

Ram Harakh Pathak and ors. Vs. Ram Saran Pathak and ors.

Ram Harakh Pathak and ors. Vs. Ram Saran Pathak and ors.

SooperKanoon Citation : sooperkanoon.com/478444

Court : Allahabad

Decided On : May-20-1915

Reported in : AIR1915All165; 29Ind.Cas.408

Judge : George Knox, J.

Appellant : Ram Harakh Pathak and ors.

Respondent : Ram Saran Pathak and ors.

Judgement :

George Knox, J.

1. The plaintiffs, now respondents, sued on a bond. The defendants pleaded payment. The matter in dispute was referred to arbitration; the arbitrator decided in favour of the plaintiffs. Objections were taken by both parties. The lower Court, after considering the objections, dismissed them and drew up a decree in terms of the award. From that decree an appeal was filed to the Court of the Additional Judge. The Additional Judge accepted the appeal and on the 16th of August 1912 entertained an application signed by one of the plaintiffs and the Vakil engaged for both plaintiffs on the one side, and by the defendant Ram Harakh and a Pleader who appeared for both defendants on the other. The application was to the effect that both parties agreed that the appeal should be accepted (manzur) and that the case should be decided on the merits. The Additional Judge ordered that the appeal is accepted and the case be decided on the merits. Some evidence was

taken and the case remained on in the Court of the Additional Judge until the 4th of April 1913. Then, so far as the record shows, the case went automatically to the Court of the Subordinate Judge of Basti. No doubt there must have been some order, but whether that was an order passed by the District Judge or by the Additional Judge does not appear. There remains the fact that on the 5th of April the case appeared in the Court of the Subordinate Judge of Basti and he began to exercise jurisdiction upon it. It remained in that Court until the 21st of January 1914, when we are told that by an order of the District Judge of Gorakhpur the case was made over to the Court of the Additional Subordinate Judge of Gorakhpur; that officer held that no appeal lay under the circumstances to the Court of the Additional Judge, that the admission or agreement of parties was on a point of law and was to the effect that a certain Court should retry the case, that this agreement was not binding on the plaintiffs, and that it did not give that Court or the present Court any jurisdiction to hear the appeal. He accordingly dismissed the appeal.

2. It is obvious that the record is incomplete, that there are papers which ought to be on the record, which are not there now, and the absence of these papers has caused the waste of a whole day of time by this Court. I expect the learned District Judge to look into the matter and see to whom it is owing that this record has been drawn up in such an incomplete way.

3. The defendants have come here in appeal and have submitted a memorandum of appeal consisting of seven pleas. The first is to the effect that the learned Additional Judge had no jurisdiction to set aside the order of his pre-decessor dated the 16th of August 1912. I do not know, nor can I ascertain from the record, who the predecessor of the learned Additional Judge was. So far as the record shows Mr. Rose was the only Additional Judge who dealt with this case. The second plea is to the effect that the agreement of the parties dated the 16th of August 1912 was binding on both the plaintiffs and the defendants and the plaintiffs have no right to resile from the same. There is no doubt that the procedure adopted by the learned Additional Judge in passing that order of the 16th August 1912 was very erratic. The order in question was a decree based upon an award. From that decree no appeal lay to the Additional Judge and he had not

the least power to adopt the procedure which he afterwards did. The 3rd and 4th pleas are practically to the same effect. The fifth plea is to the effect that the plaintiffs were estopped from questioning the jurisdiction of the Court to hear the appeal on the merits. This follows my decision on the preceding plea. Then there is a plea to the effect that even if the appellants' Vakil made any admission on a point of law, it is not binding on the appellants. The last plea is that the Additional District Judge being seized of the case, the order of transfer to the Court of the Additional Subordinate Judge was bad in law. I cannot find the order of transfer on the record and it is impossible to say what that order was. In the absence of the order it must be presumed to have been rightly made until the contrary is shown. A great deal of argument was addressed to me and several cases cited as to the power of the District Judge to withdraw an appeal from a Subordinate Court when that Court has gone to some length in the case. I quite agree with the contention that it is most inexpedient for orders of this nature to be passed, but I cannot say that such orders are illegal, specially when I am not satisfied as to the circumstances under which the order was passed.

4. The result then is that we are carried back to the appeal which was died in the Court of the Additional District Judge, no appeal lay and everything that followed must be swept aside as without jurisdiction and I come back, though not quite by the same road, to the decree of the 30th of May 1912.

5. I dismiss this appeal with costs, including fees in this Court on the higher scale.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com