

(1929) 10 PRI CK 0006

In the Privy Council

Case No : Privy Council Appeal No. 149 of 1927

Nallaparaju Mirja Atchutharamaraju and others

APPELLANT

Vs

Kruttiventi Perraju Garu and others

RESPONDENT

Date of Decision : 21-10-1929

Acts Referred:

Citation : (1930) AIR(PC) 29

Hon'ble Judges : Binod Mitter, George Lowndes, Tomlin, Lords Darling, Viscount Dunedin, JJ.

Advocate : Hy. S.H. Polak, Shepherd, Chapman Walker, B. Dube, A.M. Dunne, P.V. Subbarao, for the Appearing Parties.

Judgement

Viscount Dunedin, J.

The suit in this case was a suit as regards a mortgage, and the real point at issue between the parties was whether one rate of interest was to be allowed or another. The suit was filed before the Government Agent at Godavari. He had power to transfer the case, and he did transfer it to the Assistant Commissioner, Agency Division Vizagapatam and he was in favour of the plaintiff. Under the Agency Rules which in this part of India prevail to the exclusion of the general Civil Procedure Code, with certain exceptions which it is immaterial to mention there was an appeal to the Agency Commissioner, and he decided against the plaintiff.

The plaintiff then applied to the High Court. His right to apply depended upon R. 13. R. 13 of the rules in question, was this :

""All decrees passed by the Agency Commissioner on appeals from decree of his subordinates."and this particular decree was such a one :

"shall be final, the High Court having the power on special grounds to require him to review his judgment as may be directed by them."

Accordingly, this application to the High Court was properly presented, because

at p. 124 of the record the petition is described in the judgment of the High Court in this way :

"Petitions under R. 13 of the Agency Rules (Civil Justice) praying that, on the grounds set forth therein the High Court will be pleased to issue an order directing the Additional District Judge, Agency Division, Waltair to review his judgment."

That is precisely in the terms of R. 13.

Upon that the High Court delivered judgment. The first part of the judgment deals with the merits, and need not be read. At the end of the judgment it is said :

"On the best consideration I can give to both the facts, and law of this case, I am bound to say, I think that the learned Additional District Judge was wrong in the view he took of his transaction as far as it affects the sons. In my view, the petition must be allowed with costs, and the decree of the Additional District Judge set aside, the first Court's decree restored."

Strictly speaking, their Lordships do not think that the phraseology of that order is quite correct. The learned Judge ought to have followed the phraseology of the petition with which he was dealing and he ought to have directed the Additional District Judge to review his judgment to the effect set forth; but their Lordships are not of opinion that a mere fault of expression can have any effect upon what is the substance of the matter. The Court was sitting upon a petition to review, and they are of opinion that what was said was practically a direction to the Judge to review.

That being so, that is all the appeal that is given, and the case cannot be carried further. As a matter of fact, the present appellants went to the High Court and purported to say that this was an appeal in the ordinary sense and asked for leave to appeal to His Majesty in Council. There is obviously no authorisation for that in the Rules that have been mentioned; but there is one other fact that must be mentioned. By the time that the High Court pronounced their order new Rules had come into force, and these new Rules, differing from the old Rules, provided by B. 48:

"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 S. 100, Civil P.C."

That means on grounds that deal with law and do not deal with fact. The simple answer is that there was no such appeal, nor, as a matter of fact, could at that time any such appeal have been made, because R. 56 of the new Rules says this :

"The period of limitation for an appeal from the decree of an Agent Munsiff or an Agent Divisional Officer or for review of a judgment shall be six weeks from the

date of the passing of the decree."

An appeal, therefore, was out of the question at that time, and, on the other hand, the Court was perfectly right to carry on, so to speak, the procedure that had been started under the old Rules. Their hands were not tied, because, as has been pointed out by one of their Lordships, under the General Clauses where any Act made after the commencement of this Act repeals any enactment made, the repeal shall not *inter alia* affect the previous operation of any enactment or repeal any act duly done or suffered thereunder. Even without that, under the general principles of law, it would have been obvious that the Court, if this new provision of Appeal could not apply, would necessarily be right in carrying out the procedure perfectly properly initiated before them.

The result of all that is, that there is no appeal, because there has been no proper decree of the High Court which can be appealed in the ordinary way; there has been only a petition to review. Therefore their Lordships are of opinion that this preliminary objection must be sustained, and they will humbly advise His Majesty accordingly. There will be no order as costs.