Gambhirsingji Bhagvatsangji Vs Agarsing Bhausing

Court: Bombay High Court

Date of Decision: Dec. 20, 1910

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 115

Citation: 9 Ind. Cas. 943

Hon'ble Judges: Rao, J; Batchelor, J

Bench: Division Bench

Judgement

1. This petition is filed by certain plaintiffs who had instituted a suit for partition, under the Gujarat Talukdars Act (Bombay Act VI of 1888) before

Mr. Mehta, who appears to have been the Acting Talukdan Settlement Officer. In 1890 the plaintiffs and some ancestors of theirs had applied to

(he Talukdari Settlement Officer for division but he referred them to the Civil Court Accordingly, they filed a Suit No. 112 of 1894, which was

decided by the Assistant Judge in their favour, the Court granting the declaration asked for, that the plaintiffs in that suit were entitled to 19 dokdas

and three-fourth badams in the Talukdari estate It is admitted that to that suit Mr. Shah''s clients or at least some of them were not parties. Now

this application has been rejected by the Acting or Assistant Talukdari Settlement Officer, Mr. Mehta, by reason of the contention of those of the

defendants who were not parties to the suit of 1894, and the words used by Mr. Mehta are these as these defendants contend that the plaintiffs

have no share in the village I am precluded from entertaining an application for partition vide: Bhimjibhai Bawabhai v. Becharsang Nathubhai: High

Court Second Appeal No: 768 of 1891. I, there-fore, dismiss the application u/s 15 of the Gujarat Talukdari Act."" Now upon the first question

that arises we are clear that this is not decision within the meaning of Section 16(1) of the Act It is quite true that Mr. Mehta''s language which

purports to refer to Section 15 of the Act is altogether, inaccurate, and the inaccuracy probably arose from the customary mistake of not making

actual reference to the section under which the order purports to be made Section 15, under which Mr. Mehta affected to be acting, says ''nothing

about the Talukdari Settlement Officer being precluded from entertaining any application whatever. Section 15 deals only with certain matters

where discretion is left to the Talukdari Settlement Officer either to decide or refusing to decide to refer the parties to the Civil Court. We must,

however, make the best of such order as Mr. Mehta has recorded and according to the interpretation that we put upon it seems to us to be an

order exercising discretion in favour of referring the parties to the Civil Court nor do we doubt that the order was at the time so understood by all

the parties concerned. For our present purposes however, it is enough to say, what appears to be beyond all doubt, that the order is not a decision

within Section 16 for the only kind of decision contemplated by that section is the decision referred to in Section 15(2) which is come to after the

making of all necessary inquiry and the taking of such evidence as may be adduced. No inquiry was made here, nor was any evidence adduced.

The order recorded, therefore, is not a decision within Section 16, and it follows that no appeal lies, though if it did lie it would lie to the District

Court. That being so, the question remains whether it is open to the petitioners to come here in revision u/s 115 of the present Civil Procedure

Code. Under that section this Court''s powers of interference in revision are limited to the case of a decision arrived at by a Court subordinate to

this High Court. We are of opinion that the Talukdari Settlement Officer is not a Court subordinate to this High Court; that was the view

entertained by Sir Lawrence Jenkins and Mr. Justice Astonin Malubhai v. Sursangji 7 Bom. L.R. 821 where the learned Chief Justice observed

that the Talukdari Settlement Officer is an administrative Officer and not a Court. We concur in that view, which we think is supported by the

terms of Section 3 of the present CPC and receives further countenance from such sections as Sections 20 and 83 of the Gujarat Talukdars Act.

We are of opinion, therefore, that this application does not lie to this Court. The rule must, therefore, be discharged with costs. The applicant to

pay the costs of those opponents who are represented by Mr. Shah.

2. We may, however, point out for the future guidance of the Talukdari Settlement Officer that u/s 10 of the Act every person who has obtained a

final decree of a competent Court, declaring him to be entitled to a share of a Talukdari estate, is entitled as of right to have his share divided from

the rest of the estate and to hold the same as a separate estate. There is no provision in this section that the decree alluded to must of necessity

operate as res judicata between all the parties appearing before the Talukdari Settlement Officer.