

Sheo Harakh Vs. Ram Chandra

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Court : Allahabad

Decided On : Nov-17-1914

Reported in : (1915)ILR37All76

Judge : Chamier and Piggott, JJ.

Appellant : Sheo Harakh

Respondent : Ram Chandra

Judgement :

Chamier, J.

1. This application for revision raises a curious question upon which, so far as we are aware, there has not been any decision of this Court. The plaintiff in this case filed a suit in the court of the Munsif of Mirzapur who in July, 1913, decreed the claim. The defendant preferred an appeal against the Munsif's decree to the court of the Subordinate Judge of Mirzapur. The Subordinate Judge proceeded to hear the appeal and in November, 1913, allowed it and dismissed the plaintiff's suit. This is an application for revision of the order of the Subordinate Judge on the ground that the Subordinate Judge, in the absence of an order of District Judge transferring the appeal to him for disposal, had no jurisdiction to hear it.

2. Under Section 21 of the Bengal Civil Courts Act appeals from decrees of Munsifs lie to the District Judge; but under Sub-section (4) of that section the High

Court may, with the previous sanction of the Local Government, direct by notification in the Official Gazette that appeals lying to the District Judge under Sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the court of such Subordinate Judge as may be mentioned in the notification and the appeals shall thereupon be preferred accordingly. It appears that on the 25th of April, 1913, the High Court with the sanction of the Local Government directed by notification in the Official Gazette that appeals from the decrees of the Munsif of Mirzapur should be preferred to the Subordinate Judge of that district. On behalf of the applicant it is contended that the notification enabled the Subordinate Judge to receive such appeals, but did not give him any authority to hear them in the absence of an order under Section 22 of the same Act. Section 22 is the section which empowers a District Judge to transfer to any Subordinate Judge under his administrative control any appeals pending before him from decrees or orders of a Munsif. According to the argument presented on behalf of the applicant, an appeal, which has been preferred under a notification issued under Sub-section (4) of Section 21 of the Act, is pending before the District Judge and therefore, may be transferred by him to any Subordinate Judge under Section 22 of the Act. Speaking for myself I cannot accept this contention. It appears to me that after an appeal has been preferred to the court of the Subordinate Judge it is pending in that court, and I find much greater difficulty in holding that Section 22 enables the District Judge to transfer such an appeal pending before himself, than in holding that the Legislature intended that an appeal preferred to a Subordinate Judge under such notification should be disposed of by him. An exactly similar question arose in Oudh in 1903. In the Oudh Civil Courts Act, (XIII of 1879) there is a provision similar to Section 21, Sub-section (4) of the Bengal Civil Courts Act. Under Section 18, Sub-section (3), of the Oudh Act, the Judicial Commissioner may from time to time with the previous-sanction of the Local Government direct by notification in the Official Gazette that appeals from all or any of the decrees or orders of any Munsif shall be preferred to such Subordinate Judge as may be mentioned in the notification and the appeals shall thereupon be preferred accordingly. It will be noticed, that there is a slight difference between the language of the Oudh section and the language of Section 21 of the Bengal Civil Courts Act, and it has long been the practice in Oudh to insert in the notification

under Section 18, Sub-section (3), the name of the Subordinate Judge to whom the appeals are to be preferred. Whether this was necessary or not may be open to doubt; but the difference between the language of the two sections does not affect the question which we have to decide in this case. In the case of *Sohan Lal v. Baldeo Pershad* (1903) 7 O.C. 321 the late Mr. Scott and I held that a Subordinate Judge to whom appeals are preferred under a notification issued under Section 18, Sub-section (3), of the Oudh Act has jurisdiction to dispose of them. I am of the same opinion still. Hundreds, if not thousands, of appeals have been disposed of by Subordinate Judges in Oudh from the year 1878 up to the year 1903 on the assumption that they had jurisdiction to dispose of them, and since 1903 on the strength of the ruling to which I have referred. I have no doubt that the appeal in the present case was rightly disposed of by the Subordinate Judge and I would dismiss this application with costs.

Piggott, J.

3. I concur both in the order proposed by my learned colleague and generally in the reasoning on which it is based. The only substantial argument in support of this application seems to be that there is nothing in Section 21 of the Bengal Civil Courts Act which expressly lays it down that a Subordinate Judge to whom an appeal has been preferred under Sub-Section 4 of that section is to hear and to dispose of the same. To this it seems to me almost sufficient to reply that neither does the Act in question contain any provision that a District Judge, to whom an appeal from a decree or order of a Munsif lies, under Sub-section (2), of Section 21, shall proceed to hear and dispose of the same. I turn to the Code of Civil Procedure to ascertain what a Court has to do to which an appeal has been preferred, and I find under Rule 9 of order XLI that certain endorsements are to be made on the memorandum of appeal and the appeal is to be registered. Then power is conferred on the appellate court to dismiss the appeal, if it thinks proper to do so, without sending notice to the court from whose decree the appeal was preferred and without serving notice on the respondent. After this follow rules laying down the procedure to be followed when a day is fixed to hear the appeal and notice of the same is issued to the respondent. It is presumed throughout that the court to which an appeal has been preferred shall do each and all of these

things. The question before us in the present case, narrowed down to its ultimate limits, is, what should the Subordinate Judge of Mirzapur have done when this appeal was preferred to him? What he has actually done, is to follow the procedure laid down in Order XLI of the Code of Civil Procedure and eventually to dispose of the appeal. The applicant's contention is that he should either have submitted the memorandum of appeal to the District Judge of Allahabad for an order of transfer, or have referred the matter to the said District Judge for the same purpose. There is certainly nothing in Act No. XII of 1887 which authorizes a Subordinate Judge to do anything of this sort, and I concur without hesitation in the opinion expressed by my learned colleague that it would be a severe straining of the language used to say that this appeal, when it had been preferred be the court of the Subordinate Judge of Mirzapur, was ipso facto pending before the District ' Judge of Allahabad. It seems to me altogether simpler to hold that the Legislature in drawing up the Civil Courts Act presumed that a court to which an appeal was lawfully preferred would, in the absence of any order of transfer from a superior court, proceed to hear and dispose of the same.