

(1919) 01 CAL CK 0002
In the Calcutta High Court

Lagandeo Prosad Singh

APPELLANT

Vs

D.G. Reid and Others
 Gajadhar Proshad Singh and on
his Death his Heirs and Legal representative Vaideswari
Prasad Singh and Others Vs D.J. Reid and Others

RESPONDENT

Date of Decision : 13-01-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109(c), 110

Citation : AIR 1919 Cal 118 : 50 Ind. Cas. 760

Hon'ble Judges : Lancelot Sanderson, C.J; George Woodroffe, J

Bench : Division Bench

Judgement

1. In this case Mr. Ghosae's clients, the Zemindars of Bewasi, are asking for leave to appeal to His Majesty in Council against three decrees which were made by the High Court, one made in suit No. 114 in which the Rewasi Zemindars were the plaintiffs and the other two were made in suit No. 141 in which the defendants in suit No. 114 were the plaintiffs and the plaintiffs in No. 114 were the defendants.

2. In suit No. 114 the plaintiffs asked for a declaration of their rights to put a dam across a certain river and for damages against the defendants for interfering with the dam. That suit was dismissed in the Court of first instance. There was an appeal to the High Court against the decree of the Court of first instance and that appeal was dismissed in toto.

3. In suit No. 141 the plaintiffs were asking for a declaration that the plaintiffs as riparian owners were entitled to have the use of the water of the river unimpeded by the erection of the dam, and further asked for damages alleged to have been sustained by them in consequence of the erection, The Court of first instance decreed the plaintiffs' suit in part and granted the declaration asked for, but it dismissed the plaintiffs' claim for damages. Both sides appealed to the High Court in suit No. 141 and there were two decrees drawn up. One decree dismissed the defendants' appeal in toto and the other decree modified the

decree of the lower Court to this extent: The High Court confirmed the decision of the lower Court so far as the declaration was concerned, but it overruled the decision of the lower Court in respect of the claim for damages and it held that the plaintiffs were entitled to Rs. 5,000 as damages, and consequently awarded the plaintiff Rs. 5,000.

4. For the purposes of this application the two decrees in suit 141 ought, in my judgment, to be treated as one decree. Treating these two decrees as one decree, in my judgment, it was not a decree of affirmance within the meaning of the last clause of Section 110 of the Code. The decree of the High Court varied the decree of the lower Court in a material respect and awarded the plaintiffs Rs. 5,000 by way of damages whereas the decree of the first Court dismissed the plaintiffs' claim for damages altogether. But it was urged that the decree of the High Court did affirm the decision of the Court immediately below so far as the declaration is concerned, and that we ought to treat this matter having regard solely to that part of the decree which was affirmed by the High Court, and reliance was placed on a decision of this Court: *Raja Sree Nath Roy Bahadur v. Secretary of State for India* 8 C.W.N. 294.

5. In my judgment the decision in that case does not govern this case, because in *Raja Sree Nath Roy Bahadur v. Secretary of State for India* 8 C.W.N. 294, the facts shortly stated were as follows: The plaintiff obtained an award from the Collector for Rs. 28,287. The Judge affirmed that award of Rs. 28,287, but the applicant was not satisfied with that and appealed to this Court, which awarded him Rs. 7,000 more. The applicant was still not satisfied with that and desired to appeal to the Privy Council. This Court held that the decree was one of affirmance.

6. In my judgment that case is clearly distinguishable from this. Because in that case the decision from which the applicant desired to appeal was with reference to the balance of his claim and with regard to the balance the decision of the High Court affirmed that of the lower Court. On the contrary in this case the High Court has varied the decision of the first Court to the extent of Rs. 5,000 for damages to the detriment of the applicant. In my judgment that must be taken to be a decree which does not affirm that of the Court immediately below, consequently the applicant has a right to appeal in suit No. 141 provided the subject-matter of the suit, in the Court of first instance is Rs. 10,000 or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council is of the same value or upwards.

7. As regards the value, the matter which will be in dispute on appeal will be not only whether the plaintiffs are entitled to Rs. 5,000 as damages but also whether they are entitled to the declaration. When both these matters are taken into consideration, it is not disputed that the value of the subject-matter of the suit and of the appeal is upwards of Rs. 10,000. Consequently in respect of suit No. 141 the applicant ought to have a certificate.

8. As regards suit No. 114 if we were to consider the decree in No. 114 by itself, I should be of opinion that a certificate should be refused for the decree was one of affirmance and we were of opinion that there was no substantial question of law in that appeal, but it is to be remembered that these two suits were tried together and disposed of by one judgment and that they involve, to a material extent, the same questions, and if we were to grant a certificate for leave to appeal in suit No. 141 and refuse it in suit No. 114, the result might be incongruous, as for instance if the applicant were to succeed on appeal in Suit No. 141, and if he were not allowed to appeal in suit No. 114, there would be two inconsistent decrees.

9. Therefore in our judgment, we ought to make an order under Clause (c) of Section 109, and certify that under the circumstances of the case, as regards suit No. 114, the case is a fit one for appeal to His Majesty in Council.

10. We think the appeals ought to be consolidated and one paper-book prepared.