

Ram Dial and ors. Vs. Ram Das and anr.

Ram Dial and ors. Vs. Ram Das and anr.

SooperKanoon Citation : sooperkanoon.com/448688

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All181

Judge : Pearson, ;Turner, ;Spankie and ;Oldfield, JJ.

Appellant : Ram Dial and ors.

Respondent : Ram Das and anr.

Judgement :

Pearson, Turner and Oldfield, JJ.

1. We proceed to consider in the first place the issue on which the learned and honourable Judges differed.

2. The provisions of Section 254, Civil Procedure Code, declare that, if the purchaser of immoveable property at an auction-sale held in execution of a decree, after payment of the deposit, fails to make good the full amount of the purchase-money before sunset of the fifteenth day from that on which the sale took place * * * the deposit after defraying the expenses of the sale shall be forfeited to Government, and the property shall be resold * * * and that, if the proceeds of the sale which is eventually consummated be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules for enforcing the payment of money in satisfaction of a decree of Court.

2. Had the law simply declared the liability, of the defaulting purchaser without going on to declare how that liability should be enforced, the proceeding must have been by suit. To avoid the circuitry of the proceeding by suit, the Legislature has given to the decree-holder and judgment-debtor a more speedy remedy, and the defaulting purchaser is placed in a position which is very similar to that which he would have filled had a suit been brought against him. It is true there is this difference, that in a proceeding by suit the question now in issue between the parties would have been determined prior to and not subsequently to decree, in other respects his position is assimilated to that of a judgment-debtor and the rules for enforcing a decree against the judgment-debtor are made available to enforce the demand arising out of his default against the defaulting purchaser. Among these rules is the rule ordained by Section 11, Act XXIII of 1801, which gives a right of appeal to the parties to a suit on all questions arising in the execution of the decree and relating to the execution thereof. There seems no difficulty in applying this rule mutatis via land is to the proceeding taken against the defaulting purchaser. The judgment-debtor and (if his claim be not satisfied out of the proceeds of the resale) the original decree-holder stand in the position of decree-holders who have obtained judgment against the defaulting purchaser for damages occasioned by his default; the defaulting purchaser stands in the position of a judgment-debtor against whom a decree for such damages has passed. They are parties to the proceeding which is substituted for the suit, and inasmuch as Section 254 declares without exception that the difference in price, which is the amount of the damages, shall be leviable under the rules for enforcing payment of a money-decree, the rule relating to appeals must be applied mutatis mutandis equally with any other of those rules.

3. Having disposed of this plea, the appellants contend the Court is bound to go on to consider the appeal on the merits. The respondents, on the other hand, argue that only the appeal must be confined to the point on which the Judges constituting the Division Bench differed, and in support of their argument they refer to the ruling of the High Court of Bengal in *Roy Nandiput Mahata v. Urquhart* 4 B.L.R. A.C. 181 : S.C. 13 W.R. 209.

4. This ruling came before the Privy Council, but no question arose upon it, and the Right Honourable Committee, while alluding to it, expressed neither dissent from nor assent to it.

5. The 10th clause of the Letters Patent constituting this Court declares that an appeal shall lie to the Court from the judgment of one Judge of the said Court or of one Judge of any Division Court, pursuant to Section 13 of the High Courts' Act, and that an appeal shall also lie to the Court from the judgment of two or more Judges of the Court or of such Division Court wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the Court.

6. Now there can be no question that, on the hearing of an appeal from the judgment of a single Judge, the whole case may come before the Court in appeal, and it is competent to the Court to entertain objections to any part of the judgment, and it is a fair argument that the word judgment must be read in the same sense whenever it occurs in the same section, and that it must be held to mean the whole judgment in the second paragraph as it does admittedly in the first paragraph, unless its sense is restrained by the context. The question then must turn on the construction to be put on the word 'wherever.' Does it mean 'on any point on which,' or does it mean 'in any case in which.' Let us substitute these different meanings for the doubtful term and read them with the rest of the sentence. Adopting the former, the passage will then run 'on any point on which such Judges are equally divided in opinion, and do not amount in number to the majority of the whole of the Judges.' This construction would, it is clear, accord with the first clause of the sentence, but not with the latter. Adopting the other construction, the passage would run 'in any case in which the Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges.' This construction accords with both clauses of the section. Ordinarily where an appeal is given it must be taken to be a general appeal, and express language should be used to restrict it. For this reason, because the construction of the doubtful term which appears to accord best with the context ought to be accepted, it must be held that the appeal given to the Full Court is not confined to the point on which the Judges of the Division Bench differed in opinion. We have

then to consider the objection taken to the judgment of the Division Bench on the merits. *

Spankie, J.

7. After fuller consideration of the question, I now am of opinion that, when the decree-holder or judgment-debtor proceeds against a defaulting purchaser under Section 254, Act VIII of 1859, the latter must at any rate be regarded as a party to a suit as between himself and the person insisting on the enforcement of the provisions of the section, and therefore, as the proceedings are in execution, there is an appeal under Section 11, Act XXIII of 1861. Another question, however, has been raised during the hearing of the appeal. Is the Court at liberty to go into the merits of this case, or should it have confined itself to the point regarding which the Judges of the Division Bench have differed

8. The appeal permitted by Clause 10 of the Letters Patent is from the judgment of two or more Judges or of a Division Court, wherever such Judges are equally divided, in opinion. It will be observed that the word whenever is not used, but wherever, and Clause 27 provides that when the Judges of a Division Court are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, and if the Judges be equally divided, then the opinion of the senior Judge shall prevail. When this happens, the door is opened for an appeal. If the difference of the Division Court has been on a particular point, and on such point the decision of the senior Judge has prevailed, it would seem to follow that the appeal to the Court at large would be confined to that point of difference alone. Then no violence is done to Clause 10, which provides for an appeal from the judgment of one Judge, or from the judgment of two or more Judges, or of the Division Court, wherever such Judges are equally divided in opinion. This seems to refer to the particular point upon which they are equally divided in opinion, and so far Clauses 10 and 27 are consistent. 'Wherever' also would appear to indicate the point of difference respecting which the Court at large is to pronounce an opinion. When the difference of opinion goes to the entire case, the Court at large in appeal would of course deal with all the questions raised before the Division Bench. When the

opinion of the senior Judge has prevailed on any point, the Court on appeal would confine itself to that point alone.

9. I am fortified in this opinion by the precedents cited in the margin. In the first case it was observed by the learned Chief

Shahzadi Hajra Begam v. Justice,-- 'deciding upon the point which the two

Khaja Hossein Ali Khan Judges considered to be the only one before them for

4 B.L.R. A.C. 86 S.C. decision, there was a difference of opinion. The judg-

12 W.R. 198 ment of the senior Judge, that of Mr. Justice Kemp,

therefore prevailed. An appeal lies to us, because the Judges have differed,

and I think that on this appeal it is not now open to the parties to go into the

whole of the case and to raise before us points which were not raised before the

Judges of the Division Bench' 4 B.L.R. A.C. at

Roy Nandipat Mahata v. p. 101 : 12 W.R. at p. 499

Urquhart 4 B.L.R. A. judgment just cited was quoted in support of the

C. 18 : S.C. 13 W.R. 209. ruling that in appeal under the Letters Patent no point

can be argued except a point on which the two Judges of the Division Bench

have differed in opinion. The Officiating Chief Justice remarked--'The

36th clause of the Charter of 1865 provides 'that if the Judges are divided in

opinion as to the decision to be given on any point, such point shall be decided

according to the opinion of the majority of the Judges, but if the Judges shall

be equally divided, then the opinion of the senior Judge shall prevail.'

The point on which the learned Judges differed was whether the appellant proved that there had been any material injury by reason of the irregularity. The 15th section gives an appeal from the judgment of two Judges, wherever such Judges are equally divided in opinion. In the case of *Hhahzarii Hajra Bogam v. Khaja Hossein Ali Khan*, which has already come before the Chief Justice and two Judges, on the construction of Section 15, it has been determined that an appeal only lies in respect of that part of the judgment upon which the two Judges differ' 4 B.L.R. A.C. at p. 193 : 13 W.R. at p. 212.

10. The third ease 7 B.L.R. 730 was before Mr. Justice Macpherson on the petition of the Court of Wards on behalf of the Rajah of Darbanga. I cite it to show that that learned Judge, who was a party to the first judgment quoted, had not changed his opinion. He remarks that 'it is most desirable and fit that, under the peculiar circumstances of this case, the appeal should now lie to the Privy Council, and not to the High Court. The Division Court decided to a certain extent in favour of the present petitioner; and to that extent the Judges were not divided in opinion. There being no appeal under Clause 15 from that portion of the decree, Rajah Jalanand Singh has appealed to the Privy Council, as he has an undoubted right to do' 7 B.L.R. at p. 736. Accepting the decisions quoted as authority on the point, and also for the reasons assigned by me, I am of opinion that, the Court was not at liberty to go into the merits of this case, but should have confined itself to the point of difference between the two Judges of the Division Bench.

11. Entertaining this opinion, I do not think it necessary to go into the evidence. I would merely remark that I am of the same opinion as I was at the hearing of the appeal, that the evidence was in favour of the appellants.