

Inder v. Gurdit Singh (Sodhi, J.)

arrears of maintenance from the date she contested the proceedings upto the date of the order under Section 24 of the Act could not be made. The expression, 'during the proceeding' in relation to the monthly maintenance allowance to be fixed by the Court determines the period for which the wife is entitled to maintenance and does not imply that that allowance is payable only from the date of its order. Its payment can start with retrospective effect for the period of the proceedings and not from the date of the order only. Thus, the view taken by the trial Court that the wife is entitled to maintenance from the date of the order is untenable and liable to be set aside.

(6) According to the evidence given by Smt. Kusam Gupta as referred to above, the wife earned pay and allowances as a teacher for four months from May 1, 1969 to August 31, 1969 and thus had independent income sufficient for her support or maintenance. She is, therefore, not entitled to any maintenance allowance for that period of four months, when she served as a teacher.

(7) The correctness of quantum of expenses fixed for the proceedings pending under Section 9 of the Hindu Marriage Act has not been challenged. Hence, the figure of Rs. 70 per mensem stands undisturbed.

(8) For the foregoing reasons, I allow the appeal and modify the order of the trial Court to the extent of awarding also monthly maintenance allowance at Rs. 70 per mensem with effect from November 21, 1968 upto the date of the order barring the period from May 1, 1969 to August 31, 1969, when she served as a teacher. The order already passed for fixation of maintenance from the date of the order for the period of proceedings commencing from that date has not been sought to be appealed from and remains otherwise operative. There will be no order as to costs.

B. S. G.

CIVIL REFERENCE

Before H. R. Sodhi, J.

INDER,—Petitioner.

versus

GURDIT SINGH,—Respondent.

Civil Reference No. 1 of 1970

February 8, 1971.

The Punjab Tenancy Act (XVI of 1887)—Section 77(3) (k)—Evidence Act (I of 1872)—Section 115—Plaintiff filing suit in Revenue Court for

recovery of his share of produce—Defendant objecting to the jurisdiction of Revenue Court to try the suit—Suit filed in civil Court—Defendant objecting to the jurisdiction of civil Court also pleading the suit triable by Revenue Court only—Such defendant—Whether estopped to raise the plea.

Held, that the doctrine of estoppel by representation under section 115 of Evidence Act, 1872, based as it is on equity and good conscience is capable of application in an infinite variety of cases. It is a well-established rule of justice that a party to a proceeding cannot be permitted to approbate and reprobate. The doctrine does not, of course, apply against the provisions of a statute or cannot confer jurisdiction where it does not exist but at the same time a party to a proceeding cannot in equity and good conscience set up a position different to one already taken by it and on which the opposite party has already acted. Where the jurisdiction of a Court to take cognizance of certain dispute depends on ascertainment of facts and an objection is taken to the jurisdiction of that Court, it is not open to that party, when the objection has prevailed, to raise again an objection as to jurisdiction of the Court which, according to his earlier objection, had jurisdiction to try the cause. Hence when a plaintiff files a suit in the Revenue Court for recovery of his share of produce, the defendant objects to the jurisdiction of the Revenue Court to try the suit, the objection prevails and the plaint is returned to be filed in civil Court, the defendant is estopped to object to the jurisdiction of the civil Court on the plea that the suit is triable by Revenue Court only. An application of the doctrine of estoppel in such a case will not confer jurisdiction on a Civil Court but will only prevent the defendant from denying the truth of the facts which he had admitted earlier before the Revenue Court, and on the basis of which the plaint was returned. The defendant cannot be allowed to take up inconsistent pleas regarding the jurisdiction of civil and Revenue Courts. (Para 5)

Reference made under section 99 of the Punjab Tenancy Act (Act XVI of 1887) by the Senior Sub-Judge, Ambala, on 18th February, 1969, through the District Judge, Ambala, for decision of the question of jurisdiction :—

“Whether the case is triable by a civil Court or Revenue Court”.

NEMO, for the petitioner.

NEMO, for the respondents.

JUDGMENT

SODHI, J.—(1) This reference raising a question of jurisdiction has been made to this Court under section 99 of the Punjab Tenancy Act (Act XVI of 1887), hereinafter called the Act. Facts that led to the reference are not in controversy.

Inder v. Gurdit Singh (Sodhi, J.)

(2) Inder claimed that he had worked as a Sanjhi (partner) in cultivation with the defendant for some harvest but was not paid his share of 1/5th of produce from the land under cultivation. A suit for recovery of his share was initially filed by the plaintiff on 30th May, 1968, in the Revenue Court (Court of Assistant Collector 1st Grade, Ambala City). A notice of the suit was given to the defendant who in his written statement raised a preliminary objection that the suit did not lie in the Revenue Court. Reliance in this connection was placed by him on section 77 of the Act it being pleaded that the case did not fall under clause (k) of the first group referred to in section 77(3). Section 77(3) gives a list of cases which can be instituted in, heard and determined by Revenue Courts only and no other Court can take cognizance of a dispute arising therein. The relevant extract from this section may be reproduced hereunder for facility of reference :—

“77. (3) The following suits shall be instituted in, and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted :—

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FIRST GROUP

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(k) suits by a co-sharer in an estate or holding for a share of the profits thereof or for a settlement of accounts;”

(3) In order that a suit falls within the ambit of the aforesaid clause, it is necessary to determine on the facts as pleaded by the parties whether the plaintiff suing for his share of the produce, in the circumstances alleged by him, could be treated under the law as a co-sharer in an estate or holding. The plaintiff in the instant case accepted the force of the preliminary objection and conceded that the suit, as framed by him, was not within the cognizance of

the Revenue Court and asked for return of the plaint for presentation to the proper Court, which meant the Civil Court. The plaint was accordingly returned by an order of the Assistant Collector as made on 30th October, 1968. The plaintiff then filed the suit in a Civil Court where the defendant again raised an objection that the said Court had no jurisdiction and the suit was cognizable by a Revenue Court only. The Civil Court entertained the objection and framed a preliminary issue in the following terms :—

“Whether the suit is triable by a Civil Court.”

(4) No evidence was produced by the parties and the Civil Court relying upon a judgment of the Punjab Chief Court reported as *Sunder Singh v. Kesar Singh* (1), which was subsequently followed by a Division Bench of this Court in *Bakhshish Singh v. Kartar Singh* (2), came to the conclusion that the suit was cognizable only by a Revenue Court. Here the counsel for the plaintiff again conceded that the suit lay in the Revenue Court and prayed for return of the plaint to him for presentation to the latter Court. Instead of returning the plaint, the Civil Court had made the present reference to this Court it being of the view that the plaint could be returned if the suit had, in the first instance, been instituted in that Court. It took notice of the order of the Court of Assistant Collector passed on 30th October, 1968, whereby the said Court had already returned the plaint on the ground that the suit did not lie in that Court.

(5) The sole question that arises for consideration now is which Court should try the suit. No doubt, the Chief Court held in *Sunder Singh's case* (1), (supra) that a suit for a share in the produce of certain land owned by the defendant and cultivated in partnership with the plaintiff under an agreement amounted to a suit by a co-sharer for a share in the profits of the holding within the meaning of section 77(3) (k) and was cognizable by a Revenue Court and this view was followed by a Division Bench of this Court in *Bakhshish Singh's case* (2), (supra) more on the ground that nothing would be gained by disturbing the same since it had stood for a long time, but be that as it may it is not for me to express any opinion on the correctness of those judgments since sitting singly I am bound by

(1) 80 P.R. 1904.

(2) 1956 P.L.R. 476.

Inder v. Gurdit Singh (Sodhi, J.)

the same. The fact, however, remains that the defendant had before the Revenue Court taken up the position that the suit was not cognizable by that Court and it was in consequence of this plea being upheld by the Revenue Court that the plaint was returned to the plaintiff for presentation to the Civil Court. When the matter went to the Civil Court, the defendant raised a question of jurisdiction there as well taking up inconsistent position that the suit could lie only in the Revenue Court. In my opinion, it is the type of a case where the defendant should be held estopped from raising a plea in the Civil Court about the jurisdiction of that Court and the suit must be tried there. The doctrine of estoppel by representation based as it is on equity and good conscience is capable of application in an infinite variety of cases. It is a well-established rule of justice that a party to a proceeding cannot be permitted to approbate and reprobate. The doctrine does not, of course, apply against the provisions of a statute or cannot confer jurisdiction where it does not exist but at the same time a party to a proceeding cannot in equity and good conscience set up a position different to one already taken by it and on which the opposite party has already acted. It will amount to allowing a party to play fast and loose if its taking inconsistent pleas in different Courts relating to the same cause are entertained. The present is not a case of inherent lack of jurisdiction but facts were involved on which adjudication was necessary to come to a conclusion whether the plaintiff was a co-sharer in an estate or holding. Where the jurisdiction of a Court to take cognizance of certain dispute depends on ascertainment of facts and an objection is taken to the jurisdiction of that Court, it is not open to that party, when the objection has prevailed, to raise again an objection as to jurisdiction of the Court which, according to his earlier objection, had jurisdiction to try the cause. An application of the doctrine of estoppel in such a case will not confer jurisdiction on a Civil Court but will only prevent the defendant from denying the truth of the facts which he had admitted earlier before the Revenue Court, and on the basis of which the plaint was returned.

(6) The view I have taken finds support from observation as made by a Division Bench of the Oudh High Court in *Mahadeo Singh v. Pudai Singh* (3), and also by the Patna High Court in *Hakim Syed Shah Khurshed Ali v. Commr. of Tirhut Division and another* (4). The situation that arose in *Mahadeo Singh's case* (3)

(3) A.I.R. 1931 Oudh. 123.

(4) A.I.R. 1955 Patna 198.

was almost similar to the one before us. The plaintiff there took proceedings for recovery of possession of suit land in a Revenue Court. The defence of Mahadeo Singh was that the Revenue Court had no jurisdiction to entertain that claim and his defence was accepted. The plaintiff then filed a suit in the Civil Court and the defendant again raised the plea that the suit was not cognizable by the Civil Court. In these circumstances, on the matter coming before the High Court in appeal, it was held that the defendant was estopped from raising the plea of jurisdiction in the Civil Court. The ratio in *Hakim Syed Shah Khurshed Ali's case* (4) is also on the same lines. A suit for eviction brought against the defendant was dismissed by the Civil Court on an objection being taken that it had no jurisdiction because of the bar imposed by the provisions of the Rent Control Act. When similar relief of ejection was sought before the Rent Control authorities, it was granted by the House Controller and the Collector on appeal, but the Commissioner, exercising revisional powers, dismissed the application for eviction on the ground that the House Controller had no jurisdiction. The High Court, exercising its extraordinary jurisdiction under Article 227 of the Constitution, set aside the order of the Commissioner holding that the Rent Control authorities had committed the legal error of permitting the tenant to raise inconsistent pleas and thereby declined to exercise the jurisdiction vested in them under the Rent Control Act.

(7) For the foregoing reasons, I must hold that the defendant cannot in the present case be allowed to raise any inconsistent pleas and that the suit must proceed in the Civil Court. The reference, therefore, stands answered as above.

(8) It is unfortunate that in spite of service, neither of the parties appeared in this Court and I could not have the benefit of assistance from any counsel.