

Smt. Pratibha Singh and Another Vs Smt. Shanti Devi and Another

Court: Jharkhand High Court

Date of Decision: March 27, 2002

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 43 Rule 1, Order 43 Rule 1(1), 104(2)

Citation: (2002) 50 BLJR 1312

Hon'ble Judges: M.Y. Eqbal, J; H.S. Prasad, J

Bench: Division Bench

Advocate: S.B. Gadodia, R.K. Verma and U.N. Choudhary, for the Appellant; N.K. Prasad, Manjul Prasad and Binod Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. This Letters Patent Appeal is directed against the order dated 8.10.2001 passed by the learned Single Judge in Misc. Appeal No. 1/99.

2. We have heard Mr. S.B. Gadodia, learned Senior Counsel appearing on behalf of the appellants and Mr. N.K. Prasad, learned senior counsel

appearing for the respondents on the question of maintainability of the appeal since a preliminary objection was raised by the respondents that this

letters patent appeal is not maintainable.

3. The aforementioned Misc. Appeal No. 1/99 was filed by the appellants under Order XLIII Rule 1(1) of the CPC challenging the order dated

23.12.1998 passed by the 7th Addl. Sub-judge, Ranchi in Misc. case No. 26/98. The said Misc. case No. 26/98 arose out of an Execution case

No. 1/83-A. It appears that the plaintiffs-respondents obtained a decree for specific performance of agreement for sale passed in title suit No.

125/81. The decree-holders levied said Execution case No. 1 /83-A and in the said execution proceeding the decree holders deposited the

balance amount of consideration and filed a draft sale deed which was approved. The draft sale deed was typed on stamped paper and filed in

Court which was sent to the Registration Office and the Court executed the sale deed. The appellant-Judgment debtor filed a petition purported to

be u/s 340 read with Section 195(1) of the Cr PC praying for a preliminary inquiry with regard to the forgery committed upon the decree holders

in the matter of approval of the draft sale deed. The Executing Court found that similar objection was raised by the judgment-debtor with regard to

the legality and validity of the sale deed executed in favour of the respondents and the said objection was rejected. The Executing Court, therefore,

rejected the Misc. case No. 26/98. Against the said order the appellants preferred Misc. Appeal No. 1/99 under Order XLIII Rule 1(1). CPC.

The said Misc. appeal was dismissed by the learned Single Judge in terms of the impugned order.

4. Section 104(2) of the CPC very clearly provides that no further appeal lay from any order passed in appeal filed under Order XLIII Rule I of

the CPC. The law has been set at rest by the Supreme Court in the case of M/s. New Kenilworth Hotel (P) Ltd. Vs. Orissa State Finance

Corporation and others, .

5. We have, therefore, no doubt in our mind in holding that the instant Letters Patent Appeal against the order passed by the learned Single Judge

exercising appellate jurisdiction under Order XLIII Rule I, CPC is not maintainable.

6. Mr. S.B. Gadodia, learned senior counsel appearing for the appellant relied upon the decision of the Supreme Court in the case of ""Employer in

Relation to Management of Central Mine Planning and Design Institute Ltd. v. Union of India and Anr."" JT 2001 (2) SC 87 in support of his

contention that Letters Patent Appeal is maintainable. We are of the definite view that the ratio decided by the Supreme Court in the aforesaid case

has no application at all in the aforesaid case for the reason that this appeal has been filed against the appellate order passed in the appeal filed u/s

104 read with Order XLIII Rule 1, CPC.

7. For the aforesaid reasons, this appeal is not maintainable and is accordingly dismissed.