Ram Sahai and Another Vs Ram Sewak

Court: Allahabad High Court

Date of Decision: Oct. 12, 1955

Acts Referred: Adaptation of Laws Order, 1950 â€" Section 27
Civil Procedure Code, 1908 (CPC) â€" Section 109, 110
Constitution of India, 1950 â€" Article 133, 135, 372(2)

Citation: AIR 1956 All 321 : (1955) 25 AWR 724

Hon'ble Judges: Mootham, C.J; Agarwala, J

Bench: Division Bench

Advocate: M.B. Tawakley, for the Appellant; J. Swarup, for the Respondent

Final Decision: Dismissed

Judgement

This Judgment has been overruled by : Garikapatti Veeraya Vs. N. Subbiah Choudhury, AIR 1957 SC 540 : (1957) 1 SCR 488

Mootham, C.J.
This is an application for leave to appeal to the Supreme Court from a judgment and decree of this Court dated 16-12-

1953.

2. The dispute between the parties relates to a claim by the respondent that he is entitled to a one-fourth share in two plots of land in the town of

Ferozabad. On an issue being remitted by this Court the value of that one-fourth share was found by the learned Additional Civil Judge of Agra to

be Rs. 10,425/- and that figure is not now in dispute. The appellant contends however that the judgment and decree of this Court ""involves directly

or indirectly some claim or question respecting"" the entire property the value of which is considerably in excess of Rs. 20,000.

We do not think this contention is sound. In --- " AIR 1944 65 (Privy Council) , the Privy Council held that a question as to the title of the plaintiff

to the share which he claimed in the joint property did not become a question respecting the whole of the joint family estate merely because if his

title is established it would result in the joint family estate being partitioned. A fortiori a claim to a one-fourth share in certain property will not have

that result if the establishment of the plaintiff"s claim does not involve partition.

3. The suit out of which this application for leave to appeal arises was instituted on 7-7-1949, that is before the commencement of the Constitution,

but the decrees of the trial Court and of the lower appellate court as well as the decree, of this Court on second appeal were made after 26-1-

1950, and the important question which arises is whether in these circumstances the appellant has a right of appeal to the Supreme Court

notwithstanding the fact that the amount or value of the subject matter of the dispute, although above Rs. 10,000, is less than Rs. 20,000.

4. I will consider later the argument founded on the right which the applicant undoubtedly acquired on the date upon which the plaint was filed of

appeal to the Privy Council; I think it convenient to consider first the relevant provisions of the Constitution. They are Articles 133 and 135 and the

relevant portions read as follows :

133(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of

India if the High Court certifies-

(a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than

twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court;

135. Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction & powers with respect to any matter to which the

provisions of Article 133 or Article 134 do not apply if jurisdiction and powers in relation to that matter were exereisable by the Federal Court

immediately before the commencement of this Constitution under any existing law.

5. The right of a party to appeal to the Supreme Court from a judgment of a High Court, passed after the commencement of the Constitution is

prima facie to be determined by Article 133; and where, as in the case now before us, the amount or the value of the subject-matter of the dispute

is less than Rs. 20,000 and the requirements of Sub-clauses (b) and (c) of Clause (1) of that Article (as is admittedly the case) are not fulfilled, a

High Court has no power to give the requisite certificate and leave to appeal cannot be granted under that Article.

6. Article 135 however confers on the Supreme Court jurisdiction in respect, inter alia, of any civil matter to which the provisions of Article 133 do

not apply, provided that jurisdiction and powers in relation to that matter were exercisable by the Federal Court on 25-1-1950. What then does

the word ""matter"" refer to and what is the meaning or ""exercisabie""?

7. In my opinion the ""matter"" to which Article 133 applies is the appellate jurisdiction of the Supreme Court in appeals from High Courts in regard

to civil matters, and does not include the requirements or conditions with regard to which the Court must be satisfied before it issues a certificate. I

respectfully agree with Rajamannar, C. J., in -- " Gundapuneedi Veeranna and Others Vs. Gundapuneedi China Venkanna and Others, , that a

distinction must be made between determining whether a particular provision of law applies to a case and determining whether, when that provision

is applied, a party is entitled to relief.

The argument that the word "matter" in Article 135 includes appeals in which the requirements of sub-clauses (a) and (b) of Article 133(1) are not

fulfilled involves, I think, construing that Article as being limited in its application to appeals from judgments, decrees and final orders delivered or

made in a civil proceeding instituted after the commencement of the Constitution; the Supreme Court has however held otherwise: -- " Nathoo Lal

Vs. Durga Prasad, .

In that case the Supreme Court held that the provisions of Article 133 applied to an appeal from a judgment of the Rajasthan High Court passed

after the commencement of the Constitution in proceedings which had been instituted in the year 1945.

8. If however the view which I take as to the meaning of the word "matter" be not correct it becomes necessary to ascertain what exactly

constitutes the "matter over which it is said the Supreme Court has jurisdiction under Article 135; and it can, in the case before us, only be an

appeal from a judgment and decree of a High Court in the territory of India dated 16-12-1953, in which the value of the subject matter in dispute

is Rs. 10,425.

The question then is whether this matter is one in relation to which jurisdiction and powers were exercisable by the Federal Court immediately

before the commencement of the Constitution under any existing law. In my opinion the answer must be in the negative. The word ""exercisable"" is

defined in Murray"s Dictionary as meaning ""capable of being exercised"", and I am unable to appreciate how any jurisdiction or powers were

capable of being exercised by the Federal Court in respect of an appeal from a judgment and decree passed by a High Court after the Federal

Court had ceased to exist.

9. I think it is important to observe that the jurisdiction and powers of the Federal Court which have to be considered are the jurisdiction and

powers in relation to the particular matter for which provision is not made in Article 133, and as the Federal Court ceased to exist on the

commencement of the Constitution, the ""matter must in my opinion be one which itself existed before that date; as Chakravartti, C. J., said in --

Prabirendra Mohan Vs. Berhampore Bank Ltd. and Others, , ""the operation of the Article"" (the reference in the report to Article 133 is clearly a

mistake for Article 135)

to my mind is limited to cases where the right to appeal in such proceedings was not a mere potentiality but had actually arisen in a concrete form

immediately before the commencement of the Constitution, such as where an application for leave to appeal had already been made to the Federal

Court or when, at least, the decision of the High Court, sought to be appealed from, had been given"".

10. I now turn to the argument founded on the right of appeal which the applicant acquired on the date upon which the plaint was filed, that is to

say, on 7-7-1949. The right which on that late vested in the applicant was a right to the benefit of the system of appeals provided by the law on

that date, the right of appeal which at any time was capable of being exercised being dependent upon the stage the litigation had reached.

11. On 1-2-1948, the right of appeal to the Privy Council in civil cases was taken away by the Federal Court (Enlargement of Jurisdiction) Act,

1947, and in its place was substituted a right of appeal to the Federal Court, but it is not in my opinion necessary to consider further the effect of

this Act as it was repealed by the Constitution. In the meantime however, on 10-10-1949, the Abolition of Privy Council Jurisdiction Act, 1949,

came into force.

Under Section 2 of that Act the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in relation'' to any

judgment, decree or order of any court or tribunal, other than the Federal Court, within the territory of India was abolished, save as regards

appeals and petitions then pending before the Privy Council; and a corresponding jurisdiction was conferred on the Federal Court.

There can I think be no doubt that the provisions of the Act manifest a clear intention that the Act is to be retrospective and is to apply to all

appeals and petitions (other than those pending before the Privy Council) whether arising out of proceedings which had already been instituted or

which may thereafter be instituted. The right of appeal to the Privy Council was replaced by a right of appeal to the Federal Court.

12. The Federal Court was itself abolished by the Constitution. At the same time the Supreme Court was created and by Article 374(2) all suits,

appeals and proceedings pending in the Federal Court at the commencement of the Constitution were removed to that new Court.

No provision was made with regard to suits, appeals and proceedings not then pending in the Federal Court, and the only conclusion which in my

opinion can be drawn is that a litigant''s right of appeal was thereafter to be found, if at all, in the Constitution itself, that is to say, in the case of

appeals from a judgment, decree or final order of a High Court, in Articles 133 and 135.

13. On this point the case of -- ''Canada Cement Co. Ltd. v. Montreal East Corporation (1922) 1 AC 249 (E), is instructive. The respondent

town obtained judgment from the Circuit Court for the Recovery of a substantial sum of money from the appellants as municipal taxes under a

provision, in the Cities'' and Towns'' Act of Quebec, 1909. The question was whether an appeal lay from this judgment to the Court of King''s

Bench for the Province of Quebec. The Privy Council held that an appeal did not lie on two grounds.

In the first place, it was of opinion that the right of appeal which was given by the CPC (by which the Circuit Court was created and which defined

and limited its jurisdiction) did not extend to an appeal from a judgment under the Cities'' and Towns'' Act; secondly, it was of opinion that,

assuming a right of appeal existed, that right ceased to exist after the coming into force of Quebec Statute, 10 Geo. V c.79, which was passed

after the proceedings in the Circuit! Court had been instituted but before the appeal was brought.

Prior to the passing of that Act an appeal lay (if it lay at all) from a judgment of the Circuit Court to the Court of Review. The Act abolished

appeals from the Circuit Court, and at the same time it transferred to the Court of King''s Bench ""unless otherwise provided by this Act"" the

jurisdiction which up till then had been exercised by the Court of Review.

No provision in other words was made for the transfer to the Court of King''s Bench for appeals which would have lain to the Court of Review,

and in these circumstances the Privy Council held that no right of appeal by the appellants survived.

14. Our attention has been invited to the case of -- '' Jagannath Prasad Vs. Hazari Lal and Others, a decision of this Court, and to certain

decisions of other High Courts. Jagannath Prasad''s case (F), is distinguishable from that now before us. In that case the value of the subject matter

of the dispute was held to be over Rs. 20,000; and the judgment of this Court from which leave to appeal was sought was delivered before the

commencement of the Constitution. Leave to appeal was granted.

Similarly in the case of -- '' Dajisaheb Vs. Shankarrao Vithalrao, it appears from the report in the authorised series that the appeal was from a

judgment of the High Court dated 8-11-1949, the Court treating the application made on 6-1-1950, by the appellant for leave to appeal to the

Federal Court as one for leave to the Supreme Court.

In -- '' Narayan Prasad Sukul Vs. Raj Kishore Misra and Others, , the same question arose which we have to decide: the judgment of the High

Court was delivered after the commencement of the Constitution and the value of the subject matter of the dispute was less than Rs. 20,000 but

above Rs. 10,000. The Court granted leave to appeal u/s 110, Civil P. C., read with Article 135 of the Constitution, holding that the Constitution

had not taken away the appellant"s right to appeal to the Federal Court, and that therefore an appeal now lay to the Supreme Court.

With great respect I am unable to agree with that view. Emphasis was laid in that case, and in Dajisaheb"s case, (G), on Section 27 of the

Adaptation of Laws Order, 1950; but I think it clear that the terms of an Order made under the Constitution cannot alter the provisions of the

Constitution itself.

15. A contrary view has been taken by the Calcutta and Madras High Courts in "Prabirendra Mohan v. Berhampore Bank Ltd., (D)", and

"Veeranna v. Veeranna (B)". In each of these cases it was held that no appeal lies to the Supreme Court from a judgment and decree of a High

Court passed after the commencement of the Constitution except under the provisions of Article 133; and with that view I respectfully agree.

16. In my opinion this application fails and must be dismissed with costs.

Agarwala, J.

17. I agree.