

Nari Rawat Vs. Daulat Ram

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Court : Allahabad

Decided On : Apr-08-1927

Reported in : AIR1927All524; 101Ind.Cas.695

Appellant : Nari Rawat

Respondent : Daulat Ram

Judgement :

Banerji, J.

1. This is a reference from the Local Government under Section 17 of the rules and orders relating to Kumaun division for a ruling on the following point:

Whether the Commissioner was right in upsetting the finding of fact of appellate Court in second appeal in face of the provisions of Sections 100, 101 and 102 of the Civil P.C.

2. The facts, briefly stated, are that a suit was instituted against one Daulat Ram, who was the petitioner before the Local Government, for recovery of Rs. 318-5-0 due on a promissory note. The Court of first instance, namely the Assistant Collector of Landsdowne, decreed the suit, holding that the plaintiff had proved his case. On appeal by Daulat Ram the Deputy Commissioner of Garhwal dismissed the plaintiff's suit. Plaintiff appealed against the decree of the Deputy Commissioner to the Court of the Commissioner of Kumaun. The learned

Commissioner, under the rules framed under Section 6 of the Scheduled Districts Act (1874), exercises the powers and performs the duties of a High Court for the Kumaun Division. He began the judgment by saying that the appeal related to a simple question of fact as to whether Daulat Ram did execute a promissory note or not. It is therefore clear that the only question before the learned Commissioner was a simple question of fact. He, however, came to the conclusion that the promissory note was executed by Daulat Ram and that the amount sued for was due. He decreed the appeal with costs and restored the order of the Court of first instance.

3. No objection seems to have been taken by Daulat Ram before the learned Commissioner on the ground that in view of Sections 100 and 101 no appeal lay to the Commissioner. Although ordinarily a question which has not been raised before a Court is not taken into account, but as the question raised by Daulat Ram is a question of law it is immaterial whether he did raise that point or not. Of course it is open to the Local Government under Section 17 to pass any orders that it may consider just.

4. Now with regard to the point referred to by the Local Government, it has been argued by the learned vakil for the plaintiff that under Rule 15 of the Kumaun rules every decree or order passed by a Deputy Commissioner was appealable both as regards any question of law or fact. I have come to the conclusion that by reason of the notification at p. 3 of the U.P. Gazette Part 1(1909) the whole of the Code of Civil Procedure has been made applicable to Kumaun. The learned vakil has submitted that by reason of Section 4 of the Code of Civil Procedure all the rights that were in existence on the date when this notification was passed must be deemed to be good as Section 4 provides that nothing in this Code shall be deemed to limit or otherwise affect any special or local law or any special jurisdiction or power conferred by or under any other law for the time being in force. The rules referred to are rules framed under Section 6 of the Scheduled Districts Act and to enable any new enactment to be brought into force I find the following words in Section 15 namely 'save as otherwise provided by any enactment for the time being in force,' But the whole of the Code of Civil Procedure being made applicable to Kumaun, I am of opinion that Rule 15 must

be deemed to have been abrogated to the extent that where there is an appeal to the Commissioner i.e. a second appeal the provisions of Sections 100 and 101 are applicable. The Scheduled Districts Act of 1874 Sections 3, 5 and 5A, provides that when any enactment is brought into operation such portions as the Local Government does not wish to be made applicable can be specifically declared and when that notification of 1909 did not in any way except the operation of Sections 100, 101 or 102, I am of opinion that the Local Government did as a matter of fact amend Section 15 to that extent. The question really is of no practical moment now as the jurisdiction of the Courts in Kumaun has been brought finally under the jurisdiction of this Court. My answer therefore to the point referred is that the Commissioner could not go into a question of fact as an appellate Court in a second appeal in face of the provisions of Sections 100, 101 and 102 of the Code of Civil Procedure.

Walsh, J.

5. I concur in the answer given by my brother mainly because it is obviously in the interest of the parties that we should come to a unanimous decision and no public advantage would be served by my differing although I feel that if I had been compelled to decide upon my own responsibility I should have answered the question the other way. I think the plaintiff has had very hard measure. I am quite satisfied on examining the evidence that the first Court and the Commissioner were right and that the second Court was wrong and the plaintiff will therefore have the satisfaction at any rate of having three tribunals in his favour on the merits even though he ultimately loses his money and he will further have an opportunity of prosecuting the defendant for perjury in denying the execution of the promissory note as there appear to be several other specimens of the defendant's handwriting available. My brother if he had expressed any opinion upon it would also have agreed that the finding of fact by the Commissioner was right. Nobody I take it would doubt that up to 1909 by Rule 15 an appeal from the Deputy Commissioner to the Commissioner was unlimited. There is no answer to Mr. Shambhu Nath Seth's main point on that question namely that it is expressly limited in Chapter V for revenue appeals and the omission of the limitation in Rule 15 of Chapter IV for civil appeals impliedly rendered the right of appeal unlimited.

6. I am also much struck by the fact that until the case was over I do not believe it occurred to anybody to doubt that the unlimited right of appeal had been enjoyed by the Commissioner since 1909. At any rate it was a strong phenomenon to find in 1920 that the right of appeal had been taken away by the Government in 1909. Would learned Counsels have vigorously contested and an experienced Commissioner of Mr. Stiffe's position in the Provinces have decided a pure question of fact when everybody knew that there was no jurisdiction to entertain the matter at all. The solution to this puzzling question which leads one to argue very much in a circle if one is disposed to do so which I prefer is this. There is no express repeal of the unlimited right which existed down to 1909. Section 101 of the Code, if it applies to Kumaun from 1909 mounts to an express repeal of Rule 15 in Chapter IV. It was not a mere modification and that being so I think if I would have been left to my own opinion I should have preferred the view that unlimited jurisdiction under Rule 15 being a special jurisdiction it was expressly preserved from detracting or repeal by Section 4 of the Code when the Code was applied to Kumaun. But as I say it is only an argument. I do not feel that the matter is either of such importance or of such convincing nature that I ought to differ and I therefore concur in the answer to the question given by my brother.

7. The answer to the point referred is that the Commissioner could not go into a question of fact as an appellate Court in second appeal in face of the provisions of Sections 100, 101 and 102 of the Civil Procedure Code.