Pigot Vs Ali Mahammad Mandal

Court: Calcutta High Court

Date of Decision: Aug. 27, 1920

Judgement

Mookerjee, A.C.J.

1. The events which have led up to the present Rule have been fully narrated in the judgment delivered by Mr. Justice Chatterjea and Mr. Justice

Cuming, on the 2nd July 1920, in the case of Ali Mohammad Mondal v. Fakiruddi Munshi (1920) 24 C.W.N. 1039 and need not be recapitulated

at length for our present purpose. It is sufficient to state that proceedings u/s 145 of the Code of Criminal Procedure were initiated by the District

Magistrate of Malda on the ground that a dispute likely to cause a breach of the peace existed between the Mathurapur Zemindary Concern and

the tenants, relating to the right to grow and collect lac on plum trees standing on lands comprised in the holdings of the tenants. The District

Magistrate considered the case to be of such emergency that he proceeded to attach the disputed trees with the lac thereon, pending his decision

u/s 145. At a later stage, by order of the District Magistrate, the lac was collected and stored in the godowns of the first party and a portion

thereof was sold by auction. The tenants obtained Hales from this Court with a view to set aside the proceedings on the ground, amongst others,

that the District Magistrate had no jurisdiction to take action u/s 145 or to make the orders he had passed. This Court stayed further proceedings

pending the disposal of the Rule. But notwithstanding such order, the lac has been collected and sold in part, an action which has been attempted

to be justified, in the letter of the Magistrate, on the allegation that the lac might otherwise considerably deteriorate in value to the detriment of the

rightful owner, whoever he might turn out to be in the end. On the 2nd July 1920, Mr. Justice Chatterjea and Mr. Justice Cuming set aside the

proceedings u/s 145 as initiated without jurisdiction and added that the question of disposal of the lac and the sale proceeds of the portion already

sold would be dealt with later. The present Rule was then issued, on the 29th July 1920, calling upon the District Magistrate of Malda and the

opposite party to show cause why the proceeds of sale of the lac, as also the lac yet unsold and stored in the godowns of the Mathurapur

Zemindary Concern, should not be made over to the tenants, or why such other order should not be passed as might seem proper to the Court. As

the Rule involves an important question of law touching the jurisdiction of this Court, it has been placed for disposal before a Special Bench

constituted with the concurrence of the Full Court.

2. The first point which requires consideration is, whether this Court has inherent power to give directions as to the disposal of property which was

attached and Las been dealt with by a subordinate Court in the course of proceedings instituted without jurisdiction u/s 145 of the Code of

Criminal Procedure. We are of opinion that the question should be answered in the affirmative. It is now well settled that a High Court is

competent, in the exercise of the power of superintendence vested in it u/s 107 of the Government of India Act, 1915 (which replaced Section 15

of the Indian High Courts Act, 1861), to set aside proceedings instituted without jurisdiction by a subordinate Court u/s 145 of the Code of

Criminal Procedure; such power of superintendence can be exercised notwithstanding Section 435(3), Code of Criminal Procedure, which lays

down that proceedings under Chapter XII (which comprises Sections 145--148) are not proceedings within the meaning of that section. This view

was affirmed in Hurbullubh Narain Singh v. Luchmeswar Prosad Singh ILR (1898) Cal. 188, Laldhari Singh v. Sukdeo Narain Singh ILR (1900)

Cal. 892, Jag-mohan Pal v. Ram Kumar Gope ILR (1901) Cal. 416, Kulada Kinkar Roy v. Danesh Mir ILR (1905) Cal. 33 and was

subsequently recognised by a Full Bench in the cases of Sukh Lal Sheikh v. Tara chand Ta ILR (1905) Cal. 68 and Khosh Mahomed Sirkar v.

Nazir Mahomed ILR (1905) Cal. 352. Section 107 of the Government of India Act, which may thus be invoked to set aside proceedings instituted

without jurisdiction, is expressed in perfectly general terms, and prima facie, there is no reason why the High Court should not, when it sets aside

the proceedings, proceed to give such consequential directions as may be found necessary in the interests of justice in the circumstances of the

particular case. That the Court is competent to make such consequential or incidental orders, when it exercises its appellate or revisional

jurisdiction, is clear from Section 423(1)(d), Section 439(1) and Section 520. In such circumstances, we may legitimately hold that the High Court

may make consequential or incidental orders in the exercise of its power of superintendence over subordinate Courts which may be invoked, if

occasion should arise, to reach and remedy all forms of judicial high-handedness: Lekhraj Ram v. Debi Pershad (1908) 12 C.W.N. 678. This

conclusion harmonises with the view formulated in Palin Behary Das v. King-Emperor (1912) 15 C.L.J. 517, 582, that ""Criminal Courts, no less

than Civil Courts, exist for the administration of justice and Courts of both descriptions have inherent power to mould the procedure, subject to the

statutory provisions applicable to the matter in hand, to enable them to discharge their functions as Courts of Justice."" The same position was re-

affirmed in the following terms in Budhu Lal v. Chattu Gope ILR (1916) Cal. 816, 827, 828: ""the Code of Criminal Procedure does not contain a

provision corresponding to Section 151 of the Code of Civil Procedure; but that section does not lay down any new principle; it merely embodies

a legislative recognition of the inherent power of the Court to make such orders as may be necessary for the ends of justice. This inherent power is

in no sense restricted in application to civil cases; it is equally applicable to criminal matters. The power is not capriciously or arbitrarily exercised;

it is exercised ex debito Justitiae to do that real and substantial justice for the administration of which alone Courts exist; bat the Court, in the

exercise of such inherent power, must be careful to see that its decision is based on sound general principles and is not in conflict with them or with

the intentions of the Legislature as indicated in statutory provisions,"" This was not a novel proposition nor a new departure, for the inherent power

of the Court had been occasionally recognised in earlier cases. Thus, in Ram Chandra Mistry v. Nobin Mirdha ILR (1898) Cal. 630, when the

Court was invited to apply, to an order made by a Criminal Court, the elementary principle enunciated by the Judicial Committee in Rodger v.

Comptoir D. Escompte de Paris (1871) L.R. 3 P.C. 465, that it is the duty of all Courts to take care that the act of the Court does no injury to any

of the suitors, Mr. Justice Hill observed that in a case which the Court considered to be a fit one in all respects for its application, the Court would

not hesitate to enforce the principle referred to. The statement of this principle by Lord Cairns in the case before the Judicial Committee just

mentioned is couched in terms of great generality and may be usefully recalled in this connection. ""One of the first and highest duties of all Courts is

to take care that the act of the Court does no Injury to any of the suitors and when the expression the act of the Court is used, it does not mean

merely the act of the Primary Court, or of any intermediate Court of appear but the act of the Court as a whole, from the lowest Court which

entertains jurisdiction over the matter up to the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if

I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the

Court.

3. Again, in Ahmed Ali v. Keenoo Khan ILR (1908) Cal. 44, when Mr. Justice Brett was pressed with the argument that the High Court could not

interfere with an order passed by a Magistrate u/s 522 of the Code of Criminal Procedure, because there was no express provision in that behalf,

the learned Judge referred to Ram Chandra Mistry v. Nobin Mirdha ILR (1898) Cal. 630, as showing that the Court had an ""inherent jurisdiction"";

though it became unnecessary for him to invoke the aid of the inherent power of the Court, because, as pointed out in Manki v. Bhagwanti ILR

(1904) All. 415, the provision contained in Section 423(1)(d) read with Section 439 was comprehensive enough to include the power required to

direct cancellation of the order made u/s 522. Again, the decision in In re Lakshman Govind Nirgude ILR (1902) Bom. 552, contains a clear

recognition of the doctrine of inherent power. It has been contended, however, that cases may be found in the books which tend to show that the

theory of inherent power of a Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the

Court, has been sometimes, if not actually repudiated, at any rate, overlooked and reference has been made to Basudeb Surma Gossain v.

Naziruddin ILR (1887) Cal. 834, Queen Empress v. Fattah Chand ILR (1897) Cal. 499, Prayag Mahaton v. Gobind Mahaton ILR (1905) Cal.

602, Arju Mea v. Arman Mea (1908) 7 C.L.J. 369, Surjya Kumar Upadhya v. Dinabandhu Pal (1911) 15 C.W.N. coliv, Karimuddi Fakir v.

Naimuddi Kaviraj (1904) 3 C.L.J. 573, Tulshi Ram v. Abrar Ahmad ILR (1915) All. 655, In re Annapurnabai ILR (1877) Bom. 630, In re

Ratanlal Rangildas ILR (1892) Bom. 748, In re Devidin Durgaprasad ILR (1897) Bom. 844, In re Kuppammall ILR (1906) Mad. 375 and

Chenga Reddi v. Ramasamy (1914) 16 Cri. L.J. 104, as typical illustrations. No useful purpose would be served by an analysis of the facts of

each of these cases and of the opinions expressed thereon, though it may be a question whether all of them really ignore or overlook the doctrine

of inherent power. It is sufficient to state that in some instances the matter was not approached from this point of view, while, in others, even if the

doctrine of inherent power were invoked, the result would not have been different; but none of the cases expressly repudiates the doctrine of

inherent power, though several proceed on the assumption that a specific provision of the Code of Criminal Procedure must be pointed out to

justify an order made by a subordinate Court or an order which the High Court is invited to pass. This narrow view of the powers and duties of a

Court of Justice, whither Civil or Criminal, cannot now be maintained. The truth is that, in respect of Civil Courts, the theory of inherent power,

though enunciated by Sir Barnes Peacock, C. J., in 1868 in Hurro Chander Roy v. Suradhani (1868) 9 W.R. 402, was lost sight of for many years

and was familiarised only after it had been restated and re-affirmed in 1906 in Hukum Chand Boid v. Kamalanand Singh ILR (1906) Cal. 927 and

recognised thereafter in express terms in Section 151 of the Code of Civil Procedure, 1908. In the case of Criminal Courts, the theory of inherent

power has had a still more uncertain career, but, as we have seen, it was welcomed without hesitation in 1898, found some recognition in the Code

of Criminal Procedure of that year and was reaffirmed, in 1912. We feel no doubt whatever that the doctrine of inherent power, as enunciated in

the cases of Pulin Behary Das v. King-Emperor (1912) 15 C.L.J. 517 and restated in Budhu Lal v. Chattn Gope ILR (1916) Cal. 816, is well

established on principle and cannot be successfully questioned.

4. The second point which requires examination is, what are the directions which should be given for the disposal of the lac and the sale proceeds

of the portion already sold. It is manifestly impossible to restore the physical condition of things as they existed when the proceedings u/s 145 were

instituted; for the, twigs cannot be re-attached to the trees nor can the lac be replaced on them. The tenants have contended that as restitutio in

integrum is impossible, the lac yet unsold should be sold and the entire sale proceeds divided amongst them ratably in proportion to the number of

trees on the holding of each tenant. This course cannot be adopted for an obvious reason. Such a distribution as that suggested must be made on

the assumption that, apart from the possible question of title, all the lac when attached and removed was in the possession of the tenants. This,

however, is strenuously controverted on behalf of the zemindars and adhyars and the Court is not in a position to make an assumption in favour of

either party, because there has been no enquiry, summary or otherwise, in the proceedings which have been cancelled as instituted without

jurisdiction. It is equally plain that the lac and the money should not remain in the custody of the zemindars and adhyars who are the other party to

the proceedings. In such circumstances, the best course to adopt is to keep the property in the custody of the Court pending decision by a civil

Court on the question of title to the lac cf. Chenga v. Ramasamy (1914) 16 Cri. L.J. 104. Such a course was commended by Lord Macnaghten in

Hood Barrs v. Heriot (1896) A.C. 174, 186, where he regretted that the Court of Appeal had not thought it proper to hold a fund in medio

pending appeal to the House of Lords on the question of title thereto; see also the judgment of Lord Watson in Peruvian Guano Company v.

Dreyfus Bros. (1892) A.C. 166.

5. The result is that the Rule is made absolute. The lac and the net sale proceeds of the lac already sold (after deduction of incidental charges) will

forthwith be placed in the custody of the Subordinate Judge of Malda, who will take steps, as early as practicable, to have the lac sold. The entire

sale proceeds will constitute one fund which will remain in the custody of the Court of the Subordinate Judge. The first party will be at liberty to

institute a suit in the Court of the Subordinate Judge of Malda for declaration of their right to the lac and for incidental reliefs. If such a suit is

instituted on or before the 1st December 1920, the fund will continue to be held by the Subordinate Judge to await the result of the suit. If on the

other hand, the suit is not instituted by the first party on or before the 1st December 1920, the Subordinate Judge will distribute the fund amongst

the tenants on the basis of the record prepared by the police authorities as to the number of trees on the holding of each tenant from which the lac

was taken.

6. The distribution will be made ratably in proportion to the number of trees on each holding; but this will, not affect the right of tenants inter se to

have the question of apportionment amongst themselves decided by a Civil Court.

Fletcher, J.

7. I agree.

Chatterjea, J.

8. I agree.

Richardson, J.

9. I agree.

Ghose, J.

10. I agree.