Parmeshwari Dassi Vs Jagat Chandra Das

Court: Calcutta High Court

Date of Decision: Aug. 3, 1914

Judgement

1. This is a reference made to us by the learned District Judge of Chittagong under Or. XLVI, r. 7. C. P. C. It appears that a suit for recovery of

ornaments or their value Rs. 90 placed in deposit with the Defendant was instituted in the Court of the Munsif having Small Cause Court powers

only up to Rs. 50 and was registered as an ordinary suit. Before the case came on for hearing, the first Munsif was succeeded by another Munsif

who had Small Cause Court powers up to Rs. 100. He tried the suit as a Small Cause Court suit and dismissed it on a very strong finding of fact

that no such deposit had ever been made. The evidence of deposit is quite unsatisfactory and unreliable. He goes into the evidence in detail,

analyses it and as far as we can see has come to a just and proper conclusion. It is urged on the authority of the case of Mahima Chandra Sirdar v.

Kali Mandol 12 C. W. N. 167 (1907) that this Court is bound to act upon the reference by the learned District Judge and to direct that the suit be

reheard in the regular form. In support of this contention the Full Bench case of Madras [Hari Kamayya v. Hari Venkayya I. L. R. 26 Mad. 212

(1903)] and the decision of the Bombay Court in Shambhu Danaji v. Bam Vithu Sarang I. L. R. 28 Bom. 244 (1903) are cited. But those were

cases where the same officer had been subsequently vested with enhanced powers, and the learned Chief Justice points out in his judgment, that in

the previous Bombay case [Balchand v. Balaram 5 Bom. L. R. 308 (1903).] the Judges had held a contrary view upon the special circumstances

of that case; and we find that the Allahabad Court in the case of Ram Lal v. Kabul Singh I. L. R. 25 All. 135 (1902) has held that where no

question as to the Court''s jurisdiction was raised by either party and the Court of Small Causes proceeded to judgment as if the case was properly

cognizable by it, the High Court refused to interfere upon a reference made by the District Judge upon the ground that the Court of Small Causes

had erroneously held the suit to be or not to be cognizable by it. It was moreover cogently laid down in that case that the Court of Small Causes

could not be expected to consider whether the suit before it was one which it had jurisdiction to entertain, independently of whether an actual plea

was or was not taken to that effect. What took place in that case and also in this case is very evident. The Defendant lost his case and then for the

first time had it suggested to him that there was a plea which he might have raised before a Court of Small Causes with effect and thereupon tried

to get the decision reversed by an application to the District Judge. The Judges say :--""We are not in favour of assisting parties to set aside decree

upon points which they did not raise before the Court which tried the matters in issue and of which they gave no notice to the opposite party.

2. To a similar effect is the rule of this Court in the case of Suresh Chandra Maitra v. Kristo Rangini Dasi I. L. R. 21 Cal. 249 (1893), which was

the converse case to the present, where the case had been tried by the regular pro-(4) cedure when it ought to have been tried by the Small Cause

Court procedure and there it was pointed out that sec. 16 of the Small Cause Courts Act was in conflict with the new rule introduced in the CPC

by sec. 646, the present Or. XLVI, r. 7, and that there being this conflict, sec. 646-B, as also r. 7, distinctly stated that the High Court may make

such order in the case as it thinks fit, so it is clear that it was intended that the High Court should have full power to consider the matter on the

merits, so as to do substantial justice without putting the parties to the expense of a fresh suit.

3. This question of the discretion of this Court under the rule was not adverted to in the case which we have cited of Mahima Chandra Sirdar v.

Kali Mandol (1), and in the Bombay case, the Chief Justice based his decision on the desirability of having a uniform procedure in these cases.

With all respect to that great authority it is impossible in our opinion to have a uniform procedure where the matter is one which is left entirely to the

discretion of this Court to weigh on the merits in each case; and this case appears to us to be so peculiarly without merits that it would be

impossible for us to direct that the parties should be put to the expense of a fresh trial in such a petty matter.

4. We therefore decline to interfere in the matter, though we recognise that the learned Judge had no choice but to refer the matter to us. The result

is that the reference is discharged and the order of the Small Cause Court will be upheld. There will be no order for costs in this matter.