

(1917) 03 CAL CK 0025
In the Calcutta High Court

Chandi Charan Saha and on his death his heir Behari Lal Saha	APPELLANT
Vs	
Jnanendranath Bhattacharjee	RESPONDENT

Date of Decision : 09-03-1917

Acts Referred:

Citation : 41 Ind. Cas. 250

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This appeal is directed against an order of Mr. Justice Walmsley, whereby he has set aside the decision of the District Judge and directed the appeal to be re-heard. A preliminary objection has been taken to the competency of the appeal on the ground that the decision is not a judgment within the meaning of Clause 15 of the Letters Patent. To determine the validity of the preliminary objection it is necessary to state briefly the nature of the suit and the scope of the orders made at various stages thereof.

2. The plaintiff sued the defendant for accounts and put his case in the alternative. He alleged in the first place that the defendant was his servant employed in two wine shops, and was consequently liable to render accounts. He asserted in the second place that if the defendant was not a servant, he was a partner and was in that character liable to render accounts. The Court of First Instance came to the conclusion that the defendant was a partner and made a decree for dissolution of partnership and for accounts. The plaintiff was dissatisfied with this decision and appealed to the District Judge. The District Judge did not, as we gather from the records, hear the case on the facts, but held as a matter of law that the defendant could not be a partner of the plaintiff. He accordingly set aside the decision of the Trial Court and gave the plaintiff a decree for accounts against the defendant as an agent of one of the two wine shops mentioned. The defendant appealed to this Court. Mr. Justice Walmsley has allowed the appeal and remanded the case in order that the appeal may be re heard by the District Judge.

3. On behalf of the respondent it is contended that as all the matters in controversy between the parties have been left open for fresh adjudication by the District Judge, this decision is not a judgment within the meaning of the Letters Patent. In support of this view reliance has been placed upon the now classical definition given by Sir Richard Couch, C. J., in the case of *Justices of the Peace for Calcutta v. Oriental Gas Company* (1). We are of opinion that the preliminary objection cannot be sustained.

4. Sir Richard Couch defined the expression "judgment" in Clause 15 of the Letters Patent to mean a decision which affects the merits of the question between the parties by determining some right or liability, and added that it might be either final, preliminary or interlocutory. This definition does not assist the respondent. The decision here does affect the merits of the question between the parties by determining a right or liability: its effect is to deprive the plaintiff of the benefit of the decree made in his favour by the District Judge and to re-open the entire controversy between the parties. It is plain that the expression "some right or liability" is not restricted to the right in controversy in the suit itself. This is clear from the illustrations given by Sir Richard Couch in his judgment, as also from his judgment in the case of *Hajee Ismael Hajee Hubeeb v. Hajee Mahomed Hajee Joosub* 13 B. L. R. 91 : 21 W. R. 303. On the other hand, if we adopt the wider definition formulated by White, C. J., in the case of *Tuljaram Row v. Alagappa Chettiar* 8 Ind. Cas. 340 : 35 M. 1 : (1910) M. W. N. 696 : 8 M. L. T. 453 : 21 M. L. J. 1 the decision is unquestionably a judgment within the meaning of the Letters Patent. The test is, not what the form of the adjudication is, but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, the adjudication is a judgment *Mathura Sundari Dassi v. Haran Chandra Shaha* 34. Ind. Cas. 634 : 43 C. 857 : 20 C. W. N. 504 : 23 C. L. J. 443. The effect of the decisions of Mr. Justice Walmsley is to terminate the appeal in this Court and also to vacate the decree made by the District Judge; and a decree has been drawn up in this Court to give effect to this decision *Doucett v. Wise* 2 Ind. Jur. (N. S.) 280 at p. 296.; *Upendra Nath Bose v. Bindeshri Prosad* (3); *Krishen Dayal Gir v. Irshad Ali Khan* (4). We are of opinion that, in these circumstances, the decision of Mr. Justice Walmsley is a judgment within the meaning of the Letters Patent and the preliminary objection cannot be sustained.

5. As regards the merits it is plain that the order must be sustained. The District Judge did not hear the appeal on the facts but proceeded to determine the status of the defendant as a pure question of law. It is not necessary for us to express an opinion upon the legal questions in controversy between the parties; and as we read the judgment of Mr. Justice Walmsley, he did not commit himself to a definite proposition of law on the question, whether or not the defendant could legally be a partner of the plaintiff. He has held in substance that the facts must

be investigated before the legal relation between the parties can be determined. This view is manifestly right.

6. The result is that the order of Mr. Justice Walmsley is affirmed with costs and the case remitted to the District Judge in order that he may determine, first, the questions of fact which arise in the case and secondly, all questions of law which may adjudication on those facts.