

Collis Vs. Manohar Das

Collis Vs. Manohar Das

SooperKanoon Citation : sooperkanoon.com/453844

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All745

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

Appellant : Collis

Respondent : Manohar Das

Judgement :

Pearson, J.

1. This is an appeal from an order passed under Section 407 of Act X of 1877, rejecting an application for permission to sue as a pauper. Such an order was not subject to appeal under the old Code of Procedure (Section 311 of Act VIII of 1859). The question is whether it is appealable under the new Code of Procedure, Act X of 1877. No provision for an appeal from such an order is made in Section 588 of the Act. The appellant contends that it is appealable as a decree under Section 540, in reference to the terms of the second section, in which a decree is defined as the formal order of the Court in which the result of the decision of the suit or other judicial proceeding is embodied.

2. The order in question certainly does not embody the result of the decision of the suit, which it refuses to entertain in the manner in which it is sought to be instituted

without payment of the fee payable by law on the plaint.

3. It can hardly be denied that the order embodies the result of a judicial proceeding. But so also do the orders specified in Section 588 embody the result of a judicial proceeding, yet it cannot be presumed that those orders were regarded as decrees appealable under Section 540 * by the Legislature, for had they been so regarded, it would have been unnecessary to declare in Section 588 that an appeal shall lie from them. It seems to follow that the judicial proceedings referred to in Section 2 are proceedings of a different nature from those which result in the orders specified in Section 588, and that they in some degree resemble and partake of the character of a suit.

4. The category given in Section 588 includes all important orders passed in the course of the trial of a suit and the execution of a decree, except the most important of all, namely, orders finally disposing of applications for the execution of decree. As it is impossible to suppose that an appeal would be allowed from orders of secondary importance, and not from orders of the first importance, it may reasonably be concluded that orders finally disposing of applications for the execution of decrees were intended to be appealable as decrees under Section 540. A recent judgment of the Full Bench of this Court (*Thakur Prasad v. Ahsan Ali ante. p. 668*) has settled that they are so appealable.

5. Proceedings in execution of decree necessarily follow what is called the decision of the suit in Section 2. They may, indeed, be still a part of the suit, if that be held not to terminate with the decree, but with the execution of the decree. Nevertheless each application for execution may be viewed as a little suit of itself, though it be a suit within a suit; and the proceedings in each are not unlike those in the trial of the suit. That proceedings under Section 244 were so viewed by the Legislature is indicated by the provision made in Section 588, Clause (j) for appeals from orders passed in the course of them of the same nature with appealable orders made in the course of a suit.

6. An application for permission to sue as a pauper is really the presentation of a plaint. The order passed upon it does not so much resemble an order determining matters in issue between parties relating to the execution of a decree as an order

passed under Section 54, Clause (b), rejecting a plaint written on paper insufficiently stamped. That order is not a decree appealable under Section 540, but is appealable under Section 588, Clause (e). From an order rejecting an application under Section 407 it was presumably deemed unnecessary to allow an appeal in reference to the provisions of Section 413. The present appeal should therefore in my opinion be rejected.

Turner, Officiating C.J.

7. I concur in the judgment pronounced by Mr. Justice Pearson.

Oldfield, J.

8. I concur in the judgment of Mr. Justice Pearson.

*Appeal to lie from an original decrees except when expressly prohibited.

[Section 540 :--Unless when otherwise expressly provided in this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the when expressly prohibited. decisions of those Courts.]

?[Section 54 :--The plaint shall be rejected in the following cases:

* * * *

When the plaint shall be rejected.

(b) If the relief sought is properly valued, hut the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by court, fails to do so:

* * * *