

(1953) 03 PAT CK 0008

In the Patna High Court

Case No : Supreme Court Appeal No. 47 of 1952

Kartar Singh

APPELLANT

Vs

Ramkumar Bhagat and Another

RESPONDENT

Date of Decision : 05-03-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Constitution of India, 1950 — Article 133(1)

Citation : AIR 1953 Patna 377 : (1953) 1 BLJR 369

Hon'ble Judges : Ramaswami, J;Jamuar, J

Bench : Division Bench

Advocate : B.C. De and A.K. Chatterji, for the Appellant; N.L. Untwalia, for the Respondent

Final Decision : Dismissed

Judgement

1. This application is presented on behalf of Sardar Kartar Singh for leave to appeal to Supreme Court against the judgment and decree of a Bench of this High Court dated 17-4-1952 in F. A. 100 of 1950.

2. The opposite party No. 1 had obtained a decree for a sum of Rs. 13,382/13/1 with interest against the opposite party No. 2. There was an appeal preferred to the High Court but the appeal was dismissed on 15-3-1949. On 20-12-1949 opposite party No. 1 applied for execution of the decree in the court of the Special Subordinate Judge of Ranchi. In para 5 of the execution petition the opposite party No. 1 mentioned that there was a sum of Rs. 8000 which was kept in deposit with the Garnishee Sardar Kartar Singh for being paid to opposite party No. 1. Objections were filed to the execution case by various persons. On 5-3-1949 the petitioner filed an objection on the ground that he had paid a sum of Rs. 8000 to the opposite party No. 2 and so he was not liable to pay the amount over again to opposite party No. 1. Later on, on 23-4-1949 an application was filed in the executing court to the effect that opposite party No. 1, viz., the decree-holder, had received a sum of Rs. 8000 from the garnishee

and the balance of the amount viz., a sum of Rs. 5,382. from the opposite party No. 2. The application was Signed by one Sahdeo Prasad, agent of the opposite party No. 1, and by Mr. A.K. Banerji, an Advocate.

In the application it was prayed on behalf of opposite party No. 1 that the execution case should be dismissed on full satisfaction, Accordingly the learned Subordinate Judge dismissed the execution case. Five days later, opposite party No. 1 filed an application before the Subordinate Judge alleging that fraud had been practised by Sahdeo Prasad and the petition of satisfaction was forged and did not bear the signature of opposite party No. 1. An enquiry was made into the matter by the learned Subordinate Judge who held that the decree was really satisfied and there was no reason for restoring the execution case. Against this order opposite party No. 1 filed an appeal to the High Court and on 17-4-1952 the High Court allowed the appeal and reversed the order of the Subordinate Judge. Against this judgment, leave is at present sought for appeal to the Supreme Court.

3. In the course of argument Mr. B. C. De said that in the present case the petitioner would have a right of appeal under Article 133(1)(a) of the Constitution even if the value of the subject-matter in dispute was Rs. 13,382 in the court of first instance and still in dispute in appeal in Supreme Court. The argument is based upon the circumstance that the execution case was instituted on 20-12-1948 long before the Constitution of India was promulgated. It was argued that the case would be governed by the valuation mentioned in Section 110, Civil P. C. In support of his contention, Mr. De relied upon a decision of the Bombay High Court in -- Dajisaheb Vs. Shankarrao Vithalrao, in which it was held that in all matters where there was a right of appeal u/s 110, Civil P. C., that right continued in respect of all cases filed prior to the coming into force of the Constitution and there was nothing in Article 133 by which the litigant is deprived of that right. It is not necessary for us in the case to pronounce an opinion on the correctness of this argument for we are satisfied after a consideration of the particular facts in the present case, that the value of the object-matter in dispute so far as the petitioner is concerned was Rs. 8000 in the court of first instance and also at present in dispute in appeal.

4. It is true that the decree was for a Sum of Rs. 13,382 which was being executed in the court of the Special Subordinate Judge. But the case of the petitioner was that he had paid a sum of Rs. 8000 to the opposite party No. 1 and the judgment-debtor, viz., opposite party No. 2, had paid a sum of Rs. 5,382 to the decree-holder. The petition of satisfaction mentions that - payments have been made by the petitioner to opposite party No. 2 of these amounts. The Subordinate Judge held that the petition of satisfaction was a genuine document and that the decree has been satisfied. An appeal was preferred to the High Court by the decree-holder against the order of the Subordinate Judge. It is necessary to state that the judgment-debtor did not appear or contest the appeal in the High Court but the only contesting party was petitioner who asserted that

he had paid a sum of Rs. 8000 to the decree-holder. This contention was rejected by the High Court and it was held that no payment was made by the petitioner to the decree-holder as alleged and that the petition of satisfaction was a forged document.

It is true that the High Court held in the course of its judgment that no payment of Rs. 5,382 was made by the judgment-debtor to the decree-holder. But the subject matter in dispute in the High Court was only a sum of Rs. 8,000 so far as the petitioner is concerned. In this leave matter also the judgment-debtor has not appeared though notice of the application has been served. It is clear, therefore, in the present case that the value of the subject matter of the appeal is only a sum of Rs. 8000 since that is the measure of the detriment to the petitioner who is now seeking relief. In other words, the petitioner is affected only to the extent of Rs. 8000 by the order of the High Court against which leave to appeal is sought.

The case therefore does not fall within Art. 133(1)(a) of the Constitution.

In support of this view reference may be made to the decision of a Bench of this Court in --- "Gossain Bhaunath Gir v. Bihari Lal AIR 1919 Pat 305 (2) (B) in which the value of the property sold in execution of a mortgage decree was over Rs. 10,000 and a puisne mortgagee who was interested in a share of the property -- the value of the share being Rs. 4000 -- applied for leave to Appeal to His Majesty in Council from an. order refusing to set aside the sale. It was held by Dawson-Miller C. J., that the value of the subject matter in dispute was Rs. 4000, and not the value of the property sold and hence the requirements of Section 110 were not fulfilled.

An attempt was made by Mr. De to bring the present case within the ambit of Article 133(1)(b) of the Constitution which states that an appeal shall lie to the Supreme Court if the High Court certifies

"that the judgment, decree, or final order involves directly or indirectly some claim or question respecting property of the like amount or value."

There are however authorities to the effect that second paragraph of Section 110, Civil P. C., which corresponds to Article 133(1)(b) of the Constitution is meant to apply only to cases involving some claim or question to or respecting property other than that in respect to which the claim is brought and which may be taken into account therewith in making up the appealable value, or that it may possibly also apply to case's involving claims incapable of a money valuation such as claims to easements and the like. This is the principle laid down in -- "Subramania Ayyar v. Sellamal AIR 1916 Mad 985 (C) which has been followed by the Patna High Court in -- Maharaja Kesho Prasad Singh Vs. Shiva Saran Lal, .

Applying the principle to the facts of the present case, it is clear that the decree of the High Court does not "involve directly or indirectly some claim or question

respecting property of the like amount or value" within the meaning of Article 133(1)(b) of the Constitution. It should be added that in the application for leave there is a prayer for a certificate under Article 133(1)(c) of the Constitution. But in the course of argument Mr. De properly conceded that this case would not fall within Article 133(1)(c) since there is no question of any public or private importance involved.

5. For these reasons this application must fail and is accordingly dismissed with costs. Hearing fee five gold mohars.