

Ram Dihal Vs. Badri

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Court : Allahabad

Decided On : Nov-08-1940

Reported in : AIR1941All143

Appellant : Ram Dihal

Respondent : Badri

Judgement :

ORDER

Hamilton, J.

1. This is an application in revision by one Ram Dihal against the order of the Sessions Judge, Mirzapur, who maintained the order of a Magistrate, first class, directing that a certain lorry be handed, over to Badri opposite party. This lorry was apparently purchased in Calcutta and Badri was the person who went there to effect the purchase and to take delivery of the lorry. He purchased it in his name but had it registered in the name of Bishnath as owner, he himself being entered as transferee. Bishnath remonstrated with the result that Bishnath himself was entered as transferee, so that ostensibly the owner of the lorry was Bishnath. This last entry was made on 20th June 1936. On 25th August 1938, Bishnath sold the lorry to the present applicant Ram Dihal and Ram Dihal was accordingly entered as the owner on the registration certificate on 31st August 1939; so Ram Dihal was the ostensible owner of the lorry. In 1939 Badri brought a suit against

Bishnath for dissolution of partnership and damages and it was decreed as regards the prayer for dissolution of partnership but dismissed as regards damages. On 80th September 1939 Ram Dihal had gone with his family in the lorry to bathe and while the party were bathing three brothers of Badri with their servant came and took away the lorry and locked it in the garage of Badri. A criminal case was brought against those persons and it was after decision of that case that this lorry which had been taken over by the police was ordered to be returned to Badri. Ram Dihal who was complainant in that case appealed against the order of the original Court that the lorry be handed over to Badri.

2. The learned Sessions Judge held on the basis of *Debi Ram v. Emperor* ('24) 11 A.I.R. 1924 All. 675, that no appeal lay in this case, for, although there were decisions of the Bombay High Court taking a different view he felt himself bound to follow the decision of this Court. He then stated that an appeal can be treated as an application for revision, and had he not been satisfied that the order of the Court below was correct on the facts he would have treated it as a revision and referred the matter to this Court. As it stands however he held that an appeal had been brought before him, that he saw no reason to treat it as a revision and the appeal could not be maintained and was accordingly dismissed. Since that decision in *Debi Ram v. Emperor* ('24) 11 A.I.R. 1924 All. 675, which was a single Judge decision, the same question came up before a learned single Judge of this Court in *Cri. Revn. No. 695 of Mt. Nabban Tawaif v. Shyam Lal* *Cri. Revn. No. 695 of 1932* and as he was doubtful as to the correctness of that earlier decision, reviewing the authorities, he directed that the case be laid before a Bench of two Judges. This was done and it was held that an appeal lies. The learned Judges who composed that Bench held that on a plain reading of Section 520, Criminal P.C., it would appear that any Court of appeal, confirmation, reference or revision may direct any order under Section 317 passed by a Court subordinate thereto to be stayed and that Court of appeal may modify, alter or annul such order. The case before the Bench was one where an Assistant Sessions Judge had passed an order of acquittal and under Section 517, Criminal P.C., had passed an order for disposal of property regarding which an offence had been committed. The learned Judges of the Bench went on to say that an Assistant Sessions Judge was subordinate to the Sessions Judge and appeals from the decisions of an Assistant

Sessions Judge ordinarily lay to the Sessions Judge. In the present case the original order was passed by a first class Magistrate who acquitted the accused. The appeal from the Court of a first class Magistrate is to the Sessions Judge. The learned Sessions Judge through no fault of his followed a single Judge's decision of this Court which was directly overruled after consideration by a Bench of this Court and of course the Bench decision must prevail. In the circumstances therefore I set aside the order of the learned Sessions Judge refusing to hear the appeal on the ground that no appeal lies and order him to hear the appeal and to decide it on the merits.

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