

Kalinga Hebbara Vs. Narasima Hebbara

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Court : Chennai

Decided On : Jan-31-1911

Reported in : 9Ind.Cas.937

Judge : Abdur Rahim and ;Ayling, JJ.

Appellant : Kalinga Hebbara

Respondent : Narasima Hebbara

Judgement :

1. The preliminary objection has been taken that no second appeal lies in this matter by reason of the provisions of the new Civil Procedure Code. There can be no doubt, reading Order XLIII, Rule 1, Clause (j) and Section 104 and Order XXI, Rules 92 and 89 together, that if the new Code applies to the present case, the decree-holder has no right of appeal. The facts upon which it must be decided whether the present Code governs the case are that the decree-holder filed his appeal against the order of the Munsif when the Code of 1832 was still in force, but before the Subordinate Judge passed his order the present Code had come into force. The general principle which regulates the question whether a new statute deprives a litigant who had a right of appeal which he enjoyed under the repealed statute is thus stated by Lord Macnaghten and, therefore, the only question is was the appeal to his Majesty in Council a right vested in the appellants at the date of the passing of the Act or was it a mere matter of procedure? 'it seems to their Lordships that the question does not admit of doubt.

To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure.' Colonial Sugar Refining Company Limited v. Irving (1905) App. Cas. 360 : 74 L.J.P.C. 77 : 92 L.T. 738 : 21 T.L.R. 513. Applying the principle to the present case, the appellant, when he filed his appeal in the Subordinate Judge's Court had the right vested in him to appeal against the Subordinate Judge's order if it went against him. The next question is, has Section 154 Civil Procedure Code expressly or by necessary intendment deprived the appellant of this right? The section runs thus: Nothing in this Code shall affect any present right of appeal which shall have accrued to any party at its commencement.'

2. It is argued that the words, 'Present right of appeal which shall have accrued,' have by necessary intendment taken away the right to appeal if the right was not capable of being immediately exercised at the time of the introduction of 'the Code. We are not inclined to accept this construction, though we confess the matter is by no means free from doubt. We think the words relied on do not mean anything more than that no right of appeal which has become vested in a litigant to use the language of their Lordships of the Privy Council shall be affected by the present Code.

3. We also think there is some force in the contention of the learned Vakil for the appellant that inasmuch as under the provisions of the old Civil Procedure Code, what was passed against the appellant by the District Munsif was in the nature of a decree, the provisions of the present Code should not be held to change what was a decree into an order without clear words to that effect. We hold, therefore, that an appeal lies.

4. Upon the merits there can be no doubt that the amount deposited by the respondent who is the assignee of the judgment-debtors was short of the amount which Section 310A, Civil Procedure Code, requires to be deposited. We think the lower Court was not entitled to appropriate the other amounts paid on their accounts in order to make up the deficit in the amount payable as mentioned in the sale proclamation. Section 310A confers a special right on the judgment-debtor and before he can avail himself of the benefit of the section, he must comply

strictly with its terms. Chundi Charan Mandal v. Banki Behary Lal Mandal 26 CP. 449 : 3 C.W.N. 283.

5. The order of the lower Court will be set aside and the petition of the respondent, E.A. NO. 164 of 1908, will be dismissed. Each party will bear his own costs throughout.

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