

RAM KHELAWAN

v.

BUDH RAM

[SUPREME COURT, 1967 (Hammett J.), 1st, 8th December]

Appellate Jurisdiction

Court—jurisdiction—Magistrate's Court—claim for amount in excess of jurisdiction—no power to amend claim to bring it within jurisdiction—Magistrates' Courts Ordinance (Cap. 5) s.17 (1)—Magistrates' Courts Rules (Cap. 5) 0.16 r.1.

Practice and procedure—amendment—claim in excess of jurisdiction of Magistrate's Court—no jurisdiction to make order for amendment of claim—Magistrates' Courts Ordinance (Cap. 5) s.17 (1)—Magistrates' Courts Rules (Cap. 5) 0.16 r.1.

The jurisdiction of a magistrate's court of the first class is limited in civil causes by section 17 (1) of the Magistrates' Courts Ordinance to personal suits in which the value of the property or the debt or damage claimed is not more than £400. Where an action is commenced in such a court on a claim exceeding this limit, the proceedings cannot be amended to reduce the amount of the claim to one within the jurisdiction, because amendment can only be affected by an order under Order 16 rule 1 of the Magistrates' Courts Rules, and in a suit so instituted, the magistrate could exercise no jurisdiction and could therefore make no order for amendment.

Appeal against an order of the Magistrate's Court.

K. C. Ramrakha for the appellant.

K. Parshotam for the respondent.

HAMMETT J.: [8th December, 1967]—

In the Magistrate's Court of the first class at Labasa the Plaintiff-Respondent issued the writ of summons in this case claiming specific performance of an agreement and in addition damages for breach of contract and other reliefs. In the first paragraph of his statement of claim the Plaintiff-Respondent stated that the agreement of which he sought specific performance was an oral agreement for the sale of some 14 acres of land for the sum of £1,200.

In the Court below Counsel for the Defendant-Appellant objected to the Court exercising jurisdiction in the case because the value of the land concerned exceeded £400. After hearing both parties in the Court below the learned trial Magistrate made an order giving leave to the Plaintiff-Respondent to amend his claim by reducing it to a claim merely for damages for breach of contract in the sum of £400. On this the Court below held that it had jurisdiction. This appeal has been argued on the sole issue of jurisdiction which was raised by the Defendant-Appellant in the Court below.

A The provisions of the Magistrates' Courts Ordinance which govern the issue of jurisdiction arising in this case are contained in Sec. 17(1) of which the material part reads as follows:—

“A magistrate empowered to hold a court of the first class, shall have and exercise jurisdiction in civil causes

B (a) in all personal suits, whether arising from contract or from tort or from both, where the value of property or the debt or damage claimed whether as balance claimed or otherwise is not more than £400.”

C In this case it is clear that by his original claim the Plaintiff-Respondent sought to enforce a contract for the sale of land for the sum of £1,200; in addition he claimed substantial damages. It is not disputed that the total of the value of the property and the damages originally sued for was far in excess of £400. It was thus in excess of the jurisdiction of a Magistrate empowered to hold a Court of the first class. The Counsel for the Plaintiff-Respondent conceded this when he applied for leave to amend his statement of claim by reducing his claim to a total of £400 and abandoning any claim for any sum in excess of £400.

D The Plaintiff-Respondent endeavoured to overcome this difficulty and bring this case within the jurisdiction of the Magistrates Court of the first class by amending his claim. There is no provision in the Magistrates' Courts Rules whereby a claim may be amended except by an order of the Court. Order 16 Rule 1 of the Magistrates' Courts Rules empowers a Magistrates Court to order the amendment of any proceedings. In this case the learned Magistrate in the Court below was asked by the Counsel for the Plaintiff-Respondent for leave to amend his claim. He granted this leave and ordered that the claim be amended accordingly.

E It seems to me that it was overlooked both by Counsel and the learned trial Magistrate that when the Court below made an order amending the statement of claim it was in fact exercising jurisdiction in a cause which was beyond its jurisdiction.

F A Magistrates Court is a creature of statute and the Magistrate and the Court can only exercise the jurisdiction which is given them by the statute. Section 17 (1) of the Magistrates' Courts Ordinance states quite clearly that a Magistrate empowered to hold a Court of the first class may only exercise jurisdiction in a civil cause arising out of contract where the value of the property etc. claimed is not more than £400.

G In this case where the claim was for property and damages far in excess of £400 in value the Court below had no powers to exercise jurisdiction in the case by ordering an amendment of the statement of claim. The Court was not empowered to exercise any jurisdiction in this case at all.

H X Once a summons has been issued in a Magistrates Court of the first class in excess of the jurisdiction which is given to that Court by the Legislature it appears to me that the only order that may be made when the matter is being dealt with by the Magistrate is for him to strike out the cause for want of jurisdiction. The magistrate does not appear to have any powers either to amend the claim or to transfer the case. He can therefore only decline to entertain the suit on the ground that it is in respect of a matter that is beyond the jurisdiction which has been granted either to the Magistrate or the Court by the Legislature. X

In these circumstances the appeal is allowed. The order of the Court below giving leave to the Plaintiff-Respondent to amend his claim is a nullity and must be set aside.

A

I order the Plaintiff-Respondent's claim in the Magistrate's Court be struck out for want of jurisdiction. I award the Defendant-Appellant costs in this Court which have been agreed at £18 and also costs in the Court below which I assess at £10.10.0d.

Appeal allowed.