Bhabataran Chakravarty and Others Vs Ramlal Das Mohunt

Court: Calcutta High Court

Date of Decision: Jan. 6, 1936

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 92
Public Suits Validation Act, 1932 â€" Section 2, 3

Citation: AIR 1936 Cal 815 : 166 Ind. Cas. 954

Judgement

1. This is an appeal preferred by the plaintiffs from a decree dismissing their suit u/s 92, Civil P. C. The suit was instituted with the consent of the

Collector u/s 93 of the Code on 22nd June 1928. It remained pending for several years when on 30th November 1931 the decision of the Judicial

Committee in Prem Narain v. Ram Charan 1932 P C 51 wab delivered. On 15th February 1932, in view of the said decision, the suit was

dismissed, it being held that the consent of the Collector u/s 93 of the Code with which the suit had been filed was not in order. This decree was

signed by the Court on 17th February 1932. On 8th April 1932, the Public Suits Validation Act (Act No. 11 of 1932) received the assent of the

Governor General and came into force. On 4th May 1932, the plaintiffs put in a petition under the provisions of Section 3 of the Act for restoration

of the suit. This petition was objected to on behalf of the defendant but eventually on 20th June 1932 the learned District Judge set aside the

decree of dismissal that he had made on 15th February 1932 and ordered the suit to be restored. The objection which the defendant had taken to

the restoration of the suit was thereafter repeated before the learned Judge and as the result of that the learned Judge on 25th January 1933 again

dismissed the suit on the view that the consent of the Collector with which the suit had been originally instituted not having been in order and there

having been no fresh consent given by the Collector with the previous sanction of the Local Government, the suit was not maintainable in view of

the decision of the Judicial Committee in Prem Narain v. Ram Charan 1932 P C 51 referred to above. The learned Judge has taken the view that

although in view of Section 3 of the Act the plaintiffs were entitled to have the decree of dismissal originally made set aside and their suit restored

still the moment the suit came to be restored it would have to be proceeded with and proceeded with in accordance with the law from that point of

time, Section 2 of the Act not applying to the suit at all.

2. This is a view which, in our opinion, is clearly not maintainable. Section 3 is concerned only with the question of restoration by the trial Court of

a suit which had been dismissed merely on the ground of defect in the sanction required by Section 93 of the Code. Once the order of restoration

is made, the suit will have to be proceeded with and proceeded with in accordance with law. Section 2 of the Act is already a part of the law of

the land and if by its terms the section is applicable to the suit as it then was, there can be no question that the suit cannot again be dismissed but

should be proceeded with if Section 2 warrants such a procedure. In the present case, at the time when the Act was passed, an appeal from the

decree of the trial Court dismissing the suit was competent and open to the plaintiff"s. That being the position, the suit was a pending suit within the

meaning of Section 2 and once it is established that the suit was pending at that point of time, the provisions contained in Section 2 at once came

into play. Section 2 being applicable to the suit as it then was, there can be no question that the validity or otherwise of the consent with which the

suit was originally instituted could no longer be enquired into and would consequently form no ground for dismissal of the suit once again. We are

of opinion that the learned District Judge was in error in the view that he took of this matter. The result is, that the appeal succeeds. We

accordingly order that the decree from which it has been preferred being set aside the suit be now tried on the merits in accordance with law.

Coats of this appeal will abide the result; hearing fee being assessed at three gold mohurs.