
(1947) 01 PAT CK 0005
In the Patna High Court

Lingaraj Santra and Others

APPELLANT

Vs

Joykrishna Mahapatra

RESPONDENT

Date of Decision : 10-01-1947

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Scheduled Districts Act, 1874 — Section 6

Citation : AIR 1948 Patna 67

Hon'ble Judges : Bennett, J;Beevor, J

Bench : Full Bench

Judgement

Bennett, J.—This is an application for revision of an order of the Agency Subordinate Judge, Jeypore, on appeal from an original decree of the Additional Agency Munsif, setting aside the judgment and decree and remanding the suit to the Court of the Additional Agency Munsif for disposal according to law after giving an opportunity to the parties to produce further, evidence on certain points.

2. The Advocate General, who appeared on behalf of the opposite party, has taken a preliminary objection based on the Madras Presidency Agency Rules published u/s 6, Scheduled Districts Act, 1874, that no revision or appeal to this Court lies in respect of the order of the Agency Subordinate Judge.

3. The application of the Agency Rules to Agency area of Jeypore was not disputed by Mr. B.N. Das who appeared for the petitioner.

4. The provisions of the Agency Rules relied upon by the learned Advocate-General are Rules 11(4), 1(5), 48 49 and 89. Rule 11(4) enables the Agent to the Governor or the Government Agent to transfer any appeal pending in his Court to the Court of any Agency Divisional Officer subordinate to him, and this Rule is the basis of the jurisdiction in this case of the Agency Subordinate Judge. Rule 1(5) states that the decisions of the Sub-Judge shall have the same force and shall be subject to appeal in the same manner and to the same extent as if they were passed by the Agent to the Governor or the Government Agent, as the

case may be. Rule 48 provides for the case of second appeals from an original decree of a Court subordinate to the Government Agent or the Agent to the Governor as follows:

From every decree passed by the Government Agent or the Agent to the Governor in appeal from an original decree passed by any Court subordinate to him an appeal shall lie to the High Court, on the grounds specified in Section 100, Civil P.C.

Decrees passed by the Government Agent or the Agent to the Governor in second appeal from original decrees passed by Agency Munsifs shall be final but the High Court may for special reasons require him to review his judgment as they may direct.

5. Rule 49 provides for a first appeal to the High Court "from every original decree" passed by the Agent to the Governor or the Government Agent as the case may be. Rule 59 provides for the revision of the proceedings of the Agent to the Governor or the Government Agent as follows:

All petitions against the proceedings of the Agent to the Governor or the Government Agent in respect of matters not otherwise provided for in these rules must in the first instance be submitted to the Government (?) who may, if necessary, refer them to the High Court.

6. It is conceded by the petitioners that no petition for reference to the High Court under the provisions of Rule 59 has been submitted to the Governor and that this Court has, therefore, no jurisdiction to revise the order here in question, The learned Advocate-General has properly withdrawn any objection in form which might prevent the present petition from being considered as constituting an appeal under Rule 48, Agency Rules, but he contends that the order here in question is not a decree within the meaning of that expression as used in that Rule and that, therefore, no appeal lies. The petitioners, on the other hand, contend that the order is such a decree, and it is this issue which we have, therefore, to decide on the preliminary point. The learned Advocate-General has referred in support of his contention to a decision of the Madras High Court in *Vikrama Deo Garu v. Maharaja of Jeypore* AIR 1917 Mad. 452 where it was held that an order of the Agent to the Governor, Vizagapatam, remanding a case for disposal to the lower Court under the Agency Rules is not a decree and that the High Court cannot interfere under Rule 20 of the then Agency Rules, corresponding to Rule 48 of the present Agency Rules. The reasons for their judgment given by their Lordships of the Madras High Court were as follows:

But we do not think that we can treat this order of remand as a decree. For, though the CPC is not applicable the definition in it affords guidance which, in the absence of any other authoritative interpretation of the word, we are not prepared to disregard and that definition would not cover the order before us.

In *Venkata Nagabushanam v. Mahalakshmi* AIR 1918 Mad. 554 it was held that

an order passed by a Government Agent directing that a suit dismissed by an Assistant Agent for default of appearance of the plaintiff be restored to the file is not a decree within the meaning of Rule 8, Agency Rules for the Godavari District which corresponds to Rule 48 of the present Agency Rules, and is not revisable by the High Court by a petition filed directly in the High Court. Their Lordships of the Madras High Court relied upon the case reported in *Vikrama Deo Garu v. Maharaja of Jeypore* AIR 1917 Mad. 452 (above quoted) and decided that the order of the Agent setting aside the order of the Assistant Agent dismissing the suit for default was not an adjudication of the rights of the parties within the meaning of the definition of the decree given in Civil Procedure Code. At the conclusion of their judgment their Lordships remarked that the proper remedy of the petitioner was to submit a petition to the Government and it was for the Government, if it so chose, to refer the petition to the High Court for disposal.

We were also referred to three other Madras cases, *Jagannadha v. Gopanna* (93) 16 Mad. 229, *Vikramadeo Maharajulum Garu v. Neladevi Pattamamahadevi Garu* (03) 26 Mad. 266 and *Maharaja of Jeypore v. Raghunatha Patro* (13) 36 Mad. 128 to the same effect.

8. Mr. B.N. Das, who appeared for the petitioners, however, relies upon the decision of this Court in *Marotu Guranna Vs. Kshetri Mohanty*, where it was held that assuming that the CPC is not applicable to the Agency area, Jeypore, still an appeal will lie under the Agency Rules from an order refusing an application to, rehear an appeal decreed ex parte, and that though the order is not a decree within the definition of decree in the CPC and though there is no complete definition of decree in the Agency Rules, the ordinary dictionary-meaning will prevail and the said order is a decree for the purpose of the Agency Rules and is appealable under Rule 49. The reasons for the decision in this case given by Meredith J. do appear at first sight strongly to support the contention of the petitioners in the present case. After setting out Rule 49, Agency Rules, Meredith J. dealt with the question whether the order in that case was or was not a decree within the meaning of Rule 49, and observed thus:

The question, therefore, is whether the order in the present case can under these Rules be regarded as a decree. If we are to adopt the definition of decree in the Code of Civil Procedure, there can be no doubt that it is not a decree. But upon the assumption that the CPC is not applicable the definition contained therein is also inapplicable and consequently for the meaning of "decree" we must look to the Rules themselves, and, where they fail us, to the ordinary dictionary meaning of the word. There is no complete definition of "decree" in the Agency Rules, but in the interpretation clause we find:

"Decree" shall include orders passed under Rules 39 (1) and 43 (3) but not orders under Rules 33 and 35.

This is not, in my opinion, an attempt at definition, but merely a specification of certain instances. What it does show, however, is that "decree" is not used in the

sense it is used in the Code of Civil Procedure, because an order under Rule 43(3) is made a decree. Rule 43(3) merely provides that in certain cases of nonfeasance or misfeasance by receiver the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him, or any loss occasioned by him, and shall pay the balance, if any, to the receiver. This is clearly not a decree at all in the sense we are accustomed to in the Cods of Civil Procedure.

In the absence of any complete definition we are, as I have said, forced to rely upon the ordinary dictionary meaning of the word. In Webster's dictionary "decree" is denned as follows:

An order of decision from one having authority deciding what is, or is to be, done; a determination by one having power deciding what is to be done or to take place; authoritative decision; imperative rule; edict; law; ordinance.

It is clear, and Mr. Chatterji does not dispute, that the order of the Subordinate Judge in this case dismissing the application before him will fall within this definition as a determination from one having authority deciding what is to be done or to take place, and as an authoritative decision.

9. The meaning of the word "decree" in Rule 49, Agency Rules, enunciated by his Lordship is very wide, and since the word "decree" in Rule 49 can hardly have a different meaning from the same word where it is used in Rule 48, it would, if it is binding upon us, be decisive of this case in favour of the petitioners.

10. It is with, the greatest respect and hesitation that I venture to distinguish the present case and to dissent from the width and scope of the meaning of the word "decree" in Rule 49, Agency Rules, suggested by Meredith J. in Marotu Guranna Vs. Kshetri Mohanty, . Upon a careful review, however, of the provisions and what appears to me to be the obvious intention of the Agency Rules, I feel bound to do so.

11. It is to be remarked, in the first place, that Meredith J. in order to do justice and to Justify the decision in that case, felt himself bound to attach the ordinary dictionary meaning of the word "decree" to that word as used in Rule 49 or Rule 54, Agency Rules In my respectful opinion that was not necessary. The order there under consideration was an order of the Agency Subordinate Judge, Jeypore, refusing an application to rehear an appeal which had been decreed ex parte It is important to note that the appeal was from an original decree in a suit brought for the possession of certain land in the Court of the Agency Munsif and that the decision of the Agency Munsif was clearly a decree within the definition contained in Section 2(2), Civil P.C. The application to rehear the appeal was made under Rule 54, Agency Rules, which provides:

The agent to the Governor or the Government Agent, as the case may be, may, for sufficient cause, review his own judgment or order. He may, for sufficient cause, on the application of any party to a suit decided by any subordinate Court,

direct review of its judgment or order. He may further empower any subordinate Court to review its judgments or orders for sufficient cause Provided that no review shall be admissible under this Rule in any case in which an appeal has been preferred and no application for review shall be disposed of without notice to the parties concerned.

12. This Rule is of much wider scope than the corresponding provisions as to review in the CPC and a refusal to review thereunder is, in my respectful opinion, unquestionably a decree within the definition of that term contained in Section 2(2), Civil P.C. The Court so refusing is a Court of Review and so far as regards that Court the order of refusal conclusively determines the rights of the parties with regard to all the matters in controversy in the suit. Such an order of refusal is, for this purpose, equivalent, to an order summarily dismissing an appeal under Order 41, Rule 11, which has been held to be a decree: *Altap Ali Vs. Jamsur Ali*, . No doubt, an order rejecting an application for review under Order 47, Rule 1, Civil P. C, is, not appealable, but this is because of the express provision to that effect contained in Order 47, Rule 7 Civil P.C. That being so I think that it was unnecessary to justify the decision in *Marotu Guranna Vs. Kshetri Mohanty*, by reference to any dictionary meaning of the word "decree".

13. The question remains what meaning should be attached to the term "decree" in Rules 48 and 49 of, the Agency Rules. Before passing to a consideration of the Agency Rules as a whole, I would note the provisions of Rule 54 as above set out and of Rule 55 which provides as follows:

55. The Agent to the Governor or the Government Agent, as the case may be, for the purpose of satisfying himself that a decree or order, made in any case decided-by a Court subordinate to him was according to law, may call for the case and pass such order with respect thereto as he thinks fit.

14. The use in Rule 54 of the expression "judgment or order" and in Rule 55 of the expression "decree or order" is in sharp contract to the expression "decree" used in Rules 48 and 49. I do not think that any distinction is to be made between the expression "judgment or order" in Rule 54 and the expression "decree or, order" in Rule 55. The use of the word "judgment" in Rule 54 is strong evidence that when the Governor in Council passed the Agency Rules he had in mind the provisions of the CPC since we fold that the word "judgment" in the context of Rule 54 of the Agency Rules has obviously been taken from Order 47, Rule 1, Civil P.C., and was clearly not intended to imply any distinction between the word "judgment" in Rule-54 and the word "decree" in Rule 55. This is apparent from the wording of Order 17, Rule 1, Civil P.C., which, for this purpose, may be summarised as follows:

Any person considering himself aggrieved (a) by a decree or order...and who...desires to obtain it review of the decree passed or order made, against him, may apply for a review of judgment to the Court which passed the decree or made the order.

15. It is obvious that addition of the words "or order" following the word "judgment" in Rule 54 and the word "decree" in Rule 55 is quite inconsistent with an interpretation of the word "decree" in Rules 48 and 49 which would extend that meaning to "any order from one having authority". Mr. B.N. Das attempted to explain the use of the word "order" in Rules 54 and 55 of the Agency Rules by reference to the definition of the term "decree" in the Interpretation Clause at the beginning of the Agency Rules, which provides as follows: "Decree" shall include orders passed under Rules 39(1) and 43(3) but not orders under Rules 33 and 35 and he submitted that the word "order" was intended to cover the case of those orders under Rules 33 and 35 which would otherwise have been excepted from the operation of Rules 54 and 55.

16. There is some prima facie point in this argument, but I do not think that it can possibly prevail. As we shall see, the Agency Rules contain a simplified and complete CPC and the distinction in Rules 64 and 55 thereof between the terms "judgment" and "order" and the terms "decree" and "order" correspond to a general and well recognised legal distinction which is made not only in the Indian CPC but in practically all Codes and Rules of Civil Procedure and reflects the business necessity for a difference in treatment of decrees and orders for the purposes at their finality and of appeals therefrom and revisions thereof. The use of the term "order" in Rules 54 and 55 of the Agency Rules is prima facie completely general in scope and I can see no ground whatever for restricting the meaning of the term as there used to anything less than its usual ordinary and well recognised meaning or for supposing that the Governor in Council had not in mind the business necessity above referred in restricting further proceedings against an order to the review and revision provided for in Rules 54 and 55 and the final possibility of revision under Rule 59 of the Agency Rules. It follows that in using the expression "judgment or order" in Rule 54 and the expression "decree or order" in Rule 55 the Governor in Council must, in my opinion, have had in mind some such distinction between those terms as is contained in the CPC which was in force everywhere in British India except in the Agency "Tracts, and the inference is that by" the term "decree" the Governor in Council intended something corresponding generally to the definition of that term contained in the first sentence of Section 2(2), Civil P.C, namely:

decree means the formal expression of an adjudication which so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final.

As to the remaining part of that definition, it is not necessary for the purposes of this case to decide whether the term would also extend to the other three specific matters included in that definition by Section 2(2), Civil P.C, namely, rejection of plaint, the determination of question u/s 47 or Section 144. The fact that the definition in the CPC goes on to exclude any adjudication from which an appeal lies as an appeal from an order, or an order of dismissal for default, does

not, in my view, affect the scope of the term "decree" as used in Rules 48 and 49, Agency Rules. The exclusion of these matters from the scope of the term "decree" in the Civil Procedure is based solely upon the existence of other express provisions of the Code which deal specifically with those matters and therefore made it necessary for the purposes of that Code, to exclude them from the scope of the term "decree"

17. The above inference from the wording of Rules 54 and 55, Agency Rules as to the meaning of the expression "decree" in Rules 48 and 49 thereof, is, in my opinion, strongly supported when we consider the scope and intent of the Agency Rules as a whole. These Rules are expressed to be made by the Governor in Council for the administration of the Agency tracts and for the regulation of the procedure of the officers appointed to administer them. They are divided into three parts under the headings "Powers" which are dealt with under Rule 1, "Civil Justice" which is dealt with under Rules 2 to 60 and "Be-venue" which is dealt with under Rules 61 to 63. It is obvious that the bulk of the Rules, therefore, is concerned with civil justice. Rule 2 deals with the valuation of suits, Rules 3 to 10 with jurisdiction of Courts, Rules 11 to 13 with transfer of suits, Rules 14 to 28 with institution, trial and determination of suits, Rules 29 to 38 with the execution of decrees and orders. The term "order" in this context is referable to Rule 37 which deals with the order for the execution of a decree passed by a Court in British India situated outside the Agency tracts, and therefore has no relevance for our purpose. Rules 39 to 41 deal with the investigation of claims and objections to execution, Rules 42 to 44 deal with interim protection of properties, Rules 45 to 46 cover special proceedings, Rules 47 to 56 provide for appeals and Rules 57 to 60 contain general provision. It will thus be seen that Rules 2 to 60 of the Agency Rules constitute in effect a simplified CPC and reference to the individual Rules shows quite clearly and as one would expect that simplicity and avoidance of complicated and lengthy litigations are the objects for which the Agency tracts are governed by the Agency Rules rather than by the CPC. As we have seen, Rule 48 provides for a second appeal to the High Court from an original decree passed by any Court subordinate to the Government Agent or the Agent to the Governor and Rule 49 provides for a first appeal to the High Court from every original decree passed by the Agent to the Governor or the Government Agent. Rule 54, as we have also seen, provides a very extensive power to the Agent to the Governor or the Government Agent to review his own judgment or order, and Rule 55 provides a power of revision of every decree or order made in a case decided by a Court subordinate to the Agent to the Governor or the Government Agent which is very much wider in scope than the corresponding provisions of Section 115, Civil P.C. As a final provision, intended, in my opinion, to cover cases where difficult matters of law arise or the proceedings of the Agent to the Governor or the Government Agent present unusual features, Rule 59 confers a power of revision upon the High Court in cases where a petition against such proceedings is referred to the Court by the Governor.

18. In my opinion, the scope and intention of Rules 48, 49, 84, 55 and 53, Agency Rules, are perfectly clear and I can find no room for construing the word "decree" in Rules 48 and 49 as possessing any wider meaning than it does in the opening sentence of the definition in Section 2(2), Civil P.C. All orders other than decrees are subjected by the Rules to a very full power of revision. Under Rule 55 the Agent to the Governor or the Government Agent possesses a very wide power of revising any order made by a Court subordinate to him. Under Rule 54 the Agent to the Governor or the Government Agent possesses a very wide power of reviewing any order of his own. It is to be remembered that whilst the words "for any other sufficient reason" which appear in Order 47, Rule 1 Civil P. C., are necessarily to be construed ejusdem generis with the previous specific reason for review therein set out, there is no similar reason for cutting down the ordinary meaning of the words "or sufficient cause" in Rule 54, Agency Rules, which on their plain and ordinary meaning cover, in my opinion, any case which in the interests of justice make a review desirable. Finally, as I have already pointed out, there is the safety valve of Rule 59 under which petitions against the proceedings of the Agent to the Governor or the Government Agent may be referred to the High Court if after submission to the Government, they think fit so to refer. These three Rules 54, 55 and 59 in the context of a set of Rules designed to achieve simplicity and avoid lengthy and complicated litigation, appear to me to be quite inconsistent with any intention on the part of the Governor in Council to make any order other than a decree within the meaning of Section 2(2), Civil P.C., appealable under Rules 48 and 49, Agency Rules.

19. For the above reasons I am of opinion that the word "decree" where it appears in the Agency Rules means the formal expression of an adjudication which so far as the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in a suit and may be either preliminary or final. Whilst there is no specific provision in the Agency Rules for a preliminary decree there is nothing therein to exclude the passing of a preliminary decree in a proper case and where such a decree is passed, it would, I think, come within the scope of the term "decree" in the above mentioned rules. The order of remand here in question is, in my opinion, clearly not a decree, since it does not purport to dispose of any of the matters in controversy in the suit, and in this respect I agree with the decision of their Lordships of the Madras High Court in *Vikrama Deo Garu v. Maharaja of Jeypore* AIR 1917 Mad. 452, above referred to.

20. I would, therefore, dismiss this application with cost. The hearing fee is assessed at three gold mohurs.

Beevor, J.

I agree.