

Smt. Asha Devi

Vs

Dukhi Sao and Another

Civil Appeal No. 1758 of 1967

(P. Jagmohan Reddy, M.H. Beg, A. Alagiriswami JJ )

08.08.1974.

JUDGMEN

JAGANMOHAN REDDY, J. -

1. The question in this appeal by certificate is whether a Bench of the high court of Patna in an appeal from the judgment of a Single judge of that court in a first appeal can consider all matters which a single judge could have decided and is not limited by the restrictions imposed by sections 100 of the code of civil procedure.

2. A few facts may be stated in order to better comprehend the question posed before us. The plaintiff/appellant filed a money suit against the defendant for recovery of Rs. 7,865/7/- due from him on account of sale of the grain and Rs. 1,512/9/- as interest. The defendant admitted the purchase of grain from the appellant but denied stipulation of interest. The case of the defendant was that he had borrowed Rs. 6,000 from the plaintiff for the marriage of the grand daughters at the rate of 12 annas per hundred per month. The trail Court, after considering the evidence, decreed the suit. In the first appeal to the High Court, the Single Judge allowed it and reversed the judgment and decree of the trail Court. In the judgment it was observed :

(a) The Court below seems to have been influenced by the statement of the defendant in paragraph 5 of the written statement where he averred that he sometimes purchased grains from the plaintiff. But this statement is of no consequence.

(b) The non-examination of the defendant and non-production of the account books were immaterial.

(c) The three witness examined on her (appellant) behalf have been found to be unreliable. She has adduced no other evidence in support of the claim.

Against this judgment of the Single Judge the plaintiff preferred a Letters Patent appeal. In view of a sharp conflict of decisions on the scope of Clause 10 of the Letters Patents of the Patna High Court, the question earlier set out was referred to the Full Bench. In the Full Bench, two Judges Narasimham. C.J. and R. K. Choudhary, J. took the view that the findings of fact by the Single Judge are binding on them and they cannot go into those questions in a Letter Patent appeal. In this view they followed Ramsarup Singh v. Muneshwar Singh (AIR 1964 Pat 76) as laying down the correct law. The view taken in the Division Bench case of Jugal Kishore Bhadani v. Union of India (1965 Bihar LJR 24) to the contra was held to be too wide. U. N. Sinha, J. gave a dissenting Judgment. The view taken by him is, however, consistent with the consensus of opinion of the other

High Courts as also of this Court which unfortunately was not brought to the notice of the learned Judges of the Patna High Court probably because it does not seem to have caught the eye of any of the law reporters. Clause 10 of the Letters Patent of the Patna High Court is analogous to Clause 15 of other Chartered High Courts, namely, Calcutta, Madras, Bombay or Clause 10 of the Allahabad High Court. There is no dispute that an appeal lies to a Division Bench of the High Court from the judgment of a Single Judge of that Court in appeal from a judgment and decree of a court subject to the superintendence of the High Court. The only question is whether the power of a Division Bench hearing a Letters Patent appeal under Clause 10 of the Letters Patent of Patna High Court or its analogous provisions in the Letters Patent of the Other High Courts is limited only to a question of law under Section 100 of the Code of Civil Procedure or has it the same power which the Single Judge has as a first appellate Court in respect of both questions of fact and of law. The limitations on the power of the Court imposed by Section 100 and 101 of the Code of Civil Procedure cannot be made applicable to an appellate Court hearing a Letters Patent appeal from the judgment of a Single Judge of that High Court in a first appeal from the judgment and decree of the Court subordinate to the High Court, for the simple reason that a Single Judge of the High Court is not a court subordinate to the High Court. This Court in *Ladli Prasad Jaiswal v. Karnal Distillery Co. Ltd.* ((1964) 1 SCR 270) had occasion to observe that a Single Judge deciding a first appeal may be a court immediately below the Court hearing a Letters Patent appeal, but it is not a court subordinate to the High Court. As long ago as 1895, a similar question arose under the provision of Chapter XLII of Act No. XIV of 1882 which were analogous to the provision of Section 100 and 101 of the Code of Civil Procedure. A Bench of the Allahabad High Court consisting of Edge, C.J. and Banerji, J. in *Umrao Chand v. Bindraban Chand* (ILR 17 AII 475), after noticing the contention that the appeal before them could not be dealt with in the same way in which the first appeal to the High Court might be dealt with would place the appeal under Section 10 of the Letters Patent in the same position as an appeal to which Chapter XVII of the code of civil Procedure applies, held that no such limitations would apply because Chapter XVII limits the right to appeal from a decree passed in appeal by a court subordinate to the High Court. They observed that the appeal to the High Court having been a first appeal and not an appeal to which chapter XVII of the code of Civil procedure applies, the parties to the appeal are entitled to question not only the law, but the finding of the facts of the judge of that court from whose judgment or decree that appeal had been brought under Clause 10 of the letters patent. It would be otherwise, if the appeal to that court had been an appeal to which chapter XVII of the old Code of Civil Procedure applied. To the same effect are the decisions in *Mulpura Venkataramayya v. Devabhaktuni Kesavanarayana* (AIR 1963 AP 447, 448 (FB)), *Messrs Baldeo Das Ram Narayana v. Smt. Maina Bibi* (76 CWN 996, 1002) which followed the decision of Andhra Pradesh High Court and disagreed with decisions of the Patna High Court in *Ramsarup Singh's case* (supra); *Nilkanth Mahaton v. Munshi Singh* (AIR 1965 Pat 141); *Maimoon Bivi v. O. A. Khajee Mohideen* (AIR 1970 Mad 200, 203); *Velji Bhimsey & Co. Bachoo Bhaidas* (ILR 48 Bom 691,696), in which it was observed that under clause 15 of the Letters Patent an appeal lies from that decree, without any limitation being imposed upon the powers of the appeal court and the whole decree lies open before the Court; *Pt. Devi Charan v. Durga Porshad* (AIR 1967 Delhi 128, 130) and *Bawa Singh v. Jagdish Chand* (AIR 1960 Punj 573, 574-575). We may also mention that a five Judge Bench of this court in *Alapati Kasi Viswanatham v. A. Sivarama Krishnayya* (C.A. No. 232 of 1961, decided on January 11, 1963.) - an unreported judgment - had dealt directly with this question. Wanchoo, J. speaking for the Court observed :

The first contention urged before us on behalf of the appellant is that the letters patent bench was not authorised by law to reverse the concurrent findings of facts of the subordinate judge and the learned single Judge of the High Court. It is submitted that a letters patent appeal stands on the same

footing as a second appeal and it was therefore not open to the letters patent bench to reverse the concurrent finding of facts of the two courts below. We are of opinion that this contention is not correct. A letters patent appeal from the judgment of a learned single judge in a first appeal to the high court is not exactly equivalent to a second under section 100 of the code of civil procedure, and therefore it cannot be held that letters patent appeal of this kind can only lie on a question of law and not otherwise. The matter would have been different if the letters patent appeal was from a decision of a learned single judge in a second appeal to the high court. In these circumstances it will be open to the high court to review even finding of facts in a letters patent appeal from a first appeal heard by a learned single judge though generally speaking the letters patent bench would be slow to disturb concurrent findings of facts of the two courts below. But there is no doubt that in an appropriate case a letters patent bench hearing an appeal from a learned single judge of the high court in a first appeal heard by him is entitled to review even finding of facts. The contention of the appellants therefore that the letters patent bench was not in law entitled to reverse the concurrent finding of facts must be negatived.

In view of this decision and the consistent view held by almost all the High Court in this country on the question under consideration, this appeal must succeed.

3. We accordingly set aside the judgment of the full bench of the Patna high court and remand the matter to be heard and disposed of in accordance with law. In the circumstances of the case, we make no order as to costs.

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