
(1871) 07 CAL CK 0002

Calcutta High Court

Case No: None

In Re: the Petition of
the Court of Wards on
behalf of the Raja of
Darbanga

APPELLANT

Vs

RESPONDENT

Date of Decision: July 29, 1871

Final Decision: Allowed

Judgement

Macpherson, J.

I think that this application ought to be granted. Clause 39 of the Letters Patent of 1865 ordains, as I read it, that "any person may appeal to the Privy Council from any final judgment, decree, &c., of the High Court made in appeal, and from any final judgment, decree, &c., made in the exercise of original jurisdiction by a majority of the full number of Judges of the High Court, or of any Division Court from which an appeal does not lie to the High Court under clause 15; provided the appeal directly or indirectly involves a question as to property the value of which is not less than Rs. 10,000: and that any person may appeal to the Privy Council from any other judgment, decree, &c., when the High Court shall declare that the case is a fit one for appeal." The petitioner seeks to appeal from a decree passed by a Division Court consisting of two Judges. As regards the subject-matter of the proposed appeal, the Judges were divided in opinion; and, as provided by clause 36, the opinion of the senior Judge prevailed. It is admitted that, under these circumstances, the petitioner had, according to the construction which has been put upon clause 15 of the Letters Patent, by a Full Bench of seven Judges--Rani Swarnomayi v. Lachmipat Dugar Special Appeal No. 336 of 1866 : 23rd January 1867, a right to appeal to this Court from the decision of the Division Court; and it is contended on behalf of Raja Lilanand Sing, who opposes the present application, that the petitioner having an appeal to the High Court under clause 15 has no right of appeal to the Privy Council. But a careful consideration of the provisions of clause 39 will show that this is not so. A strictly grammatical construction of the language used proves that the words from which an

appeal shall not lie to the said High Court under the provision contained in the 15th clause of these presents," apply only to the immediately preceding passage, and from any final "judgment, decree, or order made in the exercise of original "jurisdiction by a majority of the full number of Judges of the said High Court, or of any Division Court. Taking the words as they stand, and putting the natural construction upon them, there is no right of appeal to the Privy Council from a decree made in the exercise of original jurisdiction, if an appeal will lie to the High Court itself under clause 15; but there is a right of appeal from a decree made in the exercise of appellate jurisdiction, whether an appeal will lie to the High Court under clause 15 or not. If this were not the meaning intended, the words and from any final judgment, decree, or order," would not be repeated, as they are, immediately before the words "made in the exercise of original jurisdiction, &c." I have no doubt that a distinct line was intended to be drawn between decrees made by this Court on appeal and decrees made by it in the exercise of ordinary original jurisdiction. This view is somewhat corroborated, I may add, by the words used in the latter part of clause 39,--"or from any other final "judgment, decree, or order made either on appeal, or otherwise as aforesaid."

2. The construction I put upon clause 39 is that which Sir Barnes Peacock was inclined to put upon it,--as appears from the judgment delivered by him in the Full Bench case Special Appeal, No. 336 of 1866; 23rd January 1867 to which I have already referred. He says:

It has been said that section 39 of the Letters Patent gives an appeal to Her Majesty in Council from any final "judgment, decree, or order of the High Court made on appeal in any matter not being of criminal jurisdiction; but that with "respect to judgments, decrees, or orders made in the exercise of original jurisdiction, an appeal is given to Her Majesty in Council only when the judgment is one from which an appeal shall not lie to the High Court under the provision contained in the 15th clause of the Charter; and it is argued that, if it had been intended that section 15 should apply to judgments passed in the exercise of an appellate civil jurisdiction, as "well as to those passed in the exercise of original civil jurisdiction, the words " from which an appeal shall not lie to the said "High Court under the provision contained in the 15th clause "of these presents," in clause 39 of the Charter, would have "been made applicable to judgments passed on appeal, as well as to judgments made in the exercise of original jurisdiction; and that, reading section 15 by the light thrown upon it by section 39, it must be held not to be applicable to judgments made on appeal.

The argument is plausible, but it is not conclusive. We cannot say that it was not the intention of section 39 of the Charter to draw a distinction between judgments passed in appeal, and judgments passed in the exercise of original jurisdiction, to the extent of leaving it optional to parties to judgments given by a Division Bench to appeal at once to Her Majesty in Council from a judgment given by a Division Court in the exercise of appellate jurisdiction, even though it might be one from which an appeal would lie to the High Court; but in the case of judgments given in original jurisdiction, to allow an appeal

to Her Majesty in Council only in cases not appealable to the High Court. It cannot be said that such a distinction would "have no reason in support of it, when it is borne in mind that every judgment given in appeal must be on a matter which has been previously before one other Court at least, and in special appeal before two other Courts.

3. Even, however, if the words in the earlier part of clause 39 did not give a right of appeal to the Privy Council, I think it clear that this is a case in which I have power to declare, and ought to declare, that the case is a fit one for appeal" to the Privy Council within the meaning of the latter part of the clause. Under clause 39 there are two classes of appeals. One class comprises those in which the value directly or indirectly involved is not less than Rs. 10,000. The other class comprises cases which are declared by the High Court to be fit cases for appeal, though not of such value as to bring them within the first class. The clause ordains, in fact, that any person may appeal to the Privy Council from any judgment, &c, or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal" to the Privy Council. It appears to me that it is most desirable and fit that, under the peculiar circumstances of this case, the appeal should now lie to the Privy Council, and not to the High Court. The Division Court decided to a certain extent in favor of the present petitioner; and to that extent the Judges were not divided in opinion. There being no appeal under clause 15 from that portion of the decree, Raja Lilanand Sing has appealed to the Privy Council, as he has an undoubted right to do. Having so appealed, he opposes the petitioner"s application, and wishes to drive him to an appeal under clause 15 before he can go to the Privy Council. The appeal being to a certain extent before the Privy Council, it is manifestly most inconvenient it should be to a certain other extent before the High Court. Especially when it is borne in mind that (as was stated by Counsel in the course of argument on this application) the hearing of the appeal by the Division Court occupied more than one whole month, and that it appears upon the face of the decree that the point of difference between the Judges of the Division Court is the construction to be put upon an order made by the Privy Council itself some years ago, and out of which order the present proceedings have arisen. See *Rajah Leelanund Singh Bahadoor v. Maharaja Moheshur Singh Bahadoor* 10 Moore"s I.A., 81. Under all the circumstances, I should have no hesitation in declaring the case to be a fit one for appeal, if I deemed such a declaration necessary in order to enable me to grant this application. But I do not consider it necessary to make any such declaration formally, as I have no doubt that, independently of my making it, the petitioner is entitled to appeal to the Privy Council.