

Nando Lal Roy and ors. Vs. Baserali

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Court : Kolkata

Decided On : Jan-31-1919

Reported in : 50Ind.Cas.806

Judge : N.R. Chatterjea and ;Newbould, JJ.

Appellant : Nando Lal Roy and ors.

Respondent : Baserali

Judgement :

1. This is an appeal against an order of the District Judge of Backergunj imposing a fine upon the appellants under Order XVI, Rule 12, under the following circumstances.

2. A proceeding was held against a Pleader Mokund Lal Dey who was alleged to have acted as manager of the appellants and their co-sharer, one Tarit Bhusan Roy. In the course of the proceedings, the appellants were summoned to produce certain documents. On the 20th June 1917 the appellants put in a petition stating that the documents were not with them but were with their co-sharer, Tarit Bhusan, and that consequently they were unable to produce them. It appears that the Ijmali officers of the appellants and Tarit Bhusan, viz., Srinath Roy Chowdhuri and Hira Lal Ganguli, were also cited as witnesses, but they did not appear. Proclamations were issued (so far as the appellants are concerned) under Order. XVI, Rule 10. The appellants thereupon filed another petition on the 22nd January 1918, in

which they repeated that the documents were not with them. This petition was supported by the affidavit of one Beni Madhab Roy, the cashier of the appellants, and it was stated therein that the papers called for were not with the appellants, but were with Tarit Bhusan, that the latter was concealing all the papers relating to the estate owing to a misunderstanding between him and the appellants and that the papers were in the possession or custody of the officers and clerks of Tarit Bhusan Roy. This was denied in the affidavit (dated the 23rd January) of Rash Behari Bhattaoharji, who it appears is a servant of Tarit Bhusan. He stated that all the papers of the joint Mahals had been in the possession of Srinath Roy Chowdhuri and Hira Lal Ganguli who are the record-keepers of the joint estate and further that certain papers (specified therein) written and signed by the Pleader Mokund Lal Dey were taken from the joint record-keepers by the appellants' officer Kishori Mohan Eundu, as shown by the receipt book of documents.

3. The learned District Judge held that the appellants had failed to satisfy him that the documents could not be produced by them and accordingly imposed a fine of Rs. 250 on each of the appellants.

4. Two contentions have been raised in the appeal, first, that the provisions of the Civil Procedure Code do not apply to proceedings under the Legal Practitioners Act, and that, therefore, the Court had no jurisdiction to impose a fine under Order XVI, Rule 12, of the Code, and secondly, that if the documents were with Kishori Mohan or the record-keepers, they may be fined (they have been already fined) and that the appellants should not have been fined.

5. As regards the first point, we think that the procedure provided in the Code of Civil Procedure is applicable to proceedings under the Legal Practitioners Act. Section 141 of the Civil Procedure Code lays down that the Procedure prescribed in this Code shall be followed as far as it can be made applicable in all proceedings in any Court of Civil jurisdiction. The proceedings in the present case were held by the District Judge and the Court of a District Judge is a Court of Civil jurisdiction. The provisions of the Civil Procedure Code were applied to proceedings under Section 36 of the Legal Practitioners Act in the case of *Bairn Sahib v. District Judge of Madura* 26 M. 596 : 13 M.L.J. 272, and in *Kotha Subba*

Cheiti v. Queen 6 M. 252 : 7 Ind. Jur. 247 : 1 Weir. 116 : 2 Ind. Dec. (N.S.) 454, it was held that an enquiry under the Legal Practitioners Act is a judicial proceeding. Reliance was placed on behalf of the appellant upon the case of Hari Charan Sarkar v. District Judge of Dacca 6 Ind. Cas. 327 : 11 C.L.J. 513 : 11 Cr. L.J. 320. In that case proceedings were taken by the District Judge against a number of persons as touts under Section 36 of the Legal Practitioners Act. On objections being filed by such persons the District Judge ordered the case against each person to be numbered and tried separately, and summonses were Ordered to be issued on witnesses named by the different persons; but subsequently the District Judge acceded to the request of the objectors that their evidence might be regarded as applicable to all the cases, so that they might be saved from the harassment of separate examination and cross examination in the different proceedings. The District Judge by his judgment dealt with the case of each person separately examining in detail the evidence against each, and in the result directed the names of several persons to be included in the list of touts. The order of the District Judge was assailed in this Court on the ground that they were multifarious and conducted in a manner unknown to legal procedure, and in support of that contention the cases of Smurthwaite v. Bannay (1894) A.C. 494 : 63 L.J.Q.B. 737 : 6 R. 299 71 L.T. 157 : 43 W.R. 113 : 7 Asp. M.C. 485 and Subrabmaniam Ayyar v. King-Emperor 25 M.C. : 11 M.L.J. 233 : 3 Bom. L.R. 540 : 28 I.A. 257 : 5 C.W.N. 866 : 2 Weir. 271 8 Sar. P.C.J. 160 (P.C.) and some other cases were relied upon. The, learned Judges in distinguishing the above cases pointed out that an enquiry under Section 3rd does not partake of the nature of a suit under the Civil Procedure Code or of a prosecution under the Criminal Procedure Code, and with reference to the argument that such a proceeding is 'in the nature of a miscellaneous proceeding so that under Section 141 of the Civil Procedure Code of HOS the Procedure provided in regard to suits must be followed in so far as it can be made applicable,' the learned Judges observed: 'But this provision is clearly not conclusive because even if it is assumed that an enquiry under Section 36 of the Legal Practitioners Act is a miscellaneous proceeding within the meaning of Section 141 of the Civil Procedure Code, all that is laid down is that the Procedure is to be identical with that followed in suits in so far as it can be made applicable,' and then proceeded to point out the distinction

between the enforcement by a plaintiff of his claim against one or more defendants and a determination by a Court of Justice that a certain person is an undesirable person who ought not to be admitted into the precincts of the Court, and that it would obviously be appropriate to apply to an enquiry conducted for such a purpose any inelastic rule of Procedure applicable to civil suits or criminal prosecutions. The observations were made in connection with the question of multifariousness as vitiating the proceedings. The learned Judges were of opinion that an enquiry under Section 86 does not partake of the nature of a suit under the Civil Procedure Code, but they did not decide that such an enquiry is not a miscellaneous proceeding within the meaning of Section 141 of the Civil Procedure Code, nor lay down that a proceeding under the Legal Practitioners Act when held by a District Judge is not a proceeding in a Court of Civil jurisdiction. The Act does not prescribe any Procedure to be followed in proceedings held under the Act. Section 14 of the Act provides that the presiding Officer shall receive and record all evidence properly produced in support of the charge or by the Pleader or Mukhtar and shall proceed to adjudicate on the charge.' There must be some Procedure followed in making the enquiry, for summoning witnesses and enforcing the attendance of witnesses or the production of documents. In the absence of any provision in the Act itself as regards the Procedure to be followed, we do not see why the Procedure prescribed by the Civil Procedure Code should not be followed as far as it can be made applicable to proceedings under the Legal Practitioners Act provided it is a proceeding held in a Court of Civil jurisdiction. The words 'in any Court of Civil jurisdiction' are very wide, and we think include the Court of a District Judge holding an enquiry under the Legal Practitioners Act.

6. With regard to the second contention it appears that the papers called for from the appellants were taken away by the appellants' Officer Kishori Mohan Kundu after giving receipt therefor in the receipt book. This Kishori Mohan presumably took the papers for his masters. He is an Officer of the appellants and is residing with them. He does not come forward to deny the receipt of the papers nor state what became of the papers. The record-keepers Srinath Roy and Hira Lal Gangul, who were also summoned, do not come forward and deny the statements made in the affidavit of Bash Behari. It is urged that if Kishori Mohan or any other Officer has got the papers, the appellants ought not to be fined unless it is shown that

they have got the papers in their possession. But as stated above, Kishori Mohan is their servant and is living with them. It appears that Srinath and Hira Lal are also residing with the appellants. The appellants have not sworn any affidavits that the papers are not with them or that their servant, Kishori Mohan, would not part with the papers. On the other hand their case is that the papers are with their co-sharer Tarit Bbusan, and that the latter is withholding the papers. The learned District Judge observes: In the absence of any affidavit by Babus Nanda Lal and Jasoda Lal Roy Choudhuri themselves, and of any affidavit by Kishori Mohan Kundu, who appears to have taken away the documents, and by Srinath Chowdhuri and Hira Lal Ganguli, with whom the documents would probably be kept in the ordinary course of business, I must hold that the documents are in all probability under the control of Babus Nanda Lal and Jasoda Lal Roy Choudhuri, and that the latter have not only failed without lawful excuse to produce them when required by proclamation to do so, but have not even made any serious attempt to satisfy me that they were not in a position to produce them, They have merely filed an affidavit by a person who is probably not in a position to know anything about the matter.'

7. If was for the appellants to satisfy the Court that they could not produce the papers, and having regard to the circumstances we are unable to hold that the learned Judge was wrong in holding that the cause shown was not satisfactory.

8. The appeal accordingly fails and is dismissed with costs--three gold mohurs,