

Harbanssingh Vs. the Trust Committee Shri Gurusingh Sabha Gurudwara Trust Marhatal, Jabalpur and ors.

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Court : Madhya Pradesh

Decided On : Jul-28-1971

Reported in : AIR1972MP61

Judge : Bishambhar Dayal, C.J. and ;S.P. Bhargava, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 23, Rule 3

Appeal No. : Letters Patent Appeal No. 6 of 1970

Appellant : Harbanssingh

Respondent : The Trust Committee Shri Gurusingh Sabha Gurudwara Trust Marhatal, Jabalpur and ors.

Advocate for Def. : B.S. Bakshi, Adv.

Advocate for Pet/Ap. : J.P. Sanghi, Adv.

Disposition : Appeal dismissed

Judgement :

Bishambhar Dayal, C.J.

1. This is a Letters Patent Appeal against an order of a learned Single Judge of this Court dismissing a miscellaneous first appeal. The question is whether this Letters Patent Appeal is competent under Clause 10 of the Letters Patent of this Court. The relevant facts are not in dispute. The respondent Trust Committee filed a suit for the ejectment of a tenant. That suit was decreed. The defendant filed an appeal before the Additional District Judge, Jabalpur. During the pendency of the appeal the defendant-appellant filed an application under Order 23, Rule 3 of the Code of Civil Procedure for recording a compromise. This was dismissed by the Additional District Judge. An appeal against that order refusing to record the compromise was filed in this Court. The appeal was allowed and the case was remanded for reconsideration. The Additional District Judge again refused to record the compromise. Again a miscellaneous appeal was filed in this court This appeal was dismissed by the learned Single Judge on 15th September 1970. Against this order of the learned Single Judge the present Letters Patent Appeal is sought to be filed without obtaining the leave of the learned Single Judge.

2. Clause 10 of the Letters Patent of this Court is as follows:--

'10. Appeal to the High Court from judges of the Court.-- And we do further ordain that an appeal shall lie to the said High Court of Judicature at Nagpur from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of the appellate jurisdiction by a court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the powers of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, made in the exercise of appellate jurisdiction in respect of decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the Judgment declares that the

case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to us, our Heirs and Successors in Our or Their Privy Council, as hereinafter provided,'

The point for consideration, therefore, is whether the order passed by the Additional District Judge was in the exercise of appellate jurisdiction in which case the order passed by the learned Single Judge was against an order of the lower Court which was itself passed in the exercise of appellate jurisdiction. In such a case a Letters Patent Appeal has been prohibited by the words in brackets in clause 10 of the Letters Patent reproduced above.

The contention of learned counsel for the appellant was that the Additional District Judge, when he passed the order refusing to record the compromise, was exercising original jurisdiction in hearing the application under Order 23, Rule 3 of the Code of Civil Procedure and was not exercising an appellate jurisdiction and that consequently the appeal from the order which was filed in this Court was a first appeal and the learned Single Judge was not exercising second appellate jurisdiction.

3. We are unable to agree with this contention of learned counsel for the appellant. When the Additional District Judge was asked by an application to record a compromise in the appeal, his appellate jurisdiction was invoked and it was in Ms appellate jurisdiction that he would have entertained this application ha respect of the appealwhich was pending before him. It is not possible to say that this application was made invoking the exercise of his original jurisdiction. Although under the Code of Civil Procedure an appeal against this order before the learned Single Judge was described as a first appeal from the order or a miscellaneous appeal from the order, yet the jurisdiction of this Court was being invoked and exercised in respect of an order which was itself passed in the exercise of appellate jurisdiction by the Additional District Judge. Consequently, a Letters Patent Appeal was not competent unless permission of the learned Single Judge was obtained. Admittedly, no such permission was obtained in. this case.

4. A similar question arose in this Court which was decided by a Division Bench in *Tulsiram v. Yeshodabai*, L. P. A. No. 9 of 1950, D/- 20-4-1951 (Madh Pra). A

short-note of this case is reported in 1952 Nag LJ (Notes) 31 which is as follows:--

'An appeal under Order 43, Rule 1 fu), Civil Procedure Code from an order of remand by the first appellate Court is one in a second appellate Jurisdiction and where it is dismissed under Order 41, Rule 11 and no leave is given by the Judge no Letters Patent Appeal is tenable from the order of dismissal.'

The learned Judges relied upon another Division Bench decision of this Court in *Ratanlal v. Gajadhar*. ILR (1948) Nag 690 - (AIR J949 Nag 188).

5. The same view has been taken by other High Courts also where the language of the Letters Patent is exactly the same. In *Md. Hasan Khan v. Bhikhari Lal*, AIR 1950 All 534 a Division Bench of the Allahabad High Court had to consider a case where the first appellate Court allowed an application for review under Order 47. Rule 1 of the Code of Civil Procedure. Against that order an appeal had been filed in the High Court under Order 43. Rule 1 of the Code of Civil Procedure which was heard by a learned Single Judge and dismissed. He also refused to grant permission for a Letters Patent Appeal. In spite of the refusal a Letters Patent Appeal was filed alleging that no such permission was necessary in the case. Precisely the same question arose before the learned Judges.

Malik C J. who spoke for the Bench laid down as follows:--

'According to learned counsel the lower appellate Court was exercising, what he called, a 'jurisdiction in review'. It is true that the order appealed against was not passed on 'appeal', but there can be no doubt that it was passed by the lower appellate Court in the exercise of its appellate jurisdiction. The case came up before that Court, and it became seized of it as a Court of appeal, and the application for review was filed before it, by invoking its iurisdiction as a Court of appeal to set aside its previous order and to re-hear the appeal.'

A similar view has been taken by the Andhra Pradesh High Court in *V. Krishnamacharyulu v. S. Veeraraju*. AIR 1964 Andh Pra 527 where the first appellate Court had passed an order of remand against which an appeal was heard by a learned Single Judge. It was held that-

'Notwithstanding the fact that the appeal presented by the respondents was described as a civil miscellaneous appeal, it was a second appeal, in that it was preferred against the judgment of the Lower Appellate Court passed in the exercise of its appellate jurisdiction.'

6. Learned Counsel for the appellant relied upon an unreported decision of this Court in *Ganeshmal v. Parasmal*, L. P. A. No. 19 of 1969. D/-28-1-1970 (Madh Pra). That was a case in which an appeal in this Court was filed against an order of the trial court (first Court) appointing a receiver and consequently an appeal under the Letters Patent was entertained. Reliance was also placed on *Manohar v. Baliram*, AIR 1952 Nag 357 (FB) The only question decided in that case was whether an order of remand passed by a learned Single Judge was a 'judgment' and the point whether the jurisdiction which was being exercised by the learned Single Judge was a second appellate jurisdiction or a first appellate jurisdiction was not in question.

7. After considering the matter with care, we are of opinion that no Letters Patent Appeal lies in the present case. This appeal is accordingly dismissed with costs. Counsel's fee is fixed at Rs. 100/-.

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