

(1959) 08 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Supreme Court Application No. 132 of 1958

Gurkirat Singh Bhai Prem Singh

APPELLANT

Vs

Gurdit Singh S. Gurdial Singh and Others

RESPONDENT

Date of Decision : 12-08-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90
Constitution of India, 1950 — Article 133, 133(1)

Citation : AIR 1960 P&H 32

Hon'ble Judges : A.N. Bhandari, C.J;D. Falshaw, J

Bench : Division Bench

Judgement

Bhandari, C.J.

(1) This is an application under Art. 133(1) of the Constitution of India for leave to appeal to the Supreme Court.

(2) A plot of land belonging to the judgment debtor was sold in execution of decree obtained by the decree-holder. The judgment-debtor presented an application under R. 90 of O. 21 of the CPC for the setting aside of the sale on the ground of material irregularity or fraud in publishing or conducting it. The executing Court allowed the application and directed that the sold property be sold afresh. This order was however, set aside by a learned Single Judge of this Court, and the order of the learned Single Judge was upheld by a Division Bench of which I was a member. The judgment-debtor has now presented an application under Art. 133 of the Constitution of India.

(3) The learned counsel for the judgment-debtor contends that as a learned Single Judge of this Court varied the judgment of the executing Court and as the Letters Patent Bench upheld the judgment of the learned Single Judge, the final judgment of this Court must be deemed to be the judgment of the learned Single Judge which obviously is one of variance. As the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal exceeds Rs. 20,000/- and as the judgment is one of variance, it is contended

that the petitioner is entitled as of right to prefer an appeal to the Supreme Court.

I regret I am unable to concur in this contention. In Narsingh Das V. Municipal Committee of Jhajjar, Civil Misc. No. 250-C of 1953, it was held that where on appeal under Clause 10 of the Letters Patent Bench a Division Bench affirms the decision of a Single Judge of the Court and an appeal is proposed to be taken to the Supreme Court, the judgment sought to be appealed against, namely the judgment of the Division Bench is a judgment affirming the decision of the Court below. A similar view was taken in Civil Mis. No. 847-C of 1955, D/- 20-4-1956.

In this view of the case it seems to me that the judgment from which an appeal is sought to be preferred to the Supreme Court is a judgment of affirmance and a certificate for leave to appeal can be granted only if the appeal involves the decision of a substantial question of law. No substantial question of law arises for decision in the present case.

(4) Nor is there any justification for issuing a certificate under clause (c) that the case is a fit one for appeal to the Supreme Court. The appeal does not raise any question of general public importance which requires to be decided by their Lordships of the Supreme Court.

(5) For these reasons I am of the opinion that the application for leave to appeal must be dismissed. Ordered accordingly.

(6) There will be no order as to costs.

Falshaw, J.

(7) I agree.

JC/V.R.B.

(8) Appeal dismissed.