

Agabeg Vs Musammat Sundari

Court: Patna High Court

Date of Decision: Jan. 11, 1918

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 115

Citation: AIR 1918 Patna 301(2) : 48 Ind. Cas. 133

Hon'ble Judges: Dawson Miller, C.J; Mullick, J

Bench: Division Bench

Judgement

1. In this case an application is made on behalf of Mr. Alfred A. Agabeg asking us to exercise our powers u/s 115 of the CPC and review a

decision of the Subordinate Judge of Deoghur, dated the 27th September 1917. It appears that the applicant advanced money to one Thakur

Ashutosh Deo, Ghatwal of Rohini, and in consideration of that he was appointed manager of his estate on the 4th May 1914, put into possession,

and Thakur Ashutosh Deo received apparently a monthly allowance. A little later on the applicant was served! with a notice of discharge.

Thereupon he instituted a suit and obtained a declaration to the effect that he was entitled to remain in possession and to collect the rent to pay off

the debt in accordance with the terms of the agreement, which was a written agreement entered into on the 4th May 1914. Subsequently he

appears to have advanced some further money and got a usufructuary mortgage in respect of Basuri Mahal, which was the same or part of the

same property. On the 17th July Musammat Sundari and Debi Prasad Mar-wari obtained a decree against Thakur Ashutosh Deo for a sum of Rs.

4,725, and in execution of that decree a Receiver was appointed and he was put in possession of the property in respect of which the present

applicant was already exercising, or claimed that he was exercising, rights of possession. Thereupon a written objection was filed by the applicant

to the appointment of the Receiver, and to the delivery of papers and demanding a return of the papers already delivered. This objection came on

before the same Court, that is, the Court of the Subordinate Judge at Deoghur, and was decided on the 27th September 1917, and the objection

by the present applicant was dismissed. Now the question arises whether we are entitled u/s 115 of the CPC to exercise our powers of revision

upon that order passed by the Subordinate Judge of Deoghur dismissing the objection of the applicants. The parties appear to have been somewhat

uncertain themselves, whether they were entitled to come before us by way of revision or whether there was in fact an appeal from the order of the

Subordinate Judge, and, therefore, an appeal has also been lodged, but the appeal would, in the ordinary course, come before the District Judge.

The question as to which is the proper procedure to adopt depends upon Order XL, Rule 1. If the order dismissing the applicant's objection

comes within Order XL, Rule 1, then no doubt there is an appeal from such an order, and we have got to consider in this case whether it does

come under that order or not. It seems to us that the order made by the Subordinate Judge of Deoghur was clearly within the terms of Order XL,

Rule 1. It did in effect remove the applicant from possession or custody of the property, and that being so, the exact wording in which the order

was made does not seem to be very material if it did in effect carry out the powers provided by Order XL, Rule 1. In a case which was recently

before this Court which has not been reported but which has been brought to our attention, an objection was taken that no appeal lies in a similar

sort of case. We are informed that although the objection was taken the point was not seriously argued and the question was not thoroughly gone

into before the Court, but it appears that the Court in that case seems to have said quite shortly: "This objection must be given effect to as Deo

Narain was not a party to the suit" (he was the applicant) "and therefore he has no right of appeal to this Court." Thereupon the Court assumed

jurisdiction u/s 115 to exercise its powers of revision and issued a Rule, but that decision was given, I understand, without any real argument upon

the point and I do not think the authorities were considered. But the High Court of Calcutta in the case of Rowland Hudson v. John Pierpont

Morgan 1 Ind. Cas. 356 : 36 C. 713 : 13 C.W.N. 654 : 9 C.L.J. 563 considered this question, and in a considered judgment they came to the

conclusion that in a case on all fours with the present case a right of appeal did lie. It was said in that case, as it has been said here, that as the

appellant was not a party to the order, that is the order appointing the Receiver, he had no right of appeal. That point was duly considered amongst

others and the Court determined that in cases of this sort a right of appeal did lie. We entirely agree with that decision and that being so, we think

that the application before us today to review the decision of the learned Subordinate Judge cannot be entertained. The case will go in the ordinary

course before the District Judge on appeal, the subject-matter of the appeal will be determined by him and this application will be dismissed. There

is also an application made to as to transfer the case from the file of the " Subordinate Judge to this Court, but we do not think sufficient grounds

have been made out for granting that application and it will accordingly be refused. The Rule will be discharged with costs.