CALCUTTA HIGH COURT

Narendra Lal Das Chaudhury

Vs

Gopendra Lal Das Chaudhury

(Rankin,C.J.)

07.03.1927

JUDGMENT

Rankin, C.J.

1. This is an application for a certificate that the case is a fit one to be taken on appeal to His Majesty in Council. The applicant is the plaintiff in the suit. The suit was brought for partition of a joint family property valued at 10 lacs of rupees and the suit itself has been going on ever since 1911. In the end, a preliminary decree was passed in 1923 and an appeal was brought to this High Court. That appeal was decided in May 1926 and it appears that the first question which arose was this that the plaintiff complained that the preliminary decree gave him a smaller share in the property than he was entitled to get. On that point the High Court was of opinion that the appellant was in the right and held at his instance that the share which should go to him was what he had contended for. The plaintiffs, Defendant No. 2 and Defendant No. 3, were given 4/15ths share each. In that respect, the High Court reversed the finding of the trial Court. Other points were raised upon the correct way in which the accounts should be taken as against one of the defendants who had acted as karta of the family and in certain other capacities. The complaint of the plaintiff was really that he had had an insufficient opportunity of examining the accounts and on that point the High Court on appeal affirmed the judgment of the Court below and I am of opinion that there is no substantial point of law arising in connection with that point.

2. Another question was raised with regard to a reserve fund with regard to which the High Court took the same view as the trial Court. Here again, I am of opinion that no substantial question of law arises with regard to that point. The proposed appellant to England does not claim that he is entitled or has at any time claimed to be entitled to a greater share than 4/15ths. This is not a case where the trial Court gave him one share, the High Court gave him another share and his real claim is to have something further given to him. He has no pretence of any grievance as regards the matter of the share but the question is whether all the same he is not entitled to say that the wording of Section 110 of the Civil P.C., does not impose upon him the obligation of showing that there is a substantial question of law.

3. The cases that have raised this question in this Court from time to time have bean referred to. The first case is the case of Raja Sree Nath Roy v. Secretary of State [1904] 8 C.W.N. 294, where the Judge gave an award of compensation at a certain figure and the High Court increased that

amount. The applicant desired to go to the Privy Council so that the amount might be further increased and it was held that the two Courts were at one upon-the only matter which was going to the Privy Council, namely, on the question whether beyond the amount awarded by the High Court the applicant had any claim. That case is the origin of the doctrine that the language which now finds place in Section 110 of the Code is to be construed with reference to the subject-matter in dispute in appeal to the Privy Council. The basis of that case is that if the two Courts are at one upon the matter which is to be in debate before the Privy Council then it is a case of a decree which affirms the decision of the Court immediately below.

4. The next case is the case of *Langandeo Prosad Singh v. D.J. Reid*[1] There A was the person who had erected a dam across a river. B was the person who objected to this as a riparian owner. The view taken by the High Court and the trial Court was that A had no right fact erect the dam, but whereas the trial Court had refused to grant B any damages the High Court granted him Rupees 5,000 for damages. The question was whether A was entitled to appeal to the Judicial Committee as of right and the High Court held that he was, pointing out that the case was not on the same footing as Sree Nath Roy's case [1904] 8 C.W.N. 294 because in that case the decision from which the applicant desired to appeal was with reference to the balance of his claim whereas in the case then under consideration the High Court had varied the decision of the first Court to the detriment of the applicant for leave.

5. I do not think that the case of *Chaitanya Charan Sett v. Mohommad Yusuf*[2] or the case of *Uma Churn Sett v. Kanai Lal Sett*[3] need be referred to here but there are two cases of the Allahabad High Court which I desire to mention. One is the case of *Bhagwan Singh v. Allahabad Bank, Limited*[4] In that case, it is true that the decree of the Court below was modified by the High Court to the prejudice of the applicant for leave by nearly Rs. 8,000 and the application was opposed on the ground that the High Court decree was really one of affirmance. Reliance was placed upon Sree Nath Roy's case [1904] 8 C.W.N. 294(Supra), it being contended that the two Courts were at one in respect of all other matters but had merely differed on the matter of amount. In that case the Allahabad High Court referred to a judgment by the then Judicial Commissioner Mr. Chamier, as he then was, where he dissented from the decision in Raja Sree Nath Roy's case [1904] 8 C.W.N. 294 (Supra)and appears to have taken the view that for the purposes of Section 110 a decree is either modified or affirmed and that if it is modified or varied then it does not come within the concluding words of Section 110. The learned Judges of the Allahabad High Court on their own account then went on to say: It can by no stretch of imagination be said that a decree which modifies the decree of the lower Court except perhaps in the matter of costs only...it is a decree of affirmance.

6. That view has certainly a great deal to be said for it but I find that in the following year in the case of *Kamal Nath v. Bithal Das*[5] one of the learned Judges who took part in that decision, took part in a decision which appears to me to be not consistent with some of the language which had already been used. That case was one where the plaintiff claimed a large sum on the basis of a mortgage. The main dispute was as to the validity of the mortgage. The Court of first instance decreed the plaintiff's claim on the mortgage in full. On appeal to the High Court that Court affirmed the decision of the trial Court about the factum and validity of the mortgage. It, however, reduced the rate of interest awarded against the appellant thus modifying the decree of the Court of first instance to the extent of some Rs. 300. That, however, was a modification in his favour. It does not appear that the applicant there was desirous of going to the Privy Council in

order to contend that the amount of interest ought to have been reduced to a greater extent than Rs. 300. He was desirous of going to the Privy Council upon the question of the factum and validity of the mortgage and the learned Judges took this view: The modification of the decree was a modification in favour of the applicant, and as to this he certainly does not seek to appeal nor could he appeal. Therefore his application for leave to appeal relates in fact to the portion of the decree which was prejudicial to him, but which was a decree affirming the decision of the Court below and not modifying it. We have to look to the substance and see what is the subject-matter of the appeal to His Majesty in Council. In the present case the subject-matter of appeal to His Majesty in Council is, as pointed out above, that portion of the decree in respect of which the decree of this Court was a decree in affirmance of the decree of the Court below and not in modification of that decree. Therefore, in our opinion this is not a case in which the applicant is entitled as of right to appeal to His Majesty in Council.

7. The learned Judges go on to say that the case is distinguishable from the case of the previous year to which I have already referred and there can be no doubt that it was distinguishable, but this decision does not consist with some, of the observations made in the previous case.

8. Finally it is necessary to refer to the decision of the Judicial Committee of the Privy Council in the case of Annapurnabai v. Ruprao . In that case the junior widow and the person whom she said she had adopted as a son to her deceased husband applied for leave to appeal to the Privy Council. The position was that the person claiming to have been adopted by the senior widow brought a suit claiming the property. The Court decided in favour of the plaintiff on the question of adoption, but the junior widow claimed Rs. 3,000 per annum as widow's maintenance. The first Court gave her Rs. 800 per annum; the appellate Court increased that figure to Rs. 1,200 per annum, but in all other respects affirmed the decree of the first Court so that on the question whether or not the maintenance should be Rs. 3,000, Rs. 1,200, Rs. 800 or something else the two Courts were at variance. It was proposed to appeal to the Privy Council on the question of the amount of maintenance. That indeed was the only matter of substance in the appeal. The High Court, however, treated the case as one where the two Courts in India had been in agreement and refused leave to appeal. The Privy Council appears to have been clearly of opinion that that was not so and it does seem to me, therefore, that the particular application made in Sree Nath Boy's case [1904] 8 C.W.N. 294(Suupra) of the principle that you have to have regard to the subject-matter of dispute in appeal to the Privy Council must be taken as overruled.

9. The question is whether, on the strength of the only case before the Privy Council which we have for our guidance, the views hitherto adopted in this and other High Courts require to be further considered. The question is whether the judgment of their Lordships means that in every case where the decree of the High Court is not a mare decree dismissing the appeal or a mere decree affirming the order of the Court below in the case, the necessity for showing a substantial question of law is done away with. It appears to me that the case of Annapurnabai v. Ruprao is not in itself a sufficient authority to justify this Court in abandoning the principle which it has with other High Courts acted upon; that is to say, I do not think that it shows that it is an erroneous view that we have to look to the substance and see what is the subject-matter of the appeal to His Majesty in Council. I have, I confess, some doubt as to whether in the end even that principle would be found to be in accordance with the construction to be put upon Section 110, but this Court and other High Courts have for many years acted upon that principle and I am not

prepared to accept the case of Annapurnabai v. Ruprao as going further than this that where there is a dispute as to the amount of the decree or as to the amount of damages the reasoning of Sree Nath Boy's case [1904] 8 C.W.N. 294 is not a correct application of that principle. We may take it, I think, that where the amount is a question in dispute, the fact that the Courts differ and that the higher Court differs in favour of the applicant does not mean that the decision is one of affirmance, but I am not, in a case of this kind, prepared to say that because on a totally different point, namely, a point about the share, the applicant has succeeded and succeeded altogether so that he has no further grievance in that matter, he can without showing a substantial question of law have a right to litigate upon other points upon which both the Courts have been in agreement.

10. I think, therefore, that this application for a certificate should be refused.

11. The application is dismissed with costs, hearing-fee six gold mohurs to be divided equally between the three sets of Opposite Parties who have appeared.

C.C. Ghose, J.

12. I agree.

Cases Referred.

1[1919] 23 C.W.N. 582
2A.I.R. 1922 Cal. 316
3A.I.R. 1921 Cal. 81
4A.I.R. 1921 All. 270
5A.I.R. 1922 All. 89