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Court : Rajasthan

Decided On : Mar-21-1950

Reported in : AIR1950Raj37

Judge : Bapna and; Gupta, JJ.

Acts : Jodhpur Ijlas-I-Khas Rules, 1945 - Rule 19; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 110; Rajasthan High Court Ordinance, 1949 - Sections 40 and 49; Rajasthan Appeals and Petitions (Discontinuance) Ordinance, 1949

Appeal No. : Certificate Case No. 5 of 1949

Appellant : Shivdan Chand

Respondent : Kalyan Chand

Advocate for Def. : Than Chand, Adv.

Advocate for Pet/Ap. : Sohanlal, Adv.

Disposition : Petition allowed

Judgement :

Bapna, J.

1. This is a petition for certificate that the case is fit one for appeal to Ijlas-i-Khas against the decision of the former High Court of Jodhpur dated 9th February 1949.

The relevant Rule is contained in the notification issued by His Highness the Maharaja Sahib of Jodhpur on 12th December 1946 and its relevant provisions are as under :

'18. Subject to the provisions hereinafter contained an appeal shall lie to Ijlas-i-Khas: --

(a) From any decree passed on appeal by the High Court,

(b) From any decree passed by the High Court in a case relating to land, whether either party had pleaded that he holds the land in dispute otherwise than as a cultivating tenant of the opposite party, and an issue had been framed regarding the tenure in which the land was held, and where the decree appealed from does not affirm, the decision of the Court immediately below.

(c) From any decree passed by the High Court, when the case as hereinafter provided is certified to be fit one for appeal.

19. In cases covered by (a) of Rule 18, the amount or value of the subject-matter of the suit in the Court of first Instance must be Rs. 4000 or more and the amount or value of the subject-matter in dispute on appeal to His Highness must be the same sum or more;

Or the decree must involve directly or indirectly some claim to, or some question respecting property of like amount or value.

And where the decree appealed from affirms the decision of the Court immediately below, the appeal must involve substantial question of law.'

2. It is conceded that the valuation of the subject matter in dispute in the trial Court and in appeal would be more than Rs. 4000 but the petition is opposed on various grounds. The first contention is that the judgment of the former High Court of Jodhpur was of affirmance of the decision of the Court immediately below and in order that an appeal can lie to the Ijlas-i-Khas there must be a substantial question of law involved in the appeal.

3. It is urged on behalf of the petitioners, that there is a substantial question of law involved in the appeal viz., whether' the wife of a lunatic can adopt a son to her husband which was decided against the plaintiffs. The point is not covered by any authority and without expressing any opinion on the point it may be stated at once that it is a substantial question of law.

4. It was next argued that the appeal was incompetent by virtue of promulgation of the Rajasthan High Court Ordinance on 12th August 1949. Reliance is placed on Section 49 read with Section 40 of that Ordinance. The relevant provisions are as under:

'49. (1) On the date appointed in the notification issued under Sub-section (3) of Section 1 of this Ordinance every Tribunal functioning as the High Court in such state shall cease to exist, and all cases pending before the said High Court or authority at that date shall be transferred to and heard by the High Court constituted by this ordinance, and all the records and document a of the several Courts which so cease to exist shall become, and be, the records and documents of the High Court.

(2) Notwithstanding anything hereinbefore contained cases (not being proceedings for the issue of directions or orders in the nature of prerogative writs as provided for in Section 28) pending before the High Court of any covenanting state or any authority exercising the powers of a High Court in such state on its original side, may be transferred by the High Court to the Subordinate Court having jurisdiction therein or may be kept on its own file and tried by it and for the purposes of the trial hearing and disposal of such cases the High Court shall have ordinary jurisdiction.

'Section 40. Until a Court is constituted in pursuance of Section 39 of this Ordinance or of any other law relating to the establishment of a Court superior to the High Court, to hear appeals therefrom, the High Court shall be the highest Court of appeal, reference and revision in the state and shall have jurisdiction to entertain and dispose of such appeals, revisions reference cases and other proceedings as it is empowered to entertain and dispose of under this ordinance or any enactment or law in force in the state and no appeal shall lie from any

judgment, decree or order of the High Court.

'Section 39-- The Rajpramukh may, whenever it seems to him expedient so to do by an ordinance or order, constitute a Court to hear appeals from the judgments, decrees or orders of the High Court and may make such consequential or incidental provisions as may be necessary.'

The contention is that under Section 49 all the documents which must include, judgments of the former High Courts became the documents e.g., the judgments of the Rajasthan High Court and under Section 40, until the constitution of an appellate Court under Section 39, were to be deemed final. The learned advocate for the petitioners relies on a subsequent ordinance No. 40 of 1949 promulgated on 15th November 1949 and known as the Rajasthan Appeals and Petitions (Discontinuance) Ordinance as amended by the amending ordinance No. 12 of 1960 dated 24th January 1950. Section 3 of this ordinance, so far as it is relevant to the matter in issue is as under:

'Notwithstanding anything contained in the Rajasthan Administration Ordinance, 1949 or In any law for the time being in force in any covenanting state, no appeal, revision, reference or petition, which according to such law lies to the Ruler is preferred, brought or made or presented to the Ruler or to any authority known by the designation of I-jlas-I-khas or judicial committee or by any other designation, shall so lie or be so preferred, brought, made or presented, after the commencement of this ordinance.

(1) In judicial matters, from or against any decision of a High Court: Provided farther that nothing in this section shall be deemed to prevent the presentation of any appeal for which under the law in force in any covenanting state leave to appeal was necessary and has been granted or in respect of which an application for the grant of such leave has been made before the commencement of this ordinance.'

5. Section 4 of this Ordinance lays down that where any appeals, revisions, references or petitions of the nature described in Section 3 have been preferred, brought or made or presented before and are pending at the commencement of

this ordinance shall be heard, determined and disposed of if it relates to judicial matters by the High Court of judicature for Rajasthan established by the Rajasthan High Court Ordinance 1919. It is urged that Sections 4 and 3 permit the hearing of appeals etc., already presented or to be presented after grant of certificates on petitions already pending for leave to appeal.

6. In my opinion, the contention of the petitioners is correct. Under Ordinance No. 1 of 1949 (Rajasthan Administration Ordinance, 1949) promulgated on 7th April 1949, all the laws in force in any covenanting state immediately before the commencement of that ordinance are declared to continue to remain in force in that state until altered, repealed or amended by competent authority. The judgment of the Jodhpur High Court was pronounced on 9th February 1949 before the merger of the various states and the petition for leave to appeal was presented on 12th April 1949, long before the constitution of the Rajasthan High Court. The petition was competent under the I-jlas I-khas rules whose continuance was preserved by Ordinance No. 1 of 1949. Ordinance No. 40 of 1949 [Appeals and Petitions (Discontinuance) Ordinance] seems to have been enacted with two-fold purpose, firstly, to declare that no appeals shall lie from decisions of the Rajasthan High Court and this was done to show that no appellate authority above the Rajasthan High Court as was referred to in Section 39 of the High Court Ordinance was contemplated, the other purpose was to make arrangements for the disposal of the appeals etc., already filed by litigants against the decisions of the different High Courts in various covenanting states as also from such appeals as may be presented as a result of the acceptance of any petition for leave to appeal already pending, the present one is a case of this sort. It is obvious that the appeal would lie under ordinance No. 40 of 1949 as amended by Ordinance No. 18 of 1950 and that the present petition is maintainable and if followed, an appeal would be entertainable.

7. The Rajasthan High Court Ordinance in the first place, does not touch the existing petitions for leave to appeal or appeals already presented against the decisions of any of the former High Courts of the covenanting States. Secondly, Section 49 of the High Court Ordinance seems to refer to cases pending in the former High Courts, which are directed to be transferred to the Rajasthan High

Court for disposal and it is by virtue of that provision that the present petition for leave to appeal, which was presented to the former High Court, has come up for decision. The language of the section seems to indicate that it is with respect to the pending cases that the records and documents of the former High Courts of the covenanting States are to become the documents of the Rajasthan High Court.

8. Assuming, however, that it refers to all documents including those of the cases already decided, the judgments already passed are not included in Section 40. By Section 40 the High Court has been made the highest Court of appeal, reference or revision in respect of cases which it may dispose of according to law after it is constituted. It does not affect the decisions already passed by the former High Courts. This is obviously so, not only by virtue of the Administration Ordinance but is also made clear by the Rajasthan Appeals and Petitions (Discontinuance) Ordinance. In my opinion the objection of the non-petitioners has thus no force and as the case fulfils the condition necessary for the grant of certificate, the petition is allowed, the certificate will be issued for appeal to be presented against the decision of the former Jodhpur High Court to the Rajasthan High Court as provided by ordinance No. 12 of 1960.

Gupta, J.

19.I agree.