

In Re: Vasudeva Samiar Alias Vasudeva Pillai

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Court : Chennai

Decided On : Oct-18-1928

Reported in : AIR1929Mad381; (1929)56MLJ369

Appellant : In Re: Vasudeva Samiar Alias Vasudeva Pillai

Judgement :

ORDER

Murray Coutts Trotter, Kt., C.J.

1. This case appears to me to be indistinguishable from the case of Sheikh Sardar Ali v. Sheikh Dolliluddin Ostagar (1928) 48 Cri.L.J. 150. For the sake of clearness I will set out the dates in this case. The plaint was presented on the 30th July, 1919. The Second Appeal was presented on the 15th July, 1924. The Judge who heard the Second Appeal called for a finding and in consequence of that inevitable delay gave his judgment on the 9th February, 1928. On the 24th of April, 1928, a Letters Patent Appeal was filed against the judgment of the learned Judge who sitting alone had decided the Second Appeal. Before that Letters Patent Appeal was presented the amended Letters Patent of 1928 had become applicable to this Presidency on the 31st of January.

2. I should in any case differ from the decision in the Calcutta case cited above with great reluctance because it would lead to the result that a Second Appeal would lie in Calcutta where it would not lie in Madras. I should therefore not venture to differ from the considered opinion of the Calcutta Full Bench on any

other ground than that I felt not merely that I was inclined to the opposite opinion, but that I felt that the decision offended against some standard principles of statutory construction. So far from that being the case, I entirely concur in the reasoning of Rankin, C. J., who delivered the judgment of the Court and see no answer to it. The result is regrettable because it makes the amended Letters Patent which were doubtless brought into being to relieve the heavy burden of Second Appeals, which in this Court have now reached the startling figure of 5,000 cases, unable to effect any substantial relief to us for five years.

3. I have only one observation to add to the judgment of the Calcutta High Court and that is in reference to an argument addressed to us on a case which apparently was not cited to the Calcutta High Court. That is the case of *Canada Cement Co., Ltd. v. East Montreal (Town of)* (1922) 1 A.C. 249 and it was suggested that the sentences which are to be found at the end of their Lordships' judgment were irreconcilable with the doctrine so clearly laid down by Lord Macnaghten in *Colonial Sugar Refining Co. v. Irving* (1905) A.C. 369 and that the later case should be followed if there was such a conflict and not the earlier. In our opinion, arrived at after a careful scrutiny of the Canada Cement Company's case, (1922) 1 A.C. 249 no such conflict arises. In that case what was taken away was not the right of appeal but the very Court to which the appeal lay, namely, the Superior Court of Montreal sitting in review. By 10 Geo. V., c. 79 (Quebec) the right of appeal was transferred from the abolished Court to the Appellate Side of the Court of King's Bench in Quebec, but no provision was made for the transference of appeals which would have lain to the abolished Court to the newly constituted Appellate Court. In these circumstances their Lordships of the Privy Council held that an appeal from the Circuit Court to the Court of King's Bench did not lie; but in no way did their Lordships' opinion conflict with their earlier decision in *The Colonial Sugar Refining Company v. Irving* (1905) A.C. 369. I may add that in the latter case of *The Delhi Cloth and General Mills Co., Ltd. v. The Income-tax Commissioner, Delhi* (1927) L.R. 54 IndAp 421 : 1927 53 M.L.J. 819 the decision of the Board in *The Colonial Sugar Refining Co. v. Irving* (1905) A.C. 369 was authoritatively adopted and reaffirmed.

4. We must therefore hold, however reluctantly, that the institution of the suit carries with it the implication that all appeals then in force are preserved to it through the rest of its career unless the Legislature has either abolished the Court to which an appeal then lay or has expressly or by necessary intendment given the Act a retrospective effect. We agree with the Calcutta High Court that the words of the amended Letters Patent do not admit of such an interpretation.

5. Since the above was written, our attention has been called to the case of *Badrudin v. Sitaram* : AIR1928 Bom371 decided by a Bench of the Bombay High Court (Fawcett and Mirza, JJ.), as recently as April of this year. That decision was in effect based on the case of *Frawji Bomanji v. Hormasji Barjorji* (1886) 3 Bom. H.C.R. 49. We appreciate the desire of the Bombay Court to uphold a decision which had stood for over half a century without being explicitly reversed. But in our opinion it was overruled by necessary implication in *The Colonial Sugar Refining Co. v. Irving* (1905) A.C. 369 and can no longer be regarded as an authority. *Framji's case* (1886) 3 Bom. H.C.R. 49 purports to establish two propositions which may be summarised shortly as follows : (1) That a deprivation of a right of appeal from a Judge or Bench of a Court to a larger Bench of the same Court is a mere matter of procedure. (2) That a statute similar in terms to the amended Letters Patent that we have to consider, must be construed as being retrospective in its operation. The first ground is disposed of by *The Colonial Sugar Refining Co. v. Irving* (1905) A.C. 369, the second by the judgment of the Full Bench of the Calcutta High Court and the English cases cited in that judgment. We feel that in this matter we must reluctantly dissent from the view of the High Court of Bombay, and agree with the conclusion arrived at by the Full Bench in Calcutta.

Kumaraswami Sastri, J.

6. I agree.

Wallace, J.

7. I agree.

Beasley, J.

8. I agree.

Pakenham Walsh, J.

9. I agree.

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