

A. Rangaswamy Iyengar

Vs

Pattammal (Alias) Rajalakshmi Ammal And Another

Civil Appeals Nos. 1049 and 1059 of 1967

(Shelat, J.)

11.01.1971.

JUDGMENT

SHELAT, J. -

1. The 1st respondent is the wife of the appellant and the mother of the 2nd respondent.
2. The two respondents obtained a decree for maintenance against the appellant. On the appellant's failure to pay the maintenance provided under the decree, the respondents took out execution proceedings which ended in an order for sale of the appellant's property at which the 1st respondent, who also acted as the guardian of the 2nd respondent, then a minor, became the auction purchaser. The 1st respondent had been previously granted leave by the Court to bid at the said auction sale. The amount of maintenance due till then to the respondents was set off against the purchase price.
3. Two applications were then filed by the appellant for setting aside the sale. The reasons urged in the applications were that the decree for maintenance provided separate maintenance for the two respondents, that it was accordingly not a joint decree, that the 1st respondent, therefore, could not set off the whole of the arrears of maintenance due to her and respondent 2, and consequently, was bound to deposit in the Court the balance of auction price after deducting therefrom arrears due to her. The applications were dismissed by the execution court. The appellant thereupon filed appeals in the High Court against the said orders of dismissal. A learned Single Judge of the High Court upheld the appellant's contentions and allowed the appeals. In letters patent appeals filed by the respondents, a Division Bench of the High Court reversed the order passed by the learned Single Judge and allowed the appeals filed by the respondents. The appellant thereupon applied for a certificate to file an appeal to this Court under article 133(1) of the Constitution urging that he was entitled to a certificate as the judgment of the letters patent Bench was one of reversal and the matter satisfied the test of pecuniary value, namely, Rs. 10,000/- which was the relevant value for the purposes of the instant matter.
4. The Division Bench which heard the application for certificate dismissed it holding that a Single Judge of the High Court exercising its appellate jurisdiction was not "a court immediately below" the Division Bench of the same High Court which heard the letters patent appeals and that the judgment of the letters patent Bench against which leave to appeal to the Supreme Court was sought for "was in effect so far as this High Court is concerned one of affirmance", because as the only effective judgment of the High Court, it restored the order of the court of the first instance upholding the execution of sale.
5. The appellant then obtained special leave from this Court, which, however, was confined to the

question whether a Single Judge of a High Court is a court immediately below a Division Bench of the same High Court which hears and disposes of a letters patent appeal provided under the Letters patent of such a High Court.

6. The question whether a Single Judge of a High Court trying a matter, either in exercise of the original jurisdiction of the High Court or its appellate jurisdiction, is a court immediately below a Division Bench of that same High Court as provided in Article 133(1) is now covered by two decisions of this Court, and therefore, it is no longer necessary for us to go into any enquiry about such a question. In *Ladli Prasad Jaiswal v. Karnal Distillery Co., Ltd.*, (1964 (1) SCR 270 : AIR 1963 SC 1279.) a bench of five judges disapproving the decisions relied on by the High Court in this case held that the expression "a court immediately below" and "a court subordinate to the High Court" had different meanings, and were, therefore, not one and the same. This court held that the test for determining whether an aggrieved party has a right to appeal, other conditions being fulfilled, is not whether the judgment is of a court subordinate to the High Court but whether the judgment is of a court immediately below and that a Single Judge of the High Court hearing a proceeding either as a court of original jurisdiction or in exercise of appellate jurisdiction is a court immediately below the Division Bench which hears an appeal against his judgment under the relevant clause of the Letters Patent. (See also *Shri Durga Prasad v. The Banaras Bank Ltd.* (1964 (1) SCR 475 : AIR 41963 SC 1322 : (1963) 1 SCJ 519.))

7. Accordingly, the High Court was not right in refusing the certificate if other conditions of Article 133(1)(a) or (b) were satisfied, on the ground that the judgment of the Division Bench was not one of reversal as the learned Single Judge of the High Court was not a court immediately below the Division Bench of that High Court. The appeals, therefore, have to be allowed which we do, but in the circumstances, there will not be any order as to costs. The cases will go back to the High Court and will be dealt with by the High Court in accordance with law and the observations made hereinabove.

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