

(1934) 07 PAT CK 0018
In the Patna High Court

Nrisingha Charan Nandy

APPELLANT

Vs

Rajniti Prasad Singh and Others

RESPONDENT

Date of Decision : 31-07-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 115
Santhal Parganas Settlement Regulations, 1872 — Section 5A

Citation : AIR 1934 Patna 564

Judgement

1. This is an application for leave to appeal to His Majesty in Council from an order passed by this Court in revision in connection with a suit in which the petitioners are the principal defendants and which has been instituted by the respondents Nos. 1 to 3 for the enforcement of two simple mortgage bonds and for recovery of their dues under these two bonds amounting to over ten lakhs of rupees. As the bulk of the mortgaged properties are situated within the Santal Parganas and are the subject of settlement proceedings, the plaint was originally filed u/s 5, Regulation 3 of 1872 in the Court of the Settlement Officer at Santal Parganas, with a prayer that the suit might be transferred u/s 5-A of the aforesaid Regulation to the Court of the Subordinate Judge of Gaya within whose jurisdiction a portion of the mortgaged properties are situate.

2. The Settlement Officer certified that in his opinion it was just and expedient that the suit should be transferred to the District Judge of Gaya for disposal and transferred it to that Court. The suit eventually came on the file of a Subordinate Judge and one of the issues raised before him was whether he had jurisdiction to try the suit. This issue being decided against the petitioners, they brought the matter before this Court in revision u/s 115, Civil P.C., but failed to satisfy the learned Judges who heard their application that the decision of the Subordinate Judge was wrong. The learned Judges expressed different views on the question whether the Settlement Officer was competent to transfer the suit to the District Judge of Gaya, Wort, J., holding that the Settlement Officer could transfer the suit to the District Judge of Gaya, and Khaja Mohammad Noor, J., holding that he could not.

3. They both however agreed that the ban constituted by Section 5-A of the Santal Parganas Regulation being removed the Subordinate Judge of Gaya had jurisdiction to try the suit. It is against this order that the petitioners wish to appeal to His Majesty in Council.

Now as it is frankly conceded on behalf of the petitioners that their present application falls u/s 109(c) the only point to be considered is whether this is a fit case for leave to His Majesty in Council. According to the learned Counsel for the petitioners the main test of fitness is whether the order sought to be appealed against involves a substantial question of law and he contends that the present case must be held to involve such a question as the two Judges who decided the application in revision expressed conflicting views as to whether the Settlement Officer was competent to transfer the case to the District Judge of Gaya or not. Now it appears to us that the question which directly arose in this case was not whether the Settlement Officer could u/s 5-A of Regulation 3 of 1872 transfer the case to the District Judge of Gaya or not but whether the Subordinate Judge in whose Court the suit is pending is competent to try it and on that question both the Judges were agreed.

4. However that may be, it appears to us that in deciding whether a certificate of fitness should be granted in a case governed by Section 109, Civil P.C., it is not enough to find that the order sought to be appealed against involves a substantial question of law. One of the tests usually applied to determine the fitness is to see whether the point involved is of great public or private importance. We do not find that the question has any public importance and as to whether it has any special importance to the parties to the litigation, it is sufficient to state that the fact that the petitioners did not raise the point when they came up to this Court against the order of the Subordinate Judge appointing a receiver of the mortgaged properties shows that they themselves attached no special importance to the venue of the action.

5. Even in the course of the argument before us it was not suggested that the petitioners had been in any way prejudiced by the trial proceeding at Gaya. All that is contended is that technically the Settlement Officer should have transferred the case to the Santal Parganas and then the case might have been transferred to Gaya by an order of this Court. The grievance then in short is that what was the direct result of the order of the Settlement Officer should have been accomplished by a somewhat longer process. It is manifest that in such circumstances we shall not be justified in certifying the case to be a fit case for appeal.

Another consideration which we must keep in view in granting the certificate required u/s 109, Civil P.C., is that "the litigation is not made oppressively expensive" and "the elucidation of the real issues in the case by a trial of the suit is not unduly postponed or delayed."

6. The present application for leave to appeal is accompanied by an application in

which the petitioners have asked this Court to stay the suit pending this application and although it is contended by the learned Counsel for the petitioners that it is open to us either to grant his application for stay of the proceedings or reject it while dealing with this application, it is clear that neither party would like the suit to proceed while an appeal to the Privy Council on one of the issues in the case is pending.

7. In any view of these circumstances we do not think that this is a fit case in which the certificate required u/s 109, Civil P.C., should be given and the application is accordingly rejected with costs. Hearing fee four gold mohurs. As the application for leave to appeal is rejected, the application for stay is also dismissed.