Oakshott and ors. Vs. the British India Steam Navigation Company

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SooperKanoon Citation : sooperkanoon.com/788229

Court : Chennai

Decided On : Dec-08-1891

Reported in : (1892)ILR15Mad179

Judge : Parker and ;Wilkinson, JJ.

Appellant : Oakshott and ors.

Respondent : The British India Steam Navigation Company

Judgement :

1. The first question referred to us by the Full Bench of the Small Cause Court is whether a hearing of an application for a new trial by a Full Bench under Section 37 of the Presidency Small Cause Act XV of 1882 can be said to be the hearing of a suit within the meaning of Section 69 of the said Act, so as to entitle the Court to state a cast; for the opinion of the High Court either on its own motion or at the requisition of either party.

2. Section 69 of the Presidency Small Cause Act provides for a reference to the High Court in two cases (1) when two or more Judges sit together in any suit and differ in their opinion as to any question of law or usage having the force of law, and (2) if any such question arises in any suit in which the subject-matter is over Rs. 500 in value and either party requires such reference. The concluding clause of the Section provides for the course to be adopted by the Court in both of the above cases: it is to draw up a statement for the opinion of the High Court of the

facts of the case, and either postpone judgment or deliver judgment contingent upon such opinion.

3. It was urged by the learned Counsel for the defendant company that the words 'in any suit' were wide enough to include an application for a new trial under Section 37, and we were referred to the judgment of Sir Barnes Peacock in Ishan Chancier Singh v. Haran Sirdar 11 W.R. 525 in which it was ruled that an application for a now trial under the Mofussil Small Cause Act XI of 1865 was a point in the proceedings previous to the hearing of a suit within the meaning of Section 1, Act X of 1867, and that the opinion of the High Court upon a question of law could be asked for upon such an application, per contra we were referred by the learned Advocate-General to the remarks of Sargeant, C.J., and Farran, J., in Ralli Brothers v. Goculbhai Mulchand I.L.R. 15 Bom. 376.

4. The language used in Section 1, Act X of 1867, appears to us clearly distinguishable from that used in Section 69, Act XV of 1882. Although an application for a new trial may undoubtedly be 'a point in the proceedings previous to the hearing of a suit,' yet the words 'in any suit' in the later Act appear to presuppose that a suit is actually pending. If the application for a new trial is rejected, the suit is not revived, and it becomes impossible to give effect to the direction in the last clause of Section 69, viz., to reserve judgment or give judgment contingent upon such opinion. We are fortified in this opinion by the fact that the High Court of Calcutta has taken a similar view in Nusserwanjee v. Pursutum DOSS I.L.R. 11 Cal. 298 in which it was held, following the principle laid down in Hall v. Joachim 12 B.L.R. 34 that if in hearing an application for a new trial the Judges thought it advisable to take the opinion of the High Court, their proper course was to grant a new trial, so that the point could be properly raised. In an application for a new trial no judgment could be given which would be a contingent judgment within the meaning of the Presidency Small Cause Act. We must answer the first question referred to us in the negative. We cannot, therefore, consider the other points referred. Costs in this Court to follow the result of the reference.