

(1874) 02 CAL CK 0001

In the Calcutta High Court

Case No : Appeal under cl. 15 of the Letters Patent of 1865

Hurdeo Narain Sahu

APPELLANT

Vs

Gridhari Singh

RESPONDENT

Date of Decision : 12-02-1874

Acts Referred:

Citation : (1874) 02 CAL CK 0001

Judgement

Sir Richard Couch, Kt., C.J.—The case came before the learned Judges, apparently under the power, which it has been considered is given to the High Court by the 15th section of the High Courts Act, to annul or reverse the decisions of Courts subject to its appellate jurisdiction where the Court considers that there is a want of jurisdiction, or the jurisdiction has been exceeded. If the Court, when it made the order of the 11th of March, had simply exercised the power of annulling or reversing the order of the Subordinate Judge, the case would have gone back to him, and it would follow, from the decision of this Court, that he would have confirmed the sale. His order confirming the sale would have been subject to an appeal to this Court, and the order of this Court, assuming that the subject-matter was of the appealable value, would have been subject to an appeal to Her Majesty in Council. Instead of this course being adopted, the present appellant took a rule calling upon the opposite party to show cause why not only the order of the Subordinate Judge should be reversed, but why the sale should not be confirmed, and allowed that rule to be made absolute. In fact, the position which he takes is, that while he seeks to have the benefit of the order of this Court confirming the sale, he contends that there can be no appeal to Her Majesty in Council from it, as it was not made by the High Court on appeal within the meaning of the clause in the Charter which gives this appeal. I think that having as it were asked the Court to make the order confirming the sale, he cannot now be allowed to say that it was not an order made on appeal by this Court; it was only by this Court acting as on an appeal to it that such an order could be made. By the appellant's own act and consent a procedure has been adopted in which this Court has, as a Court of Appeal,

confirmed the sale without the intermediate step being taken of sending the case back to the Subordinate Judge, by whom the sale would have been confirmed, and then there might have been an appeal to this Court. I think under those circumstances it is not open to the appellant to contend that this is an order which was not made on appeal, and therefore does not come within the 39th clause of the Charter. Although it may not be necessary in this case to decide the general question whether orders made by the High Court in the exercise of the supposed power which is conferred upon it by the 15th section of the High Courts Act are subject to appeal to the Queen in Council, I am prepared to say that I think they do come within the 39th clause. I mean that if they are not strictly within the words, they are within the intention of it. This Court is asked, under the power which it is supposed to have, to reverse or annul a decision of a Court subordinate to it on account of a defect in law, a want or an excess of jurisdiction. In some cases the Court has gone beyond this in the grounds upon which it has acted. It is true that the case does not come before the Court in the form of an appeal, either regular or special, but the effect of what is done by the Court in cases of this description is the same as if the order had been reversed on an appeal. If the Court is to exercise this power under the 15th section of the High Courts Act, I think the words of the 39th clause in the Charter should be construed liberally, and so as to give the person against whom the decision of the High Court is a right of appeal to Her Majesty in Council, provided of course that the subject-matter is of sufficient value. The words are "from any final judgment, decree or order of the said High Court of Judicature at Fort William in Bengal made on appeal." If we look at the substance, the real result of the providing, the effect which it has, I think it might be considered within the intention of these words. This opinion does not, so far as our decision in this case goes, conflict with the decision of the Full Bench in *Raja Syud Enaet Hossein Vs. Rani Roushun Jehan*. There the order was made on an application for a review. Whether that decision be a sound one or not, and whether it would be upheld by the Judicial Committee of the Privy Council, it is not necessary now to consider. The present case is of a different description; and for the reasons which I have given, I think that orders made by the Court under s. 15 of the Act of Parliament ought to be subject to appeal to Her Majesty in Council. The result therefore is that we dismiss the present appeal with costs.

L.S. Jackson, J.

2. Who is not able to be present today, concurs in this judgment.