

(1954) 01 RAJ CK 0007

In the Rajasthan High Court

Case No : Ijlas Khas Civil Appeal No"s. 2 and 3 of 1940-41

Kishen Lal L.R. of Mohanlal

APPELLANT

Vs

Sohanlal and Others

RESPONDENT

Date of Decision : 18-01-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 3, 96
Jodhpur Ijlas-i-khas Rules — Rule 17, 19

Citation : AIR 1954 Raj 138 : (1954) RLW 398

Hon'ble Judges : Wanchoo, C.J;Modi, J;Dave, J

Bench : Full Bench

Advocate : Magraj, for the Appellant; Thanchand, for the Respondent

Judgement

Modi, J.—The questions referred to the Full Bench are as follows:

(1) What is the interpretation to be put on the Exception to Rule 17 of the Ijlas-i-Khas Rules of 1939, and whether it is necessary that there should be an issue as to the nature of the tenure before the exception applies and the conditions contained in Clause (a) of Rule 17 can be waived, and whether the decision in -- Hukum Singh and Others Vs. Bhawar Singh and Others, is correct?

(2) Is the decision in -- Udaimal Vs. Hastimal and Others, correct in view of the fact that Order 45, and particularly Order 45, Rule 3, were not in force in the former State of Jodhpur, and whether in view of these facts it is open to a party, to whom leave has been granted, to urge other grounds in support of the leave than those on which leave was granted to him by the Chief Court?

2. The facts of the two connected cases out of which this reference has arisen may be stated very shortly for our present purposes. The dispute relates to the succession to the Jagir of Malpuria, Tehsil Sojat, District Pali, and arose on the death of its last holder Ganeshlal. Two rival claims are put forward; one on behalf of Mohanlal appellant in both cases, and the other on behalf of Ambalal and others who were respondents. The former claimed the Jagir as the adopted son

of the deceased Ganeshlal while the latter on the ground that they were the next heirs of the deceased, and that the adoption of Mohanlal was void and inoperative so far as succession to the Jagir was concerned, because Mohanlal was outside the line of the original grantee to whom the Jagir was granted by the former State of Jodhpur.

Both claimants filed separate suits for a declaration of their respective rights which met with varying fortunes from court to court, and the Chief Court of the former State of Jodhpur dismissed Mohan Lal's suit and decreed the claim of the rival claimants. Mohanlal applied for leave to appeal to the Ijlas-i-Khas, and the Chief Court granted leave in both cases with the result that both appeals came up for hearing before a Division Bench of this Court who have made the present reference.

3. It was argued before the learned Judges of the Division Bench, on behalf of the respondents, that the leave to appeal granted by the Chief Court apparently under the Exception to Rule 17 of the Ijlas-i-Khas Rules of 1939 had been erroneously granted and, therefore, the appeals were incompetent. The argument was that the valuation of both the suits was admittedly below Rs. 5000/-and, therefore, Rule 17(a) did not apply and the Exception to Rule 17 also did not apply as there was no dispute whatsoever in the two suits regarding the tenure in which the Jagir in question was held, and the dispute between the parties merely centred round their rights to succeed to the Jagir.

This contention was sought to be met on behalf of the appellants on the authority of -- "Hukum Singh v. Bhanwarsingh (A)", where a Division Bench of this Court held in effect that the conditions of the Exception were fulfilled where the dispute related to a right in or to a "Jagir", and the judgment of the High Court was one of variance from that of the court below and it was not further necessary that there need have been any controversy regarding the tenure in which the Jagir was held. It may be pointed out that the learned Judges there were called upon to deal with the Ijlas-i-Khas Rules of 1945 and its Rule 18(b) which is the corresponding rule to the Exception to Rule 17 of the Rules of 1939 according to which a further condition as to the judgment not being one of affirmance had been prescribed as one of the essential requirements for the applicability of that rule. But the corresponding provision in rule 17 of the Ijlas-i-Khas Rules of 1939 did not contain any such condition and, therefore, nothing turns on this additional qualification so far as the cases before us are concerned.

It was contended on the other hand on behalf of the respondent that -- "Hukum Singh's case (A)" was wrongly decided inasmuch as it unduly cut down the true import and effect of the Exception to Rule 17 of the Ijlas-i-Khas Rules of 1939, or of the corresponding rule 18(b) of the Rule of 1945, and that we would not be justified in placing an interpretation upon the rule which did violence to its plain language.

4. The Exception to Rule 17 of the Ijlas-i-Khas Rules of 1939 is in these terms:

"Exception.--If in any case decided by a civil court relating to land, either party had pleaded that he holds the land in dispute otherwise than as a cultivating tenant of the opposite party, and an issue had been framed regarding the tenure in which the land was held, an appeal shall lie to the Ijlas-i-Khas even though the conditions contained in Clause (a) above are not fulfilled." According to Clause (a), an appeal was made to lie to His Highness from any decree or final order passed on appeal by the Chief Court provided the value of the subject-matter of the suit in the court of first instance was Rs. 5000/- or upwards, and was the same at the time of appeal to His Highness, or the decree or final order involved directly or indirectly a claim to property of like amount or value, and further an appeal must have involved some substantial question of law where the judgment under appeal affirmed the decision of the court immediately below.

5. It seems to us that according to the plaint language of the Exception to Rule 17, the following conditions are required to be fulfilled before a case could be held to be appealable under it: (1) the case must relate to land; (2) the parties must have pleaded that they held the land otherwise than as a cultivating tenant of the opposite party and (3) that an issue must have been framed regarding the tenure in which the land was held. The first condition needs no comment. As regards the second condition, we are of opinion that it was imposed so as to exclude cases involving the relationship of landlord and tenant in respect of agricultural land out of the ambit of the rule as such cases would be normally of a revenue nature, and appeals in revenue cases to the Ijlas-i-Khas were separately provided for under Chapter IV of the said Rules.

Having given our very careful consideration in this connection, we consider that the view suggested in -- "Hukumsingh's case (A)" that the Exception applies to cases where one of the parties denies its status as a tenant is not sound. Suppose a landlord files a suit against the opposite party on the ground of tenancy and the latter denies his status as such, we have no doubt that such a suit would be wholly outside the ambit of the Exception; for the gist of this condition clearly appears to us to be that the dispute must be of a character not involving the relationship of landlord and tenant at all and not that there should be a denial as to the status of tenancy or that both parties be agreed that the land was not held as tenants but in any other capacity.

6. Then there is a third condition which requires that the dispute between the parties must involve a controversy as regards the nature of the tenure in which the land in question is held. Indeed the language of the Exception plainly indicates that a definite issue must have been raised relating to the tenure of the land in question so as to qualify a case for appeal under the Exception. In other words, even if there was a dispute as to land, and the parties claim to hold it otherwise than as landlord and tenant, the case would still not be appealable, and the ordinary conditions laid down in Rule 17 (a) would, still hold good unless there was an issue raised between the parties, or, at any rate, a distinct controversy must have been there as regards the tenure in which the land was

held. We are inclined to think that this further condition was deliberately imposed to safeguard the ultimate interests of the Darbar, who was the sovereign overlord of all land in the State, even in cases the valuation whereof was below the appealable value prescribed in Rule 17(a).

We cannot be unmindful of the various kinds of tenures in which land was held in the former State of Jodhpur, e.g., Bhomichara, Sasan, Doli, where the rule of equal division prevailed, and the rule of escheat by the principle of Moris-a-ala (reversion of jagir to the State on failure of the line of the original grantee) did not ordinarily come into application, and the usual jagirdari tenure where the law of primogeniture prevailed and the principle of Moris-a-ala fully applied. The difference in tenure on which the land in a given case might be held clearly gave rise to different implications as regards the ultimate interests of the State. Where, however, there was no such controversy and the dispute merely related to the private rights of two or more rival claimants and thus no question arose as regards the interests of the State, the dispute was not considered to be of sufficient importance to be made appealable under the Exception to Rule 17.

7. We desire to say that we have no doubt that the language of the Exception set out above is perfectly clear and intelligible, and its meaning is, as we have pointed out above, and that being so, we see no occasion "to busy ourselves with the supposed intention of the legislature" in the words of their Lordships of the Privy Council in --"Narayana Swami y. Emperor", AIR 1939 P. C. 47 (C). For the law is well settled that in interpreting a statute, we must not add anything which is not in the statute itself nor subtract something which is to be found therein, and we must place due meaning upon every word thereof without straining the language in any way. To be able to depart from this rule which has some times been characterized as the golden rule of interpretation, we can only do so in rare and exceptional cases where the plain meaning of the words used would lead to absurd conclusions or would be destructive of the very purpose for which the legislation sought to be interpreted happens to be enacted.

Learned counsel for the appellant has not at all been able to satisfy us that the ordinary meaning, of which the Exception is clearly susceptible leads us to any such absurdity, obscurity or unreasonableness. All that is urged in this connection is firstly that the rule provided in the Exception has never in the past been interpreted in the strict manner in which we are interpreting it. We called upon learned counsel to place before us a single decision of the former State of Jodhpur where there was a conscious and reasoned interpretation of the rule in question, and he frankly expressed his inability to do so.

It appears to us that -- "Hukumsingh's case", (A) which is a case of our own Court, for the first time sought to interpret and apply the Exception to Rule 17 in a considered manner, and we have shown above that that interpretation of the rule proceeded on incorrect premises. What we find is that somehow it came to be assumed or taken for granted by the courts of the former State of Jodhpur that the Exception applied wherever there was a dispute relating to a jagir and

that nothing more was required to bring a case within, the Exception to rule 17. But such an assumption in our judgment was and is wholly unwarranted and contrary to the plain meaning of the rule, and we must point out with respect that we cannot accept such an interpretation to be correct as that would involve the elimination of some of the most vital words which are to be found there.

8. Learned counsel next urged that the interpretation favoured by us would restrict the right of appeal to a very large degree in cases involving disputes as to jagir lands which in spite of their value being less than Rs. 5000/-, the ordinary appealable limit, were of considerable importance in the times to which these Ijlas-i-Khas Rules relate. To this, our short answer is and must be that a right of appeal is a creation of statute, and it is to the statute alone that we must look to determine whether such a right exists in a particular instance or not. Further, we see nothing unreasonable or wrong that a right of appeal to the highest tribunal in the State was circumscribed by certain well-defined restrictions.

9. Our answer to the first question, therefore, is that the correct interpretation to the Exception to rule 17 of the Ijlas-i-Khas Rules of 1939 is the one which we have set out above and which gives meaning and effect to every word used therein, and according to such interpretation, there must be, in addition to other conditions laid down in the Exception, an issue or a distinct controversy as regards the nature of the tenure in which the land in dispute is held between the parties as a condition pre-requisite for the application of the exception, and then and then only the conditions laid down in the Rule 17 (a) can be dispensed with and in this view we hold that -- "Hukumsingh's case (A)", was not correctly decided.

10. We next turn to the second question referred to us. It was suggested that we should re-consider the decision in -- Udaimal Vs. Hastimal and Others, as according to learned counsel for the appellant (and learned counsel for the respondents also appeared to share his view) that case has laid down that where a certificate had been granted by the Chief Court under Rule 19 of the Ijlas-i-Khas Rules of 1945, it was not open to the appellant to urge other grounds (such as rule 18 (c) in support of the leave) than those on which leave had been granted to him by the Chief Court.

We must point out that this contention is based upon a mis-reading of -- "Udaimal's case (B)". That was a case for arrears of rent and ejectment. The tenancy was admitted between the parties. Against a decision of the High Court of the former State of Jodhpur in second appeal dismissing the plaintiff's suit for ejectment, a learned Judge of that court allowed a certificate for leave to appeal under Rule 19 of the Ijlas-i-Khas Rules of 1945 on the assumption that the appeal related to property of the value of Rs. 30,000/- or so. A Division Bench of this Court to which one of us was a party held that the certificate was granted wrongly under Rule 19, as the valuation of the suit was Rs. 120/- only and consequently the appeal was incompetent.

It was urged on behalf of the appellant there that the leave granted under Rule 19 should be considered to have been granted under Rule 18 (c), that is, the case should be treated as having been certified to be a fit one for appeal. The Bench held that they were not prepared to hold that the certificate should be taken to be under Rule 18 (c). It was further observed that there was nothing indeed in the order of the learned Judge to show that it was even urged before him that it was a fit case for appeal, or that he had ever applied his mind to the circumstances which should be present before leave could be granted under Rule 18 (c).

We wish to point out that what was decided in the above case was that a certificate granted under Rule 19 could not as such be taken as granted under Rule 18 (c). a view to which, in our judgment, no "exception can be taken at all and which we have no hesitation in affirming as correct. No prayer was at all made in that case that the Bench should consider the question of granting special leave for appeal or that the leave granted could be supported on other grounds. The simple reason was that such a request was never made and could not have possibly been supported in the circumstances of the case. It is clear, therefore, that the reasoning that -- "Udaimal"s Case (B)", precluded the appellant from supporting leave to appeal on grounds other than those on which it was granted is based on a complete misapprehension of the real point decided in that case.

Another point decided in -- "Udaimal"s case (B)", was that where a certificate for leave to appeal was erroneously granted by the High Court, an objection to that effect could be raised at the hearing of the appeal and on that succeeding, the Ijlas-i-Khas had authority to decline to go into the merits of the appeal, and it was stated that there was abundant authority of the Privy Council in support of that proposition. All that we need add, if at all, is that the view taken there finds full support from the decisions of the

Privy Council in -- "Radha Kishn Das v. Rai Kishen Chand" 28 I A 182 and --"Radha Krishna Aiyar v. Swaminatha Aiyar" AIR 1921 P. C. 25. The decision of the Federal Court in -- "Moolji Jaitha & Co., v. K.S. & W. Mills Co., Ltd." AIR 1950 FC 83, is also to the same effect.

11. We are clearly of the opinion that it is open to an appellant to pray for special leave or to support the certificate on grounds other than those on which it was actually ordered to be given. Reference may be made in support of this view to the decision of their Lordships of the Supreme Court in -- Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and Others, It is noteworthy that their Lordships held this view although there can be no question that Order 45, including Rule 3 thereof, exists in the Indian Code of Civil Procedure. We may add that the reason for this view is not to be found in the presence or absence of Order 45 in the CPC but in the broad consideration that where an appellant succeeds in obtaining leave to appeal on a certain ground which subsequently fails, he should in justice have the liberty of urging other grounds in support of the leave granted to him which he could have urged

or pressed but was not called upon so to do for the reason that he was successful in obtaining leave on the ground which found favour with the court below.

We have therefore no hesitation in saying that the answer to the question referred to us does not turn upon the presence or absence of Order 45 or any rule thereof in the Civil Procedure of the former State of Joudhpur.

12. We hold, therefore, that there is nothing in -- "Udaimal"s case", to which exception could be taken and that it was rightly decided.

13. We further think it right to add, however, that it would be open to an appellant, in a proper case, to support the grant of a certificate for leave to appeal on any other ground if duly taken and available to the appellant than the one on which leave might have been granted to him. Should the appellant rely on any such prayer in the present cases, and on that point we express no opinion whatsoever, he would be at liberty to do so before the Bench concerned, and we have no doubt that, if so moved, that court decide the question on the merits.

14. Our answer to the second question, therefore, is that -- "Udaimal"s case (B)", does not call for any reconsideration, that it was correctly decided, and that it never decided the question as to the capability of the leave to appeal being supported on additional grounds, and that it would be open in a proper case to a party to whom leave has been granted to support the grant of leave on other grounds at the hearing of the appeal provided that such a prayer is duly made & adequately supported, and that this would be so irrespective of the provisions of Order 45 or Rule 3 thereof in the Code of Civil Procedure.

15. We hereby direct that with the answers given above, these cases will go back to the referring Bench for further disposal accordingly.