

Prankrishna Shaini and ors. Vs. Kunja Behari Das and ors.

Prankrishna Shaini and ors. Vs. Kunja Behari Das and ors.

SooperKanoon Citation : sooperkanoon.com/860082

Court : Kolkata

Decided On : Apr-08-1908

Reported in : 4Ind.Cas.61

Judge : Rampini and ;Sharfuddin, JJ.

Appellant : Prankrishna Shaini and ors.

Respondent : Kunja Behari Das and ors.

Judgement :

1. The facts of this case are as follows: This appeal arises out of a rent suit. On appeal to the Court below the appeal was heard by the District Judge who decreed the appeal. But subsequently a review of judgment was applied for and the learned Judge set aside his former order allowing the appeal. Then, there was a second appeal to this Court, and this Court set aside the Judge's decree and directed the lower Court to re-hear the case, considering the weight which was to be attached to the fact that the co-sharer tenants had paid an increase of rent and finding what was the substantive evidence of which the jama wasil and collection papers were corroborative evidence. The case was originally tried by the District Judge. The District Judge on receipt of the remand order of this Court transferred this case to the Subordinate Judge who disposed of it accordingly.

2. Now the plaintiffs, who are the appellants, have preferred this second appeal to this Court and the only point taken is that the District Judge had no power to

transfer the appeal from his own file to that of the Subordinate Judge, when it appears that the intention of this Court was that after remand it should be tried by the District Judge. The learned pleader who appears on behalf of the appellant cites to us certain authorities in support of this view, namely, the cases of Chowdhery Hameedoollah v. Muteeoonissa Bibee 15 W.B. 574; Sita Ram v. Muni Dulaiya 21 A. 230 and Kumarasami Reddiar v. Subburaya Reddiar 23 M. 314. The learned pleader for the respondent relies upon Section 22 of Act XII of 1887 which gives the District Judge complete power to transfer any appeal pending before him to any Subordinate Judge under his control. He urges that this section gave the District Judge full power to transfer the case and that there is no technical defect in this proceeding. We are of opinion that the Subordinate Judge who tried the case had jurisdiction to hear it. We, therefore, do not think it fit to interfere with the judgment of the Subordinate Judge.

3. As for the case of Chowdhry Hameedoollah v. Mutteeoonissa Bibee 15 W.B. 574 that was a case in which it was held that a District Judge was not competent to transfer a case of execution of a decree which had been passed by his own Court to the file of the Subordinate Judge for disposal. It has been held by this Court that Section 25 of the Code of Civil Procedure does not give the District Judge power to transfer execution cases under that section. In this respect the Calcutta High Court is opposed to the views of the High Courts of the other provinces. However that may be, this ruling has no application to the present case.

4. Then as far the case of Sita Ram v. Muni Dulaiya 21 A. 230 it is sufficient to say that the learned Judges who decided that case did not take into consideration the provisions of Section 22 of Act XII of 1887. The judgment contains no reference to that section. Furthermore, this judgment does not commend itself to us, and all that we need say is that this Court is not bound to follow it and we respectfully dissent from it.

5. As for the case of Kumarasami Reddiar v. Subbaraya Reddiar 23 M. 314 it was a case in which the District Judge who heard it in part remanded the, case to the District Munsif for findings on fresh issues: and under those circumstances the Madras High Court held that the District Judge had no power to transfer an appeal

to the Subordinate Judge. This is perfectly different case from the present one. It, therefore, appears to us that there is no defect in the proceedings of the Court below. Moreover, it appears to us to be very probable that the learned Judges who remanded the case would be glad that the case should on remand be re-heard by an officer different from the officer who heard the case originally and with whose judgment they were not satisfied. Finally this point was not raised in the Court below and this seems to be a very late stage of the proceeding to raise such a plea.

6. We, therefore, dismiss this appeal with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com