

(1896) 01 CAL CK 0013
In the Calcutta High Court

Balaram Bhramaratar Ray

APPELLANT

Vs

Sham Sunder Narendra

RESPONDENT

Date of Decision : 03-01-1896

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1896) ILR (Cal) 526

Hon'ble Judges : Gordon, J; Banerjee, J

Bench : Division Bench

Judgement

Banerjee, J.—This rule arises out of certain cases under the former Land Acquisition Act (X of 1870). The cases were referred to the Court of the Subordinate Judge, who had been empowered to perform the functions of a Judge under that Act; and whilst they were pending before him, Act X of 1870 was repealed by Act I of 1894. The Subordinate Judge then disposed of the cases, apportioning in a certain way the compensation awarded. Dissatisfied with his decision, the petitioner before us preferred appeals to the District Judge, and at the hearing of the appeals the learned District Judge held that they lay, not to his Court, but to the High Court, u/s 54 of Act I of 1894. Upon that the petitioner before us made two applications to this Court; in one of which he contended that the District Judge was wrong in dismissing the appeals, on the ground of want of jurisdiction, and that the appeals properly lay to his Court; and in the other he contended that, if the District Judge was right in the view taken by him, then he was entitled to file his appeals to this Court, though out of time; the fact of the law having been changed and the fact of its being doubtful whether the appeals lay to the District Judge's Court or to this Court, constituting a sufficient cause within the meaning of Section 5 of the Limitation Act for his not presenting the appeals to this Court within time. Upon the first-mentioned application this rule was granted, calling upon the other side to show cause why the order of the District Judge, dismissing the appeals on the ground of want of jurisdiction, should not be set aside; and upon the second application the order of this Court was that it should Stand over pending the disposal of this rule.

2. Upon the question raised in the rule, namely, whether the District Judge was right in holding that the appeals in these cases lay not to his Court, but to the High Court, we are of opinion that the answer ought to be in the affirmative. It is true that, by Section 39 of Act X of 1870, it was provided that the appeal shall lie to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge; but that Act has been repealed by Act I of 1894, and the only saving clause is that in Sub-section (2) of Section 2, which provides that all proceedings commenced under the Land Acquisition Act (X of 1870) shall, as far as may be, be deemed to have been commenced under the Act of 1894. We must therefore look to the provisions of Act I of 1894 to see whether an appeal lies or not, and if any appeal lies, to what Court.

3. Now Section 54 of Act I of 1894 enacts: "Subject to the provision of the Code of Civil Procedure, applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Act." The proceedings in these cases, though commenced under the old Act, must, by virtue of the provisions of Sub-section (2) of Section 2 of Act I of 1894, be deemed to be proceedings under the latter Act. That being so, Section 54 would apply to the case, and under that section the appeals lie to the High Court.

4. It was contended by Dr. Asutosh Mookerjee that, though that may be so, what was appealed against here was not an award within the meaning of Section 54, but an order of apportionment of compensation under Part IV of the Act; and in support of the contention that a distinction should be observed between what is called an award in the Act and an order apportioning compensation, we were referred to Section 26, which provides for the form of the award, by the Judge. It was further contended that, though Section 11 of the Act makes the apportionment of compensation a part of the award, that section refers not to an award by the Judge, but to an award by the Collector. This argument is no doubt entitled to consideration, and the question may not be altogether free from doubt. The Act has not defined the term "award," and all that Section 30, under which the order apportioning compensation must have been made, says is: When the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court;." And if, as the learned vakil for the petitioner contends, the order in these cases is not an award within the meaning of Section 54, then it is argued that the appeals should lie to the Court, to which, under the ordinary law, an appeal lies from a decision of a Subordinate Judge; and the provision of Act I of 1894 that is applicable to the case must, therefore, it is contended, be Section 53 of the Act which makes the CPC generally applicable. After giving our best attention to the question, we must say that the term "award," as used in Section 54, must include an order for the apportionment of compensation u/s 30. Though Section 11 relates only to the award of the

Collector, there is no reason to suppose that the Legislature intended the application of the word to be limited to cases where a final order is made by the Collector, and not to use the same word with reference to the same order, when made by the Civil Court. By Section 11 the award is to state the true area of the land, the compensation which should be allowed for the land and the apportionment of the same; by Section 26 of the Act, the Judge in making an award is to specify the amount awarded under the several clauses of Section 23, and by Section 30 the Civil Courts are authorized to pronounce a decision upon the question of apportionment; and if the decision of the Judge upon the question of the amount of compensation is to be called an award, there is no reason why his decision upon the question of apportionment should not also be called by the same name; moreover, it appears to us that in substituting Sections 53 and 54 of the present Act for Sections 36 and 39 of the old Act, the Legislature has intentionally made all appeals in land acquisition cases to lie to the High Court; and the contention of the petitioner, if given effect to, would lead to this anomaly that, whereas an award, as far as it relates to the fixing of the amount of compensation being clearly an award within the meaning of Section 26, and therefore of Section 54, can be questioned by way of appeal only before the High Court, if in addition to a dispute as to the amount of compensation, there is also a dispute as to how it is to be apportioned, and an order is made as to such apportionment, a different Court is to have jurisdiction in hearing an appeal from that part of the order. That is an anomaly which, in the absence of more clear and express language, we do not think that the Legislature can be credited with having intended. That being so, we must hold that the learned District Judge was right in his view, that the appeals lay not to his Court but to this Court.

5. The rule must therefore be discharged with costs.

6. We now come to the other application of the petitioner, namely, that in which he asks us to permit him to file his appeals, though out of time. We are of opinion that the application ought to be granted. It is clear that if the time, during which the appeals before the District Judge were pending is deducted, the petitioner will be quite in time in appealing to this Court on the date he made his application. That being so, the only question is whether there was good and sufficient cause within the meaning of Section 5 of Act XV of 1877 for his not presenting his appeals in this Court within the time allowed. Now what we have already said in disposing of the rule is quite sufficient to show that the question was not altogether free from doubt at the time when the petitioner filed his appeals in the District Judge's Court. There can be no question that the appeals before the District Judge were filed and prosecuted *bond fide*, and if Section 14 of the Limitation Act had applied to appeals, the petitioner would have been entitled to a deduction of that time. That being so, following the observations of the learned Judges of the Allahabad High Court in *Bhuanant Sing v. Gumani* ILR 5 All. 591, we hold that there was good and sufficient cause in this case within the meaning of Section 5, and we therefore direct that the appeals of the petitioner

may be admitted, if filed on or before Monday next. We ought to add here that this last order of ours is made ex-parte and subject to all just objections and exceptions by the other side.