
(1964) 04 GUJ CK 0010
In the Gujarat High Court

Rajkunvarba

APPELLANT

Vs

Randhirsinhji Kalyansinhji and Others

RESPONDENT

Date of Decision : 06-04-1964

Acts Referred:

Constitution of India, 1950 — Article 132, 133, 134
Reorganisation Act, 1956 — Section 52

Citation : (1964) 5 GLR 907

Hon'ble Judges : N.M. Miabhoy, J;J.B. Mehta, J

Bench : Division Bench

Judgement

N.M. Miabhoy, J.—This appeal comes from the Kutch area. On behalf of respondents Mr. Mankad raises a preliminary objection that no appeal lies from the appellate decree of the learned single Judge of the Bombay High Court.

2. It will be convenient to mention a few facts at first. Suit No. 40 of 1952 was Sled in the District Court of Kutch at Bhuj on the 16th June 1952 That suit was dismissed by the District Court on the 14th of October 1957. The plaintiff filed from the decree in that suit First Appeal No. 8 of 1958 in the High Court of Bombay sitting at Rajkot. That appeal was decided by a single Judge of that High Court. That appeal was dismissed on 27th August 1958. From that appellate decree plaintiff preferred an appeal to the same High Court of Bombay which was numbered as Letters Patent Appeal No. 28 of 1959. That appeal was admitted by a Division Bench of that High Court on the 27th of April 1959 Whilst this appeal was pending on the file of the Bombay High Court the Bombay Reorganisation Act of 1960 was enacted Under that Act the Kutch area became the territory of the new State of Gujarat and a new High Court of Gujarat was created. Under the provisions of the same Bombay Reorganisation Act the Letters Patent Appeal No. 28 of 1959 was transferred to this Court for disposal according to law It was numbered as Letters Patent Appeal No. 14 of 1960 when it was transferred to this Court. Mr. Mankad as already stated contends that no appeal lies from the judgment of the learned single Judge of the Bombay High Court delivered on 27th of August 1958.

3. In order to appreciate the preliminary objection it is necessary to mention the legislative history governing the jurisdiction in relation to the suit No. 40 of 1952 and the Courts which had jurisdiction over that litigation at different stages since its institution. On the date when it was instituted in the District Court of Kutch at Bhuj the suit was governed by the Kutch Province (Courts) Order 1948 which had come into force on 28th December 1948. By Clause 3 of that Order a Court known as the Court of the Judicial Commissioner for Kutch was established for the Kutch area. That Court possessed inter alia appellate jurisdiction in civil cases. It was constituted the first Court of appeal in regard to matters mentioned in Clause 31 and a Court of second appeal in regard to matters mentioned in Clause 32. That Court had jurisdiction to entertain and hear appeals from the decisions of the District Court of Kutch at Bhuj. There was however no provision for any further appeal to the Judicial Commissioners Court from any decision of the Judicial Commissioner reached either in first or second appeal Under the Constitution of India became a Union territory and a C State. Chapter V of Part VI of the Constitution did not apply to the Union territory. Article 241 however empowered the Parliament to constitute by law a High Court for the Union territory or to declare any Court in any such territory to be a High Court for all or any of the purposes of the Constitution. Clause (2) of that Article provided that - The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in Clause (1) as they apply in relation to a High Court referred to in Article 214 subject to such modifications or exceptions as Parliament may by law provide. In pursuance of this power the Parliament enacted the Judicial Commissioners Courts (Declaration as High Courts) Act (XV) 1950 (hereafter called Commissioners Courts Act). By Section 3 of that Act every Court in a Part C State known at the commencement of the Act as the Court of the Judicial Commissioner for the State was declared to be a High Court for the purposes of Articles 132 133 and 134 By Section 6 of that Act only Articles 215 219 225 226 to 229 became applicable to the Judicial Commissioners Court. The effect of these provisions was that the Judicial Commissioners Court at Kutch retained all the jurisdiction and powers which it possessed before the coming into force of the Constitution. In addition to this it got the powers of issuing writs under Article 226 and powers of superintendence over the subordinate Courts under Article 227 of the Constitution. A right of appeal was also conferred from the decisions of the Judicial Commissioners to the Supreme Court under Articles 132 133 and 134 of the Constitution. In Section 4 of the Commissioners Court Act it was provided that an appeal shall lie to the Supreme Court under the provisions of Article 133 from any judgment decree or final order of a Judicial Commissioners Court notwithstanding that such judgment decree or final order was that of a single Judge. By Section 5 of the said Act it was provided that Subject to any rules made under Article 145 or any other law as to the time within which appeals to the Supreme Court are to be entered an appeal shall lie to that Court from a judgment decree or final order of Judicial Commissioners Court under the provisions of Article 132 or Article 133 or from a judgment, final order or sentence of such court under the provisions of Article 134 whether such

judgment decree final order or sentence as the case may be was passed or made before or after the commencement of this Act. Whilst the aforesaid suit No. 40 of 1952 was pending in the District Court another event took place which has a relevance on the preliminary objection raised by Mr. Mankad. With effect from 1st November 1956 Kutch ceased to be a State and u/s 8 of the States Reorganisation Act (hereafter called the Reorganisation Act) it became a part of the now State known as the new Bombay State. On this day u/s 50 of the Reorganisation Act the Court of the Judicial Commissioner for Kutch amongst others came to be abolished and the High Court of Bombay u/s 49 of the Reorganisation Act became the High Court for the new State of Bombay. The effect of this was that the High Court for the new State of Bombay acquired jurisdiction over the Kutch area. The submission of Mr. Mankad is that the jurisdiction which the High Court of Bombay for the new State of Bombay acquired was the same jurisdiction which the defunct Court of the Judicial Commissioner for Kutch possessed and no more roe submission is based on the ground that under the law prevailing before Kutch became a part of the new Bombay State no appeal lay to the Court of the Judicial Commissioner from the judgment of the Judicial Commissioner and that under the Commissioners Courts Act an appeal lay directly to the Supreme Court if the provisions of any of the Articles 132 133 or 134 applied. The submission is that the law relating to the jurisdiction of the Judicial Commissioner for the Kutch area remained intact and was not changed under the Reorganisation Act of 1956 and that that law became crystallised for the High Court of Bombay for the new State under the Reorganisation Act of 1956. This submission is based on Section 52 of the Reorganisation Act of 1956. Mr. Mankad further submits that the same situation continued after the appeal was transferred to the High Court of Gujarat. Now Mr. I.M. Nanavati who is appearing for the appellant does not dispute the proposition that under the law as existing before the Reorganisation Act of 1956 no further appeal was provided from the judgment delivered by the Judicial Commissioner and that if the provisions of Articles 132 133 or 134 applied a further appeal lay to the Supreme Court. Mr. I.M. Nanavati also does not dispute the proposition that the law in relation to the aforesaid appeal would continue to be the same in the High Court of Gujarat as it was in the High Court of Bombay. But Mr. I.M. Nanavati very seriously disputes the proposition that Section 52 of the Reorganisation Act of 1956 has the effect of crystallizing the law relating to jurisdiction which was obtaining in the Court of the Judicial Commissioner for Kutch. That section is as follows:

The High Court for a new State shall have in respect of any part of the territories included in that new State all such original appellate and other jurisdiction as under the law in force immediately before the appointed day is exercisable in respect of that part of the said territories by any High Court or Judicial Commissioners Court for an existing State.

We considered the effect of Section 52 and other relevant sections of the Reorganisation Act of 1956 having a bearing on the construction of Section 52 in

a group of Letters Patent Appeals from Saurashtra the judgment in which has been delivered just before the commencement of this judgment. *Amritlal Gokaldas Mehta v. State of Bombay* 1964 V.G.L.R. 769 In fact we heard the arguments in respect of the present appeal along with the group of Saurashtra appeals. For the reasons which we have given in the judgment just delivered in the Saurashtra group of appeals we have come to the conclusion that the correct interpretation of Section 52 is that the law as obtaining in each of the areas which merged with the old Bombay State remained intact and was preserved so far as the law relating to jurisdiction of the High Court of Bombay for the new State was concerned in its application to those areas. For the reasons given therein we must hold that the law governing the jurisdiction of the High Court of Bombay and now the High Court of Gujarat in relation to the Kutch area is the same as the law prevailing in relation to the Commissioners Court before the commencement of the Reorganisation Act of 1956. In view of the fact that there was no provision for any further appeal from the judgment of the Court of the Judicial Commissioner to that very Court but that only appeal lay to the Supreme Court in certain cases under the law prevailing before the Reorganisation Act of 1956 came into force we must hold that no further appeal lies from the judgment of the learned Judge delivered First Appeal No. 8 of 1958 on 27th of August 1958.

4. As we have observed in the judgment in the Saurashtra group of appeals the conclusion that we have arrived at reveals a serious defect in the law relating to the jurisdiction of the High Court in regard to the Saurashtra area. The same remarks apply in connection with the jurisdiction of the High Court in regard to the Kutch area. We make the same recommendation in regard to appeals from Kutch area which we have made to the authorities concerned in regard to appeals from the Saurashtra area. For the aforesaid reasons we uphold the preliminary objection and decide the present appeal does not lie from the judgment aforesaid. For the reasons which we have given in the judgment in the Saurashtra group of appeals we propose to direct that each party shall bear its own costs.

6. Appeal dismissed. No order as to costs.