

(1879) 11 AHC CK 0005

Allahabad High Court

Case No: None

Sheo Prasad Ram

APPELLANT

Vs

Ranjit Singh and
Raghu Nandan Ram

RESPONDENT

Date of Decision: Nov. 17, 1879

Citation: (1880) ILR (All) 487

Hon'ble Judges: Robert Stuart, C.J; Spankie, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Robert Stuart, C.J.

The question in this case is a very nice one, showing a certain conflict between the law of procedure and the law of limitation relating to suits and decrees. It is the first time I have met with it as a Judge of this Court, and I am not aware that it has arisen in any of the other High Courts. The circumstances under which it comes before us for decision in the present appeal are these:--The plaintiff, respondent, instituted a suit in the Court of the first class Assistant Collector of Ghazipur, on the 14th December 1876, against Raghu Nandan Ram and Ranjit Singh for recovery of Rs. 164-11-3 principal and interest, being the profits of a one-anna share in a zamindari estate from 1281 to 1282 fasli. A decree, however, was not made in that suit till the 27th of May 1878, when the Assistant Collector found the claim proved as against Raghu Nandan Ram, and decreed accordingly against that defendant with all costs, but the suit as against Ranjit Singh was dismissed. Raghu Nandan Ram, however, the defendant against whom the decree had been given, appealed to the Judge who, after inspection of the record of the Court of First Instance and hearing the pleaders of the parties, ordered that Ranjit Singh, although he had been absolved by the first decree, should be made a respondent in the appeal before him, and the appeal thus supplemented was heard by the Judge and decided by him against Ranjit Singh, whom in his judgment he somewhat inaccurately calls an "outsider,"

but whom he nevertheless found accountable for a large surplus, and he therefore decreed the appeal and set aside the order of the lower Court, thereby reversing the Assistant Collector's decree. The Judge added to his order this remark: "The effect of this decision will be that I give a decree in favour of respondent as against Ranjit for the amount claimed, viz., Rs. 164-11-3, with all costs, and interest thereon at six per cent. per annum."

2. Against this order of the Judge the present second appeal has been brought in which it is contended, among other things, that the Judge's decree against Ranjit Singh was illegal, seeing that Ranjit held the decree of the first Court in his favour, and that decree, under the Limitation Law, Act XV of 1877, Schedule ii, Article 152 *, had become final, seeing that the limitation period thereby prescribed, viz., 30 days, had expired before the filing of the appeal to the Judge. The two material dates are these, the 27th of May 1878, when the Assistant Collector's decree dismissing the claim against Ranjit Singh was given, and the 10th of July following, when the appeal to the Judge was filed, so that 43 days had expired.

3. This contention on the part of the appellant must be allowed. As a general rule there can be no doubt that a Judge under the present procedure law, Act X of 1877, is acting within his powers when he orders a party in the position of this Ranjit Singh to be made a respondent in an appeal before him. Indeed, Section 582 ♦ read with s. 32 is to my mind sufficient for such a general conclusion. But in the present case there is this peculiarity, that the Judge, who must be taken to have known the law he was administering and the legal position of the parties in the matter in issue before him, was bound to take cognizance of the fact that, while he thought it desirable that Ranjit Singh should be made a party to the appeal, this same Ranjit Singh had obtained a decree in his favour in the suit which was the subject of that same appeal, and that since the date of such a decree the limitation period provided by law had run out, and that the appeal before him, so far as it impugned that decree, could not be entertained. Instead, however, of proceeding in this way, the Judge made an order as if Ranjit was a party properly before him, and which order therefore cannot stand. Whether such is a satisfactory state of the present law of procedure may perhaps be doubted, for it humbly appears to me to be very awkward and embarrassing that a power or discretion vested in a Judge for the purposes of justice may be defeated by another and almost contemporaneous law. The result is that the Judge's order against Ranjit Singh comes to nothing and must be set aside, and pro tanto the present appeal must be allowed with costs.

Spankie, J.

4. The plaintiff, respondent, sued Ranjit Singh, Raghu Nandan Ram, and others, defendants, for Rs. 164-11-3 principal and interest, being the profits of a one-anna share in a zamindari estate from 1281 to 1282 Fasli. The question was whether Ranjit Singh or Raghu Nandan Ram, or both of them, owed the money claimed, and in what proportion the sum sued for should be recovered. The first Court decreed

the claim in full against Raghu Nandan Ram and dismissed it in regard to Ranjit Singh. The defendant Raghu Nandan Ram appealed, but plaintiff accepted the decree which absolved Ranjit Singh and did not appeal from it as he might have done. The Judge found it necessary to make Ranjit Singh a respondent, and having done so, he decreed the appeal of Raghu Nandan Ram and set aside the order of the first Court. He added these words,--" The effect of this decision will be that I give a decree in favour of respondent as against Ranjit Singh for the amount claimed, viz., Rs. 164-11-3, with all costs, and interest at six per cent. per annum."

5. It is contended in second appeal by Ranjit Singh that, as neither plaintiff nor Raghu Nandan Ram had appealed against the Munsif's decree as regards him, no decree should have been passed against him in appeal: the Munsif's decree absolving him from all responsibility, not being appealed, became final: the powers given by 582, Act X of 1877, are not applicable to the case, and if they were, the appeal as against appellant was barred by limitation.

6. Section 582, Act X of 1877, provides that the Appellate Court shall have the same powers in appeal under Schedule. xli as are vested by the Code in Courts of original jurisdiction in respect of suits instituted under Schedule. v, and by Section 587 the provisions contained in Schedule. xli, shall apply as far as may be to appeals under Schedule. xlii. After a suit has been instituted in the manner prescribed by Section 48, Schedule. v, the Court has power u/s 32 (chapter iii, relating to parties and their appearances and acts), on or before the first hearing, upon the application of either party, to strike out the name of any party, whether as plaintiff or defendant, improperly joined. By the second clause of the section the Court has "propria motu" power to order any plaintiff to be made a defendant, or any defendant to be made a plaintiff, and also that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. u/s 73, Act VIII of 1859, and a. 37 of Act XXIII of 1861, corresponding with Sections 32 and 582 of Act X of 1877, the Appellate Courts in past years have always felt themselves at liberty to add parties who have been parties to the original suit. I have no doubt that the lower Appellate Court in this case did not exceed its jurisdiction in making Ranjit Singh, a defendant in the suit, who was no party in the appeal, a respondent, to enable it effectually and completely to adjudicate upon and settle all questions involved in the appeal.

7. It has, however, been urged that when Ranjit Singh, defendant in the suit, was made a party to the appeal as respondent, the limitation prescribed by law within which an appeal must be instituted had expired so far as he was concerned.

8. Clause 5, Section 32, Act X of 1877, provides that " all persons whose names are added as defendants shall be served with a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, Section 22) the proceeding as against them shall be deemed to have begun only on the service

of such summons." It has been contended that "the parties whose names are so added" are parties whose names have been added on the application of the plaintiff, or on their own application, and that the clause does not refer to cases in which the Court acts on its own authority and without application. It has also been suggested that the preceding clause shows this. The clause runs thus:-- "Any person on whose behalf a suit is instituted or defended u/s 30 may apply to the Court to be made a party to such suit," and then follows the fifth clause, "all parties whose names are so added &c, &c." But this contention appears to be more ingenious than successful. Under all circumstances it would be necessary to serve a summons on every person made respondent by a Court, to enable him, if absent, to appear and answer the appeal, and such a party appears to be of necessity one of those "parties whose names are so added as defendants," that is to say, meaning "so added" under the clauses of Section 32 of the Act. At the same time, the addition of a defendant to an appeal as respondent cannot override the law of limitation. In an appeal the appellant is for the time the plaintiff, and the respondent for the time defendant, and if Clause 5, Section 32 applies at all, it carries with it the saving of Section 22 of the Limitation Act, XV of 1877. Section 22 provides that when, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party. This being so, I am of opinion that though the Court of Appeal, if it hold it desirable for the purposes of justice, in order to determine the appeal, might make any one a party to it, who was a party to the original suit, or represented a party to the suit, it would not be able to decree the original claim as against the party so made a respondent, if the first Court had dismissed the suit in his favour and the plaintiff had not appealed against that part of the decree within the time prescribed by the Limitation Law.

9. I would, therefore, hold that the Judge should have closed the case by decreeing the appeal of Raghu Nandan Ram and reversing the order as against him, with costs payable by plaintiff, and further that the Judge should also have dismissed the appeal as regards Ranjit Singh, with costs payable by plaintiff, as the latter ought to have appealed against him within the time prescribed by law. At the same time, I do not think that it was necessary in this case for the Court to make Ranjit Singh a party to the appeal as plaintiff had accepted the first Court's judgment relieving him of liability, and the Judge had the record before him, which contained material sufficient to enable him to determine the appeal of Raghu Nandan Ram on the merits. I would decree the appeal with costs in favour of appellant, and not interfere with the rest of the judgment.

*[Article 152:

Description of Appeal.	Period of limitation.	Time from which period to run.
Under the Code of Civil Procedure to the Court	Thirty days. ...	The date of the decree appealed against.]

of a District Judge.

◆ Appellate Court to have same powers as Courts of original jurisdiction.

[Section 582:--The Appellate Court shall have the same powers in appeals under this chapter as are vested by this Code in Courts of original jurisdiction in respect of suits instituted under Chapter V.

The provisions hereinbefore contained shall apply to appeals under this chapter so far as such provisions are applicable.]