

Sadiq Ali Vs. Anwar Ali and ors.

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Court : Allahabad

Decided On : Jul-07-1922

Reported in : (1923)ILR45All66

Judge : Grimwood Mears, C.J. and ;Piggott, J.

Appellant : Sadiq Ali

Respondent : Anwar Ali and ors.

Judgement :

Grimwood Mears, C.J. and Piggott, J.

1. On the 27th of October, 1919, Sadiq Ali filed three second appeals in this Court making Abdul Baqi Khan and Anwar Ali respondents. Abdul Baqi Khan died on the 30th of June, 1920. When the Court reopened on January 3rd, 1921, Sadiq Ali had that day, and that day Only, upon which to take steps to get the heirs of Abdul Baqi Khan put on the record. Nothing was done on that day, and thereupon the appeals auxomatically abated. On January 4th, 1921, an application was made that the Court should set aside the abatement. That matter was heard by Mr. Justice Tudball, who subsequently declined to Bet aside the order, and the parties come up here in appeal.

2. The first point which has been taken by Mr. Iqbal Ahmad is that no appeal lies from the decision of Mr. Justice Tudball, and we propose to consider this matter, just because, if Mr. Iqbal Ahmad is right, we cannot inquire into the merits of the

case and see if Sadiq Ali in his application to Mr. Justice Tudball alleged and proved that he was prevented by any sufficient cause from continuing his suit.

3. Whether an appeal lies from the decision of Ms. Justice Tudball must depend upon the proper construction of Section 10 of the Letters Patent, and the word upon which the whole matter hinges, is the word 'judgment.' The material passage of Section 10 is as follows:-- "An appeal shall lie to the said High Court from the judgment of one Judge of the said High Court." Now, ought 'judgment' in that passage to be given the very narrow interpretation of a decision obtained in an action or ought it to include those matters of judicial decision which are commonly spoken of as orders? This question has arisen in other cases and, as far back as 1895, this Court thought that the right construction of Section 10 of the Letters Patent was that the word judgment included all those types of decisions which are to be found in Section 12 of the Judicature Act of 1875. It may just be well to state what they are. Section 12 of the Judicature Act was providing for appeals to the Court of Appeals, and separating them into final and interlocutory appeals, and it defined those matters as 'orders,' 'decrees' or 'judgments.' If we are prepared to follow Mr. Justice Burkitt in his construction of Section 10 it would follow that this appeal to us is entertainable by us. Mr. Justice Burkitt, in the case of *Wall v. Howard* (1895) I.L.R. 17 All. 438 observed: 'In construing the word 'judgment' in Section 10 of our Letters Patent, which were prepared in England and use the phraseology of the English Courts, it is impossible to give to it the restricted meaning of the word 'judgment' as defined in the Code of Civil Procedure. As used in England, it is wide enough to embrace the definitions of decree, judgment and order in that Code.' The learned Judge then points out that in Section 10 of the Letters Patent the use of the word 'sentence' or 'order' in the exception as to criminal matters is significant, and by that he, no doubt, intends to convey that, in his opinion, the word 'judgment' will have the wider significance of including orders and decrees. There is just a passage in the case of *Tuljaram Row v. Alagappa Chettiar* (1910) I.L.R. 86 Mad. 1 which may help to throw light on this matter. The question in that case was whether an order of a single Judge on the Original side, whereby he refused to frame an issue asked for by one of the parties, was an order from which an appeal could be had. The Chief Justice, at page 7 of the report, says as follows:-- 'The test seems to me to be not what is the form of the

adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, 'a judgment' within the meaning of the Letters Patent.' In the separate judgment of Mr. Justice krishnaswami Ayyar will be found collected in useful form a number of authorities in which the word judgment is discussed and the decision to which he ultimately came was that whilst the word 'judgment' covered of course final orders, it also covered preliminary and interlocutory judgments but not preliminary or interlocutory orders. That was in strict consonance with the opinion of the Chief Justice and is an understandable interpretation of the word.

4. The question for our decision, therefore, involves a reexamination of the facts in order to see what was the result of Mr. Justice Tudball's order. Did it purport to put an end to and determine the rights between the parties on a matter in contest between them? If it did, it was most clearly an order, and on the interpretation given by Mr. Justice Burkitt of Section 10 of the Letters Patent, it was also a judgment. When the application was made before Mr. Justice Tudball, Sadiq Ali was asking that in view of certain circumstances an appeal, which had in fact abated and was dead, should be revived and that Sadiq Ali should be remitted back to the position in which he stood before the expiration of the 3rd of January. Mr. Justice Tudball had to take all the facts of the matter as they were presented to him, and had to determine whether Sadiq Ali had, to his satisfaction, showed that he was prevented by some sufficient cause from continuing the suit. When he made this order, that order, unless an appeal was given by Section 10, was a final order determining once and for all that Sadiq Ali could or could not have the abatement set aside. It was a judicial act, and an act which did settle once and for all, if unappealable, the rights of the parties. Judged by the test of the case of *Wall v. Howard* (1898) I.L.R. 17 All 438 and by the Madras case reported in *Tuljaram Row v. Alagappa Chettiar* (1910) I.L.R. 35 Mad. 1 to which reference has been

made, this decision of MR. Justice Tudball was a judgment within the meaning of Section 10 of the Letters Patent.

5. In 1906 there came up on appeal to the Chief Justice and Mr. Justice Banerji, an appeal from a single Judge, who had refused to extend the time for the admission of an appeal, an application having been made to him for that purpose under Section 5 of the Indian Limitation Act of 1877. The analogy between that case and this one under consideration is extraordinarily close. The applicant in the case of *Kura Mal v. Ram Nath* (1906) I.L.R. 28 All. 414 had put all his facts before a single Judge of this Court, and had urged that in the circumstances he ought to be given the benefit of Section 5 of the Indian Limitation Act. In the present case under consideration Sadiq Ali urged upon Mr. Justice Tudball that there were circumstances which should entitle him to have the advantage of the provision in Order XXII, Rule 9 (ii), whereby in certain circumstances, the abatement is set aside. Both were really asking the same kind of relief. The Chief Justice and MR. Justice Banerji went at once into the merits of the case and the counsel for the respondent did not take the point that this was an order of the single Judge unappealable to a Bench, nor did that point occur to the learned Chief Justice or MR. Justice Banerji. We are sure that they would not have accepted and listened to the appeal unless it was a matter of common practice to admit applications which were of a character wider than these proceedings which can be strictly defined by the use of the word judgment. We are of opinion that as a general working rule there has grown up in this Court a practice of regarding those matters which are mentioned in Order XLIII, Rule 1, of the Code of Civil Procedure as being generally appealable from a single Judge of this Court to a Bench. In Order XLIII, Rule 1(k), an order under Rule 9 of Order XXII, refusing to set aside the abatement or dismissal of a suit, is mentioned specifically as one from which an appeal shall lie. Therefore there is no doubt that there can be an appeal to this Court from the order of, for instance, a District Judge, and that matter can be heard and determined by a Bench of this Court. It is strange if there is permission to appeal, as undoubtedly there is, from the lower appellate court to this Court. that there should not also be the right of appeal not merely in a suit but when the question arises in a court of appeal. It has been argued that the very last rule of Order XXII makes it right and proper for us to read Order XLIII, Rule 1(k), as

including not merely a suit but also an appeal. Taking the whole of the circumstances together, we are of opinion that it has been the practice of this Court to read the word judgment in Section 10 of the Letters Patent as having a meaning which certainly covers orders in a case of this kind, and the preliminary objection therefore fails.

[Their Lordships then dealt with the particular circumstances of this case and held that under those circumstances the application ought to have been entertained.]

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