
(1909) 06 CAL CK 0040
In the Calcutta High Court

Pachi Dasi

APPELLANT

Vs

Bala Das and Others

RESPONDENT

Date of Decision : 02-06-1909

Acts Referred:

Citation : (1909) 06 CAL CK 0040

Judgement

Coxe, J.—This was a suit by the daughter of one Kala Nath Dass to set aside as fraudulent a bond said to have been executed by Kala Nath Das in favour of the defendant No. 2 and the decree obtained upon it on confession of judgment, by her brother Bala. The plaintiff's case was that Bala was excluded by his blindness from the inheritance, that she was the heir of Kala Nath Das, and that the proceedings in the bond suit were fraudulent and had been fraudulently concealed from her. The Court of first instance found that Bala's blindness was not proved to be of such a character as to exclude him from the inheritance, and that the bond and suit upon it were dishonest. It accordingly dismissed the suit. On appeal the Subordinate Judge dealt with the case u/s 551 of the former Code, without sending for the record. After stating the points for determination the Subordinate Judge observed: ""After examining the judgment of the lower Court and considering the arguments urged by the learned pleader for the appellant, I am inclined to agree with the lower Court in thinking that it is not proved either that defendant No. 1 was born blind or that the decree which it is now sought to have set aside, was obtained collusively." He accordingly dismissed the appeal. The plaintiff appeals to this Court.

2. The first point taken is that as the appeal proceeded on questions of fact, the proof of which depended on evidence, the Subordinate Judge was not competent to dispose of it without sending for the record and examining that evidence. The learned pleader for the appellant has pointed out the hardships which in his view may be expected to ensue if Courts of first appeal dispose of appeals on questions of fact without examining the record. The simple answer to this contention is, to my mind, that the considerations put forward are so self-evident that they cannot be supposed to have been absent from the mind of the

Legislature when Section 651 was enacted, and the terms of that section show that the Legislature thought that Courts of appeal could be trusted to dispose of appeals summarily without examining the record, if they thought fit under the circumstances of the case to do so. The learned pleader cannot give us any authority for the proposition that Courts of appeal must send for the record before disposing of appeals on questions of fact u/s 551; and if the Legislature had really intended to make this course obligatory, there is no apparent reason why this should not have been enacted in the section. This Court should not, in my opinion, lay on the Subordinate Courts restrictions and burdens which the Legislature has not seen fit to impose, and I am, therefore, not prepared to abridge the discretion given to the lower appellate Court or to hold that it was bound by law to send for the record because the appeal before it turned on questions of fact.

3. The second point taken is that when a Court dismisses an appeal u/s 551 it is bound to write a judgment in accordance with the provisions of Section 574 of the old Code. Reliance is placed on decisions in *Rami Deka v. Brojo Nath Saikia* 25 C. 97 : 1 C.W.N. 692; *Put tapa v. Yellappa* 5 Bom. L.R. 233 and *Rakhai Chandra Tewari v. Satindra Deb Rai* 5 C.L.J. 348. The latter case, however, merely followed the first mentioned case and the appeal was decided on another ground. The two first mentioned cases, however, are clear authorities for the appellant's contention, though the reason that led the learned Judges to adopt the view, that they did adopt, are not stated in either case. Speaking for myself, and with the greatest respect, I cannot agree with that view though it is not necessary in this case to decide the appeal upon this point. Section 551 enacts that " the appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without serving notice on the respondent. " This seems to me a perfectly complete and self-contained section, which stands in no need of being read with or controlled by Section 574. Section 574 enacts how the judgment is to be drawn up. It clearly refers to the preceding section and is explanatory of that section. That section authorises the Court " after hearing the parties or their pleaders and referring to any part of the proceedings to which reference may be considered necessary " to pronounce judgment. It comes almost at the end of the chapter and refers, in my opinion, solely to appeals regularly heard, in which both parties have appeared or had a chance of appearing. The section does not authorise a Judge to pronounce judgment until he has heard the parties or their pleaders; if they appear, and this provision seems to me inconsistent with the provision of Section 551 under which the appeal may be dismissed without notice to the respondent at all.

4. I may refer to the decision quoted by the learned pleader for the respondent in *Samin Hasan v. Piran* 30 A. 319 and may observe in conclusion that it has been held that no judgment is necessary under the very analogous provisions of Section 421 of the Criminal Procedure Code.

5. Assuming that Section 574 controls Section 551 the learned pleader for the appellant argues that all the rulings u/s 574 govern the dismissal of appeals u/s 551. This seems to me a perfectly logical argument and almost to amount to a *reductio ad absurdum* of the contention that Section 551 is so controlled. But assuming that in this case the learned Subordinate Judge was bound to write a judgment in accordance with Section 574, I am not prepared to say that his judgment can not be reconciled with that section. Each case must be judged on its own merits, and the question whether certain words amount to a sufficient statement of the reasons for the decision is one in which different minds might reasonably form different opinions and its conclusion would not, in my opinion, amount to a decision of law unless perhaps the words were identical. The learned Judges who decided *Shaharulla Mondal v. BAngoo Mondal* 13 C.W.N. 143 : (1909) 2 Ind. cas. 404 (ante.) thought the terms of the judgment of the lower appellate Court in that case insufficient. Those who decided *Rakhal Chandra Tewari v. Satindra Deb Rai* 5 C.L.J. 348 thought the judgment that they were dealing with sufficient. But the words used in this case being entirely different from those in the two cases cited, I do not think we are bound to regard either decision as a binding authority in disposing of this case. In this case we have a clear and full judgment, by the Munsiff. It appears from that judgment that there was no evidence at all that Bala's blindness was incurable, that the plaintiff's husband, when it suited his purposes, treated Bala as the rightful heir and forced him to register a deed executed by his father, that the plaintiff's husband was one in interest with his wife and looked after the suit for her, that the bond suit was contested and other fictitious heirs of Kala Nath Das were put forward, who, however, were defeated. Under these circumstances, no officer of any experience could find it easy to believe that the bond suit was fraudulently conducted in order to rob the plaintiff, or could have much doubt that the present suit was dishonest. The Subordinate Judge heard the plaintiff's pleader and was doubtless able by questioning him to ascertain if there were any circumstances that might lead him to find that the suit was not the mere speculation that it looked. If he ascertained that there were no such circumstances he was entitled to dismiss the appeal u/s 551, and even he was bound to write a judgment in accordance with Section 574, I think, though with considerable hesitation, that the statement in his judgment of the reason, for his decision are not so wholly insufficient that we ought to set it aside in second appeal. I would, accordingly, dismiss the appeal with costs.

Richardson, J.

6. I agree in the conclusion at which my learned brother has arrived.

7. As to the first contention urged for the appellant it has not been shown to me that the learned Subordinate Judge improperly exercised the discretion which he undoubtedly had under the law to send or not to send for the record, nor am I quite able to appreciate the importance attached to the record being sent for. Before dismissing the appeal u/s 551 of the old CPC (now Order XLI, Rule 11),

the Subordinate Judge was, if so desired, bound to hear and he did hear the appellant's pleader and it was open to the learned pleader to place the whole of the evidence before the Court. I do not know whether this was done or not, but there is no reason why it should not have been done with the help of a proper brief and our attention has not been invited to any special circumstances in the case which had the effect of disabling the Subordinate Judge from arriving at a judicial conclusion upon the matter before him without sending for the original record. I think that the appellant has failed to make out a legitimate grievance on the ground and that the contention fails.

8. It has been held by this Court that when a Subordinate Court dismisses an appeal u/s 551 of the old Code, it is bound u/s 571 (Order XLI, Rule 30) to record judgment and the judgment must be sufficient to meet the requirements of Section 574 (Order XLI Rule 31) *Rami Deka v. Brojo Nath Suikia* 25 C. 97 : 1 C.W.N. 692; *Rakhal Chander Tewari v. Salindra Deb Rai* 5 C.L.J. 348. The second contention for the appellant is that in view of those decisions and of other decisions relating to particular judgments which were held to be insufficient, this Court is bound by authority to hold in the present case that the judgment of the Subordinate Judge does not contain the necessary ingredients or elements of a good and valid judgment.

9. Now speaking for myself I fully accept the view of the law taken in the two cases which I have cited by name. The first of those cases was decided in 1897 and in this Court the decision has not only been questioned but has been followed in the second case. A similar view has been taken in the Bombay High Court *Puttapa v. Yellappa* 5 Bom. L.R. 233.

10. The only question which remains is whether the judgment recorded by the Subordinate Judge in the present case is a sufficient judgment. We were referred to a number of cases and I do not at all-I have no desire to question the correctness of those decisions with reference to the facts of each case. But I have not been able to discover underlying (or any) principle of law or procedure or justice which can be applied with confidence in each new case as it arises. The reason for that is clear. In this class of cases any attempt to lay down general rules over and above the rules in the Code is doomed to failure and each case must be decided on its own merits. The common sense of the law, as I understand it, is this, that in order to save the time of the Court, and trouble to all concerned, and expense to the parties, the Courts are given a power to hear and dismiss an appeal without issuing the usual notice to the respondent, and so forth. The power is intended especially for the purpose of protecting the Court from frivolous appeal or appeals which have no hope of success and in dealing with an appeal of this kind, once sufficient time has been taken by a Court to ascertain that the appeal is frivolous, it need not in dismissing the appeal pay too much regard to form and ceremony-a judgment is required but provided it substantially meets the requirements of the law, it is not necessarily defective because it does not repeat or recapitulate all that is contained in the judgment of

the Court of first instance Cf. *Rakhal Chundra Tewari v. Satindra Deb Rai* 5 C.L.J. 348.

11. In the present case, the judgment recorded by the Subordinate Judge appears to me to be sufficient. I have been shown no reason for apprehending that there has been any miscarriage of justice, or that any advantage would have accrued to any one from the Subordinate Judge writing a longer judgment.