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Tej Ram and ors. Vs. Harsukh

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All101

Judge : Turner, Officiating C.J., ;Pearson, ;Spankie and ;Oldfield, JJ.

Appellant : Tej Ram and ors.

Respondent : Harsukh

Judgement :

1. It is not contended that an appeal lies to this Court from the order of the Judge, or that under the Code of Civil Procedure this Court has any power of interference. It is argued that the Court is authorized to exercise jurisdiction in the matter in virtue of the provisions of 24 and 25 Vic, c. 10-4, Section 15. These provisions have frequently been urged as justifying the interference of this Court with orders of a Subordinate Court, on the grounds that the orders of the Subordinate Court has proceeded on an error of fact or law, and that no further appeal is given by the Code, and so far as we are aware the Court has uniformly declined jurisdiction.

2. The provisions of Section 9 of the Statute above-mentioned declare that High Courts established under the Act shall have and exercise all such civil, etc., jurisdiction, etc., and all such powers and authority for, and in relation to, the administration of justice, etc., as Her Majesty may by Letters Patent grant and direct, and that save as by such Letters Patent may be otherwise directed, and

subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under the Act at the time of the abolition of such last-mentioned Court.

3. By the Letters Patent of this Court Her Majesty was pleased to confer on it extraordinary original civil jurisdiction and appellate civil jurisdiction, but she conferred on it no powers of revision in civil suits or matters arising thereout. In these matters the Court has no other power or authority than that enjoyed by the Sudder Dewany Adawlut of these Provinces at the time of its abolition unless such power is derived from the 15th Section of the Statute. The Sudder Dewany Adawlut certainly had no power to exercise judicial functions in any case in which its right of interference was not declared by the law of India, and no provision of any Indian Act is cited as conferring on the Sudder Dewany Adawdut authority to interfere on an application of the nature of that which is now preferred to the Court.

4. The petitioners then can rely only on the provisions of 24 and 25 Vic., c 105, Section 15, which declare that the High Courts established under the Act shall have 'superintendence' over all Courts which may be subject to its appellate jurisdiction, and consequently it is contended that the term superintendence confers jurisdiction to revise proceedings of the Subordinate Civil Courts.

5. We cannot allow this contention. Whether we consider the ordinary significance of the term or construe it in connection with the context, it appears to us to confer on the High Court no revisional power, no power to interfere with or set aside the judicial proceedings of a Subordinate Court, but that it confers on the High Court administrative authority and not judicial powers; as we construe the term *, it would be competent to the High Court in the exercise of its power of superintendence to direct a Subordinate Court to do its duty or to abstain from taking action in matters of which it has not cognizance, but the High Court is not competent in the exercise of this authority to interfere and set right the orders of a Subordinate Court on the ground that the order of the Subordinate Court had proceeded on an error of law

or an error of fact. It is true that some cases may be found in the reported decisions of other High Courts, in which it appears that Judges have claimed in virtue of the right of superintendence given them by the Statute to exercise larger powers than we believe are conferred by the provisions of that law, but the practice of this Court has accorded with the views expressed by us, and on the construction we put on the Statute we are not at liberty to disturb it.

6. The record will be returned to the Bench with this expression of our opinion.

* The statement of the law here given seems on the whole to be in conformity with the view taken in a long series of cases by the Calcutta High Court. That Court has held

(a) that it may interfere, under Section 15 of the High Court's Act, to direct the exercise of a power or jurisdiction disclaimed by the lower Court--see Gobind Coomar Chowdhry v. Kisto Coomar Chowdhry 7 W.R. 520 : S.C. 2 Ind. Jur. N.S. 199: Greesh Chunder Lahooree v. Kasheessuree Debia, 8 W.R. 26 : Omar Chand Mahata v. Nawab Nazim of Bengal 11 W.R. 229 : Collector of Bogra v. Krishna Indra Roy 2 B.L.R.A.C. 301 : Petition of Sankar Dobay 4 B.L.R.A.C. 65 : Hardayal Mandal v. Tirthanand Thakur 4 B.L.R. App. 28 : Khenumkuree Dabi v. Ranee Shurut Soonduree Dabi 14 W.R. 9 : Munohur Paul v. J.P. Wise 15 W.R. 246 : Petition of Rani Umasundari Dabi 5 B.L.R. App. 29 : Petition of Srimati Nassir Jan 7 B.L.R. 144 : Haris Chandra Gupto v. Srimati Shashi Mala Gupti 6 B.L.R. 721 : but see Petition of Hureehur Mookerjee 20 W.R. 202.

(6) that it may interfere to set aside an order made by the lower Court without jurisdiction--see Joy Ram v. Bulwant Singh 5 W.R. Misc. 8 : Bhyrub Chunder Chunder v. Shama Soonderee Debi 6 W.R. Act X. Rulings 68 : Judooputtee Chatterjee v. Chunder Kant Bhattacharjee 9 W.R. 309 : Petition of Bunkobeharry Ghose 11 W.R. 26 : Petition of Maharaja Dhiraj Mahtub Chand Bahadur 2 B.L.R.A.C. 217 : Deep Chand v. Gauree and Beharee 13 W.R. 98 : Rooknee Roy v. Amrith Lall 14 W.R. 254 : Tarini Charan Mookerjee v. Raja Purna Chunder Roy 6 B.L.R. 717 : Mir Habib Sobban v. Mahendra Nath Roy 2 B.L.R. App. 32 : Amra Nashya v. Gagan Shuta 2 B.L.R. App. 35 : Haris Chandra Gupto v. Srimati Shashi Mala Gupti 6 B.L.R. 721.

(c) that it should not interfere merely on the ground that an order made by a Court having jurisdiction is erroneous--see Petition of Pearee Lal Sahoo 7 W.R. 130 : Janokee Bullub Sein v. Dukhina Mohun Chowdhry 7 W.R. 519 : Showdaminee Dosse v. Manick Ram Chowdhry 9 W.R. 386 : Mahomed Busheerullah Chowdhry v. Ramkant Chowdhry 9 W. R. 394 : Jumal Ali v. Shaikh Wahed Ali 11 W.R. 97 : Petition of Jodoo Moonee Dossee 11 W.R. 494 : Petition of Durga Charan Sirkar B.L.R.A.C. 165 : Sreemutty Dossee v. Sreenibash Dey 12 W.R. 74 : Asrafannissa Begum v. Syad Inaet Hossein 5 B.L.R. 316 : B.C. 13 W.R. 439 : Doorga Soonduree Debi v. Kashee Kant Chuckerbutty 14 W.R. 212 : Kalee Hur Doss v. Roodressur Chuckerbutty 15 W.R. 90 : Khorshed Ali v. Chowdhry Wahid Ali 15 W.R. 170 : Petition of Kasinath Roy Chowdhry 7 B.L.R. 146 : Hur Kishore Audhicary v. Sudoy Chunder Nundee 17 W.R. 80 : Petition of Munnoo Singh 19 W.R. 306 : Petition of Bagram 20 W.R. 10 : Khowaz Ram Bux Singh v. Bishendharee Geer 23 W.R. 402 : Ajonnissa Bibi v. Surja Kant Acharji 2 B.L.R. 181 : see, however, Maharaja Dhiraj Mahtab Chund Bahadur v. Shagor Kundu 5 B.L.R. App. 91 Petition of Mathuranath Chuckerbutty 9 B.L.R. 351.

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