

NAGPUR HIGH COURT

Nandlal Ganpatsao

Vs

Hiralalsao Ganpatsao

Misc. Civil Case No. 6 of 1948, in F.A. No.59 of 1941

(Hidayatullah and R. Kaushalendra Rao, JJ.)

25.09.1947. 14.02.1950

JUDGMENT

R. Kaushalendra Rao, JJ.

1. This is an application by the plaintiffs (who were respondents) for leave to appeal to the Supreme Court against the judgment of this Court in First Appeal No.59 of 1941 decided on 25th September 1947.
2. The present suit was filed by one Ganpatsao against his brother Dhanpatsao for partition of certain joint family properties. Both Ganpatsao and Dhanpatsao are now dead and are represented by their legal representatives. In the present application the applicants value the proposed appeal at Rs. 28,000. They state that the subject matter of the suit was above Re. Mom in the lower Court. They claim that the valuation being above Rs. 10,000 in the suit and above Rs. 28,000 in appeal to the Supreme Court, and the decision of the High Court being a reversing one, leave ought to be granted to them.
3. In the plaint the plaintiff Ganpatsao made no attempt to value four items in respect of which partition was sought, The defendant drew attention to this fact in his written statement dated 14th June 1939 and stated that the value of that property exceeded Rs. 10,000.
4. Assuming this to be a fact the value of the plaintiff's share would come to Rs. 13,960. It would thus appear that the claim in the suit was above Rs. 10,000.
5. Now as regards the proposed appeal, the main point concerns a 0-2-0 share in Shivraj Litho Press, Nagpur. This share has been held to be worth Rs. 28,000, and the defendant has been held to be entitled to Rs. 14,000, This arises as follows:

6. The family owned in the name of the plaintiff Ganpatsao 0-3-0 share in the Shivraj Litho Press. This share was sold by the family to the other partners ostensibly for Rs. 14,000. In the judgment of the High Court it was held that this sum of Rs. 14,000 represented merely 0-1-0 share out of the 0-3-0 which the family held in the Press,

7. In Exhibit P-2 item No. 11 ran as follows:

"There is a 0-3-0 three anna joint share in the Nagpur Press each being of 0-1-6 one anna and a half. Any one or both can, if they so desire, mil their respective shares. But, however, the share being in the name of Mr. Ganpat Sao, he will have to sell it to the purchaser or if he keeps the same himself, he should pay the same price. If per chance he cannot arrange for money at that time a receipt or stamp should be got executed from him at that time,..."

8. On the strength of certain documents the first Court had held that the 0-3-0 share in the Press was in fact sold to the other shareholders on payment of Rs. 14,000. In appeal the High Court held that all that was sold was only 0-1-0 share and that 0-2-0 share had been retained by Ganpateao by a secret agreement with the other share-holders. The High Court accordingly held that Rs. 28,000 representing this 0-2-0 share must be taken to be available for partition and the defendant was entitled to get Rs. 14,000.

9. Now it is clear that the value of the appeal to the Supreme Court would be Rs. 14,000.

10. Under Section 110, Civil Procedure Code, the conditions are satisfied, and the valuation both in the lower Court and on appeal to the Supreme Court would be above Rs. 10,000. The decree being one of reversal on this point leave must be granted.

11. It was however argued by Shri B.R. Mandlekar on behalf of the non-applicants that the present appeal is barred by Article 133 and Article 135 because the provisions of Article 133 apply to this case and the valuation both in the suit and in the proposed appeal is below Rs. 20,000.

12. There can be no doubt that the Federal Court was exercising jurisdiction which the Privy Council exercised till C.A. Act V [5] of 1949 was passed. This application was pending on the date the Constitution of India was brought into force. A vested right existed in the applicants to file an appeal as of right before the Federal Court, and that right can only be taken away by express provision of law or by necessary intendment - see *Colonial Sugar Refining Co. v. Irving*¹, Article 133 is not made retrospective either expressly or by necessary intendment, and an appeal which belonged to a party as of right in a pending case cannot be said to have been taken away. Indeed, by Article 395 read with Article 372(i) the Abolition of Privy Council Jurisdiction Act, 1949, is still on the Statute Book, and it must be held that the jurisdiction of the Federal Court under that Act still vests in the Supreme Court. To that extent Article 133 must be taken not to

apply to this case, and the jurisdiction must be held to be preserved by virtue of Article 135. The argument of Shri Mandlekar is, therefore, not accepted.

13. In view of what we have said above a certificate shall issue. The application is allowed with costs. Counsel's fee Rs. 50 if certified.

Application allowed.

Cases Referred.

¹1905: A.C. 369 (74 L.J.P.C. 77)