. 10,000.

By the Bengal, Agra and Assam Civil Courts, (Bihar Amendment), Act, 1960, Section 19(1) and (2) and Section 21 were amended. The pecuniary jurisdiction of the Munsif mentioned in Section 19(1) was raised to Rs. 2,000 and Munsif of the class mentioned in Section 19(2) was raised to Rs. 5,000. By the Bengal, Agra and Assam Civil Courts (Bihar Amendment) Ordinance, 1987 (Bihar Ordinance 15 of 1987) which came into force with effect from 25-5-1987, Sections 19 and 21 of 1887 Act were amended. Section 19 after amendment in 1922 read as follows:

Section 12: Extent of jurisdiction of Munsif.--(1) Save as aforesaid and subject to the provisions of Sub-section (2), the jurisdiction of a Munsif extends to all like suits of which the value does not exceed rupees one thousand;

(2) The State Government may, on the recommendation of the High Court, direct by notification in the Official Gazette, with respect to any Munsif named therein, that this jurisdiction shall extend to all like suits of such value not exceeding rupees four thousand as may be specified in the notification:

Provided that that the State Government may, by notification in the Official Gazette, delegate to the High Court its powers under this section.

Pecuniary jurisdiction of the Munsif mentioned in Section 19(1) was raised to Rs. 10,000 and Munsif of the class mentioned in Section 19(2) was raised to Rs. 25,000. By amending Section 21 of 1887 Act, the District Judge was empowered to entertain appeal valued less than Rs. 50,000. The Bihar Ordinance 15 of 1937 was replaced by Bengal, Agra and Assam Civil Courts (Bihar Amendment) Act, 1987. In 1987 Act, the pecuniary jurisdiction of the Munsif under Section 19(1) of 1887 Act was raised to 20,000 and Munsif of the class mentioned in Section 19(2) of 1887 Act was raised to Rs. 30,000. By amendment of Section 21 of 1887 Act, District Judge was empowered to entertain appeal valued less than Rs. 60,000, This Act came into force with effect from 8-2-1987 and Bihar Ordinance 15 of 1987 was repealed.

6. As the position stands today, the pecuniary jurisdiction of the Munsif mentioned in Section 19(1) of 1857 Act commonly known as the Additional Munsif is Rs. 10,000 and class of Munsif mentioned in 19 (2) of 1887 Act commonly known as Munsif is Rs. 30,000. The District Judge appeal valued at less than Rs. 60,000. This was also the position when the suit in question was transferred by the District Judge from the court of the Subordinate Judge to the court of the Munsif. It has already been noticed that the court below accepted the contention of the opposite party No. 1 that all action taken by the Munsif was void relying on *Karlik Nath Jha* (supra).

7. In *Kartik Nath Jha* (supra), the learned single Judge relied upon some decisions for holding that notwithstanding the amendment of Section 21 of 1887 Act by the Bihar Ordinance of 1987 with effect from 25-5-1987, if the value of the suit is Rs. 10,000 and filed before the Ordinance, but decided thereafter, appeal will lie not before the District Judge, but the High Court. The correctness of *Kartik Nath Jha* (supra), was considered in *Bhim Singh v. M.L. Agarwala* 1991 BBC 459 : 1991 (1) PLJR 325 The Division Bench noticed all the judgments relied upon in the case of *Kartik Nath Jha*, (supra) and held that none of the judgments supports the legal position laid down by the learned single Judge. Relying on the *New India Assurance Co. Ltd. v. Smt. Shanti Misra* MANU/SC/0547/1975 : [1976]2SCR266, the Division

Bench did not approve Kartik Nath Jha (supra), as laying down the correct law. The Supreme Court in the New India Assurance Co. Ltd. (supra) considered the effect of Section 110-A of the Motor Vehicles Act, 1939 by which Claims Tribunals were constituted for filing claims arising out of motor vehicle accidents. The question was whether with regard to the claims for compensation arising out of an accident which took place after introduction of Section 110-A, a suit will lie or a claim there for shall have to be filed before the Claims Tribunal. It was held by the Supreme Court that by Section 110-A there was no change in law, but merely change of forum i.e., the change of adjectival or procedural law and not substantive law. It was observed. "It is well-established proposition that such ^change of law operates retrospectively and the person has to go to new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action, but not a vested right of forum". It may be noticed that the language of Section 19 is not such as to interpret it that the Munsif and Additional Munsif were given jurisdiction to hear suits of higher value which were filed after the amendment of that section. For this reason also, it must be held that the application of Section 19 will be retrospective in the sense that it will apply to the pending suits. This proposition of law has been laid down in the New India Assurance Co. Ltd. (supra).

8 . In my opinion, the law is that after the pecuniary jurisdiction of the Munsif/Additional Munsif was raised, it acquired pecuniary jurisdiction to hear suits of higher value that is Rs. 30,000 and Rs. 20,000 respectively even if they had no jurisdiction to entertain such suit when it were filed. The crucial test for deciding whether the court had the pecuniary jurisdiction to hear a suit is to see whether on the date hearing of the suit is taken up, it has the pecuniary jurisdiction to entertain such suit or not. It has been noticed that on the date when the suit was transferred to the court of the Munsif and hearing was taken up, it had jurisdiction to entertain suit valued up to Rs. 30,000. In the present case, it must, therefore, be held that the Munsif had jurisdiction to hear the suit and record evidence.

9. In the result, this civil revision application is allowed and the order impugned is set aside. In view of the fact that the evidence had been closed by both the parties when the suit was pending in the court of Munsif, the court below shall fix date for hearing arguments of the parties and shall dispose of the suit in accordance with law. The suit is of 1985. The court below shall dispose of the suit within three months from the date of receipt of a copy of this judgment.

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