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Shankar Dat Dube Vs Radha Krishna

Court: Allahabad High Court

Date of Decision: Dec. 23, 1897

Acts Referred: Civil Procedure Code, 1882 â€" Section 108

Citation: (1898) ILR (All) 195

Hon'ble Judges: John Edge, C.J; Blair, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

John Edge, C.J. and Blair, J.

Rai Radha Krishna brought a suit against Shankar Dat Dube, then Raja of Jaunpur, on a bond alleged to

have been given by the Raja"s deceased elder brother. The Raja entered an appearance, filed a written statement and appointed pleaders to act

for him. One of those pleaders was one Satish Chandar, a pleader practising at Benares. The suit in question was filed in the Court of the

Subordinate Judge of Benares, and the vakalatnamah which was given by the Raja authorised Satish Chandar and the other pleaders therein

named to conduct the suit on behalf of the Raja, and to answer any questions, &c. Satish Chandar obtained more than one adjournment, and on

the 31st of January 1896, he obtained an adjournment until the 19th of March in that year. On the 19th of March when the suit was called on for

hearing and disposal, Satish Chandar stated that no one had come near him on the part of the Raja, and that he had no instructions. Thereupon the

Subordinate Judge proceeded to dispose of the suit upon the evidence on the record, and, arriving at a finding in favour of the plaintiff, made a

decree for the plaintiff. Raja Shankar Dat Dube subsequently applied to the Subordinate Judge u/s 108 of Act No. XIV of 1882 for an order to

set aside the decree. The Subordinate Judge, without considering whether Raja Shankar Dat Dube was prevented by sufficient cause from

appearing and maintaining his defence at the hearing on the 19th of March 1896, dismissed the application on the ground that the decree in

question which he had passed against raja Shankar Dat Dube was not a decree passed ex parte. He appears to have arrived at that conclusion

because he considered that on the 19th of March 1896, the raja was represented by Satish Chandar having instructions. This is an appeal from

that order.

2. Although Satish Chandar was still the vakil of the Raja, and under his vakalatnamah had full authority to act in the suit within the limits of that

vakalatnamah for the Raja he stated that he had no instructions. We understand from that, that he bad practically retired from the case. It is difficult

to understand how a pleader, even in the Court of the Subordinate Judge of Benares, can conduct a case for the defendant without instructions. It

appears to us that the decisions of the Court in Bhagwan Dai v. Hira ILR 19 All. 355, and of the High Court at Calcutta in Jonardan Dobey v.

Ramdhone Singh ILR 23 Cal. 738, are authorities in favour of the contention of the appellant that an application lay in this case u/s 108 of Act No.

XIV of 1882. On the other hand we have been pressed by the learned Counsel for the plaintiff decree-holder with the decision of their Lordships

of the Privy Council in Sahibzada Zein-ul-abdin Khan v. Sahibzada Ahmad Baza Khan L.R. 5 IndAp 233 : S.C. ILR 2 All. 67. The procedure

which the Subordinate Judge must, in our opinion, have adopted was that u/s 157 of Act No. XIV of 1882. That section makes applicable, so far

as may be, to cases coming within the section the procedure of Chapter VII of the Code. Section 157 apparently relates to a later period in the

litigation than the sections which are to be found in Chapter VII, but there is no difficulty in ascertaining the rule to be followed in cases u/s 157 by

reference to Chapter VII. It has been contended for the plaintiff decree-holder that the effect of the decision of their Lordships of the Privy Council

in Sahibzada Zein-ul-abdin Khan v. Sahibzada Ahmad Raza Khan L.R. 5 IndAp 238 : ILR 2 All. 67, is that there can be no decree which can be

called a decree ex parte against a defendant who has at any time and on any occasion before the decree is made put in an appearance in the suit,

although at the hearing he may have been absent and unrepresented, or may have had present merely a pleader who had no instructions. In our

opinion the decision of their Lordships of the Privy Council merely referred to the opening paragraph of Section 119 of Act No. VIII of 1859.

That section itself shows quite clearly that there can be ex parte decrees against defendants whether or not they have put in appearances in the suit.

The prohibition of an appeal in the earlier part of Section 119 is limited, to apply the decision of their Lordships of the Privy Council, to a case in

which the defendant had not put in any appearance at all. In our opinion the decision of their Lordships of the Privy Council has no bearing on the

case before us here.

3. We hold that this was a decree passed ex parte against a defendant within the meaning of Section 108 of Act No. XIV of 1882 for, although

the defendant"s pleader was physically present in Court, he was not there representing the defendant in the suit. We set aside the order under

appeal, and we remand this case u/s 562 of Act No. XIV of 1882 to the Court of the Subordinate Judge to be disposed of on the merits. We

make this order with costs to the representative of Raja Shankar Dat Dube.