
(1872) 07 CAL CK 0005

Calcutta High Court

Case No: Regular Appeal No. 281 of 1871

In re: Duli Chund

Vs

APPELLANT

RESPONDENT

Date of Decision: July 11, 1872

Judgement

1. This appeal is against the portion of the decree of the Subordinate Judge of Gya, dated the 22nd February 1872, which disallowed the claim in suit, to the extent represented by the amount at which this appeal is valued, viz., Rs. 3,675; the entire claim being Rs. 7,935. With reference to each of three similar appeals, the Fourth. Bench has to-day held that, "under s. 22, Act VI of 1871¹, the appeal ought to have been preferred in the Court of the District Judge, inasmuch as the subject-matter in dispute does not exceed Rs. 5,000 in value," and directed "the case" to "be sent down to the District Judge."

2. But for this order, the officer would have received this appeal tinder the impression that the terms, "the amount or value of the subject-matter in dispute," used in s. 22, Act VI of 1871, are synonymous with the terms, "suits exceeding the amount or value," used in s. 4, Act XXV of 1837², which have been re-enacted first by Act XVI of 1868, s. 18³, and next by the more recent Act of 1871 above quoted.

Under the circumstances, however, I must refer the appeal to the First Bench, to which the district it has come up from indicates it to belong, for orders as to its admission or other-wise.

In consequence of the decision of L.S. Jackson and Mark-by, JJ., in Srimati Dasi v. Saudamini Dasi⁴, this case and cases Nos. 241, 199, and 260 were referred to a Bench of four Judges.

3. The circumstance of case No. 244 were the same as those in the case referred by the Deputy Registrar. Cases Nos. 199 and 260 were cross-appeals; the value of the suit was above Rs. 5,000, and a decree had been passed in favor of the plaintiff for Rs. 2,916.

¹ Act VI of 1871, s. 22.--"Appeals from the decrees and orders of Subordinate Judges and Munsiffs shall when such appeals are allowed by law lie to the District Judge, except where the amount or value of the subject-matter in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court."

² XXV of 1873, s. 4.--"And it is hereby enacted that in all suits exceeding the amount or value specified in clause 1, section 18, Regulation V, 1831, which shall, under the authority of section 1 of this Act, be referred to a Principal Sudder Ameen appeal from the decision of such Principal Sudder Ameen shall be direct to the Court of Sudder Adawlut and it shall be conducted in all respects according to the same rules as if it were an appeal from the decision of a Zillah Judge to the said Court of Sudder Dewanny Adawlut, and any application for a review of judgment on such decision shall be made by the said Principal Sudder Ameen directly to the said Court of Sudder Dewanny Adawlut, and shall be conducted in all respects as if it were an application for a review of a decision of a Zilla Judge."

³ Act XVI of 1868, s. 18.--"In suits decided by any Subordinate Judge in the exercise of his original jurisdiction, of which the amount or value of the subject-matter does not exceed rupees five thousand, an appeal shall lie to the District Judge to whom control such Subordinate Judge is subject. In all other suits decided by any subordinate Judge, whether in the exercise of his original or appellate jurisdiction, the appeal from the decision of the Judge shall be direct to the High Court".

⁴ Before Mr. Justice L.S. Jackson and Mr. Justice Markby. Srimati Dasi and another(Defendants) v. Saudamini Dasi (Plaintiff).

This was a suit brought to recover possession of lands valued at Rs. 7,926, and insane profits valued at Rs. 12,343. Upon the objection of the defendants as to the over-valuation of the suit, the Subordinate Judge found that the fair valuation of the lands in dispute would be, Rs. 2,500, and that she means profits for [six years would be about Rs. 4,417, making Rs. 6,917 as the amount of the claim. He accordingly fixed Rs. 6,917 as the valuation of the suit.

On the merits he found in favor of the plaintiff, and passed a decree for the plaintiff to recover possession of all the lands described in the plaint, with wasiat from the date of suit to date of delivery of possession in execution, which was thereby reserved to be ascertained in execution of the decree.

The defendants appealed to the High Court, valuing the appeal at Rs. 2,5000.

On the appeal being called on for hearing, Jackson, J., observed:--The matter in dispute now is Rs. 2,500. The appeal does not lie here.--S.22, Act VI of 1871.

Baboo Nilmadhab Bose (Baboo Bamacharan Banerjee with him), for the appellant, contended that the suit was valued at above Rs. 5,000. This section relates to the

"subject matter in dispute" in the suit, not to the subject-matter in appeal. When the suit is for recovery of possession of land and mesne profits valued at a sum above Rs. 5,000, the appeal lies to this Court. [Jackson, J.--We have to do with the appeal only. The words of the section are "subject-matter in dispute." The suit was brought on the 27th January 1871 before the Act was passed, and consequently the appeal is governed by the old law and practice. [Jackson, J.--The Act came into operation on the 10th February 1871, and before the appeal. We have to do with the appeal only. The appeal was by mistake filed here.]

Baboo Nilmadhab for the respondent was not called upon.

Jackson, J.--Under s. 22 of Act VI of 1871, the appeal ought to have been preferred in the Court of the District Judge, inasmuch as the subject-matter in dispute does not exceed Rs. 5,000 in value.

The case must be sent down to the District Judge.