

(1939) 03 PAT CK 0006
In the Patna High Court

Nandamani

APPELLANT

Vs

Hari Krishna Bhima Deo

RESPONDENT

Date of Decision : 23-03-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109(c), 115

Citation : AIR 1939 Patna 564

Judgement

1. This is an application by the defendant in the suit for a certificate that this is a fit case for appeal to His Majesty in Council u/s 109(c), Civil P.C. The plaintiff opposite party has brought a suit in the Court of the Subordinate Judge of Berhampur claiming possession of a large estate and mesne profits. The plaintiff's case was that he was entitled to the estate by inheritance and that the defendant who was in possession was illegitimate and had no claim whatsoever to the property. The defendant inter alia pleaded that the plain, tiff was illegitimate and that the question of the defendant's legitimacy had been decided once and for all by their Lordships of the Privy Council in an earlier suit. Accordingly, it was said that the question of the legitimacy of the defendant could not again be agitated as the matter was barred by the principle of res judicata. To meet this defence of res judicata, the plain, tiff has alleged that the decree obtained by the defendant is tainted by fraud and collusion and that as he was not a party to that litigation, it is not binding upon him. Accordingly he contends that the matter is entirely at large and that as between the parties the legitimacy of the defendant is a matter to be decided in this particular suit.

2. In due course fifteen issues were framed and an application was made on behalf of the defendant under Order 14, Rule 2 and Order 15, Rule 3, Civil P.C., praying that the Court should hear and dispose of issues 3 to 7 and the second part of issues 8 and 9 as preliminary issues and further that the Court should try issue 1 on facts and dispose of it before going into the other issues of the case. The learned Subordinate Judge heard the parties and on 22nd September 1938, delivered an elaborate judgment in which he held that it was not a case in which he ought to direct that these issues be disposed of before going into the merits

of the whole case. Against that order the defendant filed a revision application in this Court which was heard by this Bench at Cuttack. This Bench declined to interfere with the order of the Subordinate Judge and summarily dismissed the petition. As the application was dismissed summarily, no judgment was delivered, but we were of opinion then, and still are, that no case had been made out for interference in revision. The defendant has now preferred the present application praying that this Court should certify that the case is a fit one for appeal to his Majesty in Council.

3. It must be remembered that the application which was made to this Court was an application in revision and the applicant was bound to show that the learned Subordinate Judge had either exercised jurisdiction not vested in him or declined to exercise jurisdiction vested in him or had acted illegally or with material irregularity in the exercise of his jurisdiction. As we have stated, the learned Subordinate Judge in his order dealt at great length with the contentions raised on behalf of the present applicant. There can be no question that the learned Subordinate Judge had jurisdiction to deal with the application and that he did deal with it on the merits and we fail to see in what manner the learned Subordinate Judge acted illegally or with material irregularity in dealing with the (application. The whole of the argument on behalf of the applicant today has been directed to the question as to whether the learned Subordinate Judge decided this application correctly.

4. If a Court has jurisdiction, it does not at all follow that if it has decided an issue wrongly that it has acted illegally or with material irregularity in the exercise of its jurisdiction. As pointed out by their Lordships of the Privy Council in *Amir Hassan Khan v. Sheo Baksh Singh* (1885) 11 Cal. 6:

The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case and, even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.

5. As we have stated, this Bench came to the conclusion that the learned Subordinate Judge had jurisdiction and had not acted illegally or with material irregularity and consequently dismissed the application summarily. "When applications in revision are made to this Court, the Court is governed by the provisions of Section 115, Civil P.C. This Court refused to interfere with the order of the learned Subordinate Judge and we fail to see how that decision gives rise to any point of importance or difficulty which would warrant the grant of a certificate u/s 109(c), Civil P.C. It is true that this case is of vital importance to the defendant and the present litigation may well be a protracted and expensive one. We fully realize the hardship that this litigation might cause to the defendant should the plaintiff's allegation prove wholly unfounded. Such however cannot be allowed to influence our views.

6. The preliminary issues which the Court was asked to try, are however as pointed out by the learned Subordinate Judge, mixed issues of law and fact. For example, the issue of res judicata is complicated by reason of the fact that the plaintiff alleges that the decree is not binding upon him by reason of fraud, collusion or negligence. Another important question arises whether or not the defendant in that earlier suit could be regarded as representing the present plaintiff. These matters were considered by the learned Judge, and he came to the conclusion that the preliminary questions of law could not be disposed of without going into the questions of fact. He has pointed out that as these questions are questions of difficulty, it may well be that if the case was decided upon any preliminary issues of law, such a decision might later be reversed and the parties again compelled to go into the facts.

7. The question of the legitimacy of the plaintiff could also not be decided conveniently without going into the whole of the facts of the case. If the evidence upon that issue was gone into, it would, in all probability, be just as convenient to dispose of the remaining evidence in the case. The issues of law in this case are not clear cut and are mixed up with questions of fact. In such a case it was impossible to say that the learned Subordinate Judge had acted illegally or with material irregularity in refusing to dispose of the issues suggested. It was pointed out by the learned Subordinate Judge that a number of witnesses who are likely to be called in this case are old men, and if this case is protracted, these witnesses might well die before they have an opportunity of deposing in the matter.

8. Had the proceeding before the High Court been in the nature of an appeal, different considerations would arise; but in our view there is nothing in the refusal of this Court to entertain the revision application which would warrant the Court certifying that the case is a fit one for appeal. For the reasons which we have given, we reject this application and make no order as to costs. The stay order is vacated.