

(2001) 05 GAU CK 0022
In the Gauhati High Court
Case No : Civil Revision No. 74 of 1998

Badan Mia @ Jalal Uddin and Others	APPELLANT
Vs	
Sunil Chakravorty and Others	RESPONDENT

Date of Decision : 25-05-2001

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 21(1)

Citation : (2001) 2 GLT 205

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : B.L. Singh and M.A. Laskar, for the Appellant; S.R. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The opposite parties filed TS No. 49/75 in the Court of the Assistant District Judge, Cachar, Silchar. The said suit was decreed by Judgment and Decree dated 22.8.1975. The petitioner preferred an appeal in TA No. 23/75 before the learned District Judge, Cachar, Silchar and the learned District Judge set aside the judgment and decree passed by the Assistant District Judge, Cachar, Silchar. The opposite parties then filed Second Appeal No. 70/81 before this Court and in the said Second Appeal, the matter was remanded to the learned District Judge for hearing. When the matter was placed before the learned District Judge, the Sharistadar of the Court of the learned District Judge, Cachar, Silchar, submitted a report to the effect that the provisions of Bengal, Agra and Assam Civil Court Act, 1887, had been amended in the meanwhile by the Assam Act VII of 1993 and as a consequence of the said amendment, the appeal can no longer be heard by the District Judge but by the Civil Judge (Sr. Division) as the valuation of the suit from which the appeal arose was Rs. 3,125/-. Thereafter, the learned District Judge by the impugned order dated 9.3.1998 accepted the said report of the Sharistadar and held that the appeal could not be disposed of by the District Judge and ordered for return of the

memorandum of appeal for necessary action. Aggrieved by the said order dated 9.3.1998, the petitioner who was the appellant in TA No. 2/98 has filed this Revision u/s 115 of the code of Civil Procedure.

2. I have heard the learned counsel for the parties and I am of the considered opinion that the aforesaid report of the Sharistadar of the Court of the learned District Judge and the impugned order dated 9.3.1998 of the learned District Judge based on the said report of the Sharistadar are erroneous in law. Sub-section (1) of Section 21 of the Bengal, Agra and Assam Civil Court Act, 1887 s amended by the Assam Act No. VII of 1993 is to be following effect.

"21. Appeal from Subordinate Judges and Munsiffs - (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall be -

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed fifty thousand rupees.

(b) to the High Court in any other case."

3. It will be clear from the provisions of Clause (a) of Sub-section (1) of Section 21 of the act quoted above that the valuation of the original suit in which the decree or order appealed from has been passed was not to exceed Rs. 50,000. Thus the upper limit of the appellate jurisdiction of the learned District Judge was fixed at Rs. 50,000. In the aforesaid provisions in Clause (a) of Sub-section (1) of Section 21 of the Act no lower pecuniary limit of the appellate jurisdiction of the learned District Judge had been fixed and the learned District Judge appears to have proceeded on the assumption that the lower limit of the appellate jurisdiction of the learned District Judge was Rs. 25,001. This erroneous assumption is perhaps based on the fact that by the Assam Act No. VII of 1993, the higher limit of pecuniary Jurisdiction of the Court of Munsiff in Sub-section (2) of Section 19 of the Bengal, Agra and Assam Act, 1887 was fixed at Rs. 25,000. But Section 19 which deals with the extent of pecuniary jurisdiction of the Munsiff (presently Civil Judge, Jr. Division) has nothing to do with the appellate jurisdiction of the learned District Judge provided under Clause (a) of Sub-section (1) of Section 21 of the Act. For finding out the pecuniary jurisdiction of the District Judge as an appellate Court, one has to look at the provisions of Section 21 of the Act and not at the provisions of Section 19 of the aforesaid Act. The learned District Judge has misconstrued the provisions of the said Act as amended by Assam Act VII of 1993 and has come to the conclusion that he has no jurisdiction to hear the appeal when in fact he had the jurisdiction u/s 21(1) (a) of the said Act.

4. Since the learned District Judge has failed to exercise, the jurisdiction vested in him I set aside the impugned order dated 9.3.1998 and order that the learned District Judge, Hailakandi will hear and dispose of the said appeal in accordance with law and pass fresh orders after hearing the parties.

5. The revision is allowed. But considering the facts and circumstances of the case, the parties shall bear their own costs. LCRs including the records of the said TA No. 23/75 will be sent back by the office immediately.