
(1967) 05 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1267 of 1962

Ram Baksh

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 16-05-1967

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209

Citation : (1967) 37 AWR 678

Hon'ble Judges : M.H. Beg, J;K.B. Asthana, J;B. Dayal, J

Bench : Full Bench

Judgement

B. Dayal, J.—A Division Bench of this Court has referred the above matter to a Full Bench. It is necessary to State briefly the circumstances which led to the reference. The Petitioner Ram Bux filed a suit u/s (sic) of the UP(sic) and LR Act, 1951 (hereinafter referred to as the Act) claiming to be the sirdar of the land in dispute and alleging that the opposite party had forcibly occupied the land in dispute without any right. The suit was contested and the opposite party claimed to be the bhumidhar of the land in dispute. The suit was decreed by the trial court and the opposite party filed an appeal before the Commissioner, which was allowed and the case was remanded relying upon a ruling of the Board of Revenue to the effect that the Government was a necessary party. Thereupon a Second Appeal was filed by the Petitioner before the Board of Revenue. The Board of Revenue also relying upon its earlier decision, dismissed the appeal by its order dated 23-1-1962. The reasoning of the Board of Revenue was that since the Plaintiff was claiming adhivasi or sirdari rights in the land in dispute while the Defendant claimed bhumidhari rights, the nature of the suit became that of one u/s 229B of the Act as there were rival claims to the same land and it lost its character as a suit u/s 209 thereof. Against that order, the Petitioner has come to this Court. The case was heard by a learned single Judge. The decision of the Board of Revenue was not only tried to be supported upon its own ground but it was further contended on behalf of the opposite party that after the decision of the Board of Revenue, Section 209 of the Act had been amended and it was

provided that the State Government was a necessary party to all suits under that section. In view of that amendment, the decision of the Board of Revenue was, in any case, correct and there was no reason to interfere with it. The learned single Judge, who heard the contentions, did not agree and in view of the fact that a Division Bench case of this Court (not reported) Sp. A. No. 624 of 1964 Jagdish Pd. v. Board of Revenue (sic) was brought to his notice with which he did not agree, he referred the following two questions to a larger Bench:

(i) What is the effect of amendment of Section 209 of the UPZA and LR Act by the amending Act 21 of 1962 on pending appeals?

(ii) Is it obligatory on the appellate Court after the above amendment to direct the impleadment of the State Govt, or set aside validly obtained decree without going into the merits of the case?

When the matter came up before a Division Bench, the learned Judges were of the opinion that the decision of this Court in Jagdish Pd.'s case mentioned above required a reconsideration and the decision of the two questions referred, entirely depended on it. The learned Judges, therefore, directed the papers to be laid before the Hon'ble the Chief Justice with a recommendation that "a Full Bench be constituted to hear and decide the reference". Thus we have to answer the two questions referred to by the learned single Judge.

2. On the facts stated above, it is clear that the Board of Revenue had not taken the amendment of the Act into consideration when it passed an order of remand. The basis of the order of the Board of Revenue was that the nature of the suit had changed because of the allegations, in the written statement on behalf of the Defendant. That question, however, is not to be decided by this Full Bench as the correctness of that order has not been referred by the learned single Judge. I, however, am unable to see how the nature of a suit can possibly be altered by any allegation made in defence. This is one of the cardinal principles of pleadings that the nature of the suit is governed by the allegations in the plaint. It is for the Plaintiff to prove his allegations and if he succeeds, he succeeds in the suit. The Defendant can only traverse the allegations in the plaint. In a suit for possession against a trespasser, the title of the Plaintiff may be denied and may have to be enquired into incidentally in order to give relief for possession. But that does not convert a suit for possession into one for a declaration. The Defendant in such a suit may also plead his title but the pleading of his title is not really necessary for the suit. The Defendant may merely deny the title of the Plaintiff and if he succeeds in disproving the Plaintiff's case the suit would be dismissed. A Plaintiff's suit cannot be utilised by a Defendant for a declaration of his own title nor can the court give such a declaration although it may incidentally come to a conclusion, while considering the title of the Plaintiff, that instead of the Plaintiff, the Defendant appeared to have a better right. But even that finding is really not necessary for the case. However, that question not being before the Full Bench, I need not elaborate that point further.

3. Although the amendment was not in force when the Board of Revenue decided the case yet it had been contended on behalf of the opposite party that this Court should pronounce judgment on the effect of the amendment of Section 209 of the Act, because even if the order of the Board of Revenue is set aside on its own merit and the case is remanded, the question of the effect of the amendment will crop up before the revenue court where the case will go back for decision. In these circumstances, the learned single Judge considered it proper to refer the two questions mentioned above.

4. Before proceeding to consider the effect of the amendment, I would like briefly to state the probable reason which led to the amendment. The legislature has not clarified the purpose behind it. The Board of Revenue, however, as mentioned above, had started taking the view that in every case u/s 209 of the Act where the Defendant, who is alleged to be a trespasser by the Plaintiff claims himself to be a tenant, the nature of the suit changes and the State Government is a necessary party and on that basis, the Board of Revenue started setting aside the decrees passed by the courts below, even in Second Appeals and remanding the cases for a de novo trial. This naturally caused delay in the decision of controversies, waste of time of revenue courts and inconvenience to the parties. To obviate all this, it appears, the legislature intervened and made it compulsory that in every case u/s 209 of the Act, the State Government should be made a party. On principle there appears to be no justification for such an amendment. It is well settled that it is for the Plaintiff who has started the litigation to decide what cause of action is to be put into litigation. If he does not consider that he has any grievance against the Government, he cannot be forced to make an unnecessary party as a Defendant and to run the risk of having to fight against third parties who may raise controversies not germane to the dispute between the Plaintiff and the Defendant with whom the Plaintiff wants to fight. If third parties are added he will be forced to the risk of having to pay unnecessary costs incurred in the litigation by such a Defendant. In the present case, the real dispute was between the Petitioner and the Respondent. The Government was at the best interested in watching the result of the litigation and no relief was claimed by the Plaintiff against the Government. It is difficult to see how the Government can be said to be a necessary party in suits u/s 209 of the Act. As far back as 1880, a Division Bench of this Court in *Naraini Kunwar v. Durjan Kunwar and Ors.* ILR 2 All 738, held:

While the propriety of preventing unnecessary and expensive repetition of litigation and multiplication of suits cannot be questioned, neither as a principle of justice to litigants nor as a convenient rule of practice can an indiscriminate joinder either of cause of action or of parties be tolerated.... It does not appear to me that the Plaintiffs in either case could have joined the other Plaintiffs in their original plaint as Defendants, for they sought no relief against them.... In the multitude of instances it will be a useful test to apply in deciding whether the presence of parties is necessary to enable the Court effectually and completely to adjudicate and settle the questions involved in the suit.

5. A similar observation was made by a Division Bench of the Calcutta High Court in *Gobinda Chandra Ghosh alias G. Ghosh and Another Vs. Abdul Majid Ostagar and Others*, as follows:

It seems to us to be opposed to all principles to make a decision in the presence of a particular party with a view to make him bound by it when admittedly no relief can be given against him.

However, it is not for us to question the wisdom of the legislature but what has to be seen is whether this amendment has the effect of upsetting the decrees passed by the courts below before the said amendment came into force. In this connection, it has been contended that this is merely a procedural amendment and therefore must be applied retrospectively and the suit, still not having been finally decided, the amendment has to be applied to the case. In the first place, I am not satisfied that this is merely a procedural amendment. A right to litigate the matter in a court of law is a vested right (1944 Cal. 163 *ibid*). The matter of procedure only regulates the exercise of that right. Making another person a party to the suit is forcing that party, to become a litigant and forcing the Plaintiff to fight against that party. Such an amendment, to my mind, is not merely a procedural amendment. But even assuming that it is so, the only affect is that the amended law becomes immediately applicable to pending litigation also, although the general rule is that an amendment of law during the pendency of a suit will not affect that suit and the suit must continue to be decided according to the old law. But procedural amendments are presumed to be retrospective and consequently unless the context shows a different intention, are applied immediately to pending litigation and in that sense they are said to be retrospective in application. But this does not mean that orders validly passed in that suit according to law in force at the time when they were passed, have necessarily to be set aside after the amendment, because they are inconsistent with the amendment. It only means that the amended procedure will be followed if applicable to the stage which the suit has reached. Otherwise it would imply a fiction of law that an amendment brought into force on a particular date shall be deemed to have been in existence even before that date. That is not the meaning of retrospective application of an amended law. The (legislation sometimes does utilise that fiction also but unless it has been expressly provided that an amendment shall be deemed to have existed in the statute even before the date of amendment, such a fiction cannot be brought into operation merely by the passing of an amending Act which affects only procedural Jaw. In *K. Chunni Lal v. K.N. Srinivasa Rao* AIR 1946 Mad. 262; it was held:

The general principle, I think, is that the statutes and rules are not to be considered retrospectively so as to deprive any person of a vested right.

Reliance was placed on several authorities, Indian and English, discussed therein.

6. Again a Division Bench of the Oudh Chief Court in AIR 1948 36 (Oudh) after a detailed discussion of this question of retrospective application, the learned

Judges laid down four propositions with regard to the applicability of a change in the law of limitation. Only the observations regarding the fourth proposition are relevant for our purposes. The fourth proposition laid down was as follows:

Where a suit is within time according to the old Act but barred by the new Act and the new Act comes into force at once.

In this connection it was held:

In the fourth case the result of applying the new Act would be to destroy the right to sue which was vested in the Plaintiff on the date the new Act came into force. But even an enactment relating to procedure will not operate retrospectively so as to destroy the vested rights whether substantive or remedial.

A Full Bench of the East Punjab High Court had the occasion to consider the question of retrospective application of procedural law and after considering the matter thoroughly, the Full Bench in *Ram Singh v. The Crown* AIR 1950 EP 25 reached the following conclusion:

When it is said that a change in the procedural law has a retrospective operation it only implies that the new rules of procedure coming into existence as a result of the change should be applied even to the pending proceedings. These new rules, however, can be applied only to such pending proceedings as are actually covered by them. They cannot be applied to proceedings for which they do not even purport to provide and to which they are otherwise clearly inapplicable.... The retrospective operation given to a rule of adjective law cannot be taken to destroy the operation of another rule of the same law in relation to proceedings for which the new rule does not provide, which proceedings had been properly and legally initiated in accordance with that other rule and at a time when the said rule was actually in force.

In the present case, the proceedings before the trial court had already come to an end and a decree had been passed. The amendment merely provided for making the State Government a party to suits. The stage of making a party to a suit normally is when the suit is instituted and at that stage the amendment was not in force and all the necessary parties according to law then in force were impleaded. The procedure applicable to suits is essentially different from the procedure applicable to appeals. The stage of suit had come to an end and the amendment which was applicable to the said stage therefore could not be applied after that stage was over and a decree had been passed in favour of the Plaintiff. Moreover, the decree having been passed in favour of the Plaintiff, it could not be set aside merely on the ground that another party was considered a necessary party without going into the facts of the case and coming to a conclusion on merits that the controversy between the existing parties could not be completely decided without impleading a third party. If the decree is to be set aside on this technical ground alone, the result would be highly prejudicial to the Plaintiff. All the time and money spent by him on the litigation from the institution of the suit

upto the time when the amendment came in force would be wasted. Several witnesses who were very material in the case and who had made their statements may not be available when the de novo trial starts and it is not possible to hold that merely on the general principle of retrospective application of an amendment in procedural law, such a result should follow. In this Court also a similar matter came up before a Full Bench in *Shobhnath v. Rambaran and Ors.* 1954 AWR 302. There it was observed:

There can be no doubt that amendment of procedural law takes effect immediately and also retrospectively to the extent that all pending suits would be governed in the matter of procedure by the amending law unless a contrary intention appears from the amending law itself or there is some sort of vested interest acquired by a party under the procedure prescribed by the law as it stood originally which was taken away by the Amending Act.

In that Full Bench case a decree had been passed when the amendment came into force and it was observed that the decree could not be set aside merely on account of the amendment in law. In view of the pronouncement of this Full Bench of our own Court, it is obvious that the decision by a Division Bench in *Jagdish Prasad's* case contrary to it cannot be said to have laid down a correct law. In *Jagdish Pd.'s* case, the question was not considered in detail. It was merely said that the amendment being of a procedural nature, affected all pending suits retrospectively and consequently no interference was called for in writ jurisdiction.

7. Learned Counsel for the Respondents has brought to our notice some cases in support of his contention that where the amendment is retrospective, the decree passed by the courts below would also be set aside. Reliance has been placed in this connection on the case of *Ram Bahadur Singh Vs. Muneshar Chamar*, . In that case in a mortgage suit attestation of the mortgage deed had not been proved according to the then existing Transfer of Property Act. While the case was pending in appeal, the Transfer of Property Act was amended and the definition of "attestation" was altered. Not only was a new definition added but it was expressly provided that this definition shall be deemed to have always existed in law. In those circumstances, it was held that it must be assumed that the new definition was in force even when the suit was originally heard and the proof of attestation being sufficient in view of the new definition, the order of the trial court dismissing the suit was set aside and the suit was decreed as attestation had been properly proved. That therefore was not a case of a mere retrospective application of an Act but a case where a fiction of law had been created. Similarly in the case of *Subodh Gopal Bose Vs. Ajit Kumar Haldar and Others*, the position was that by an amendment of the Act, Section 7(2) provided:

Every decree passed or order made before the date of commencement of this Act for the ejectment of any person from any land in pursuance of Section 37 or 52 of the Act, shall, if the decree or order could not have been validly passed or made had this Act been in operation at the date of the passing or making

thereof, be void.

The amending Act had therefore to be applied to see whether the decree passed by the trial court was validly passed in accordance with the new Act. While considering the effect of the amendment, their Lordships of the Supreme Court observed:

That being so, the question is whether the suit could have been validly instituted had the amending Act been in operation at the date of the institution of the suit.

In those circumstances, it was held that the suit being in consistent with the amendment the decree passed would be set aside in appeal. As stated above, the cases in which fiction of law has expressly been enacted to the effect that the amendment would take effect from a time earlier than it was passed, are different and the considerations applicable to those cases are essentially different from those where merely procedural law has been amended in which case the only effect is that the procedure becomes effective even in pending suits but does not have the effect of invalidating the orders validly passed under the old law before the amendment came into force.

8. I will now consider some other arguments advanced on behalf of the Respondents. It was contended that an appeal is a continuation of the suit and therefore when the legislature has enacted that a party will be joined in a suit it necessarily includes an appeal. As stated above, although an appeal is a continuation of the suit in some respects, but for purposes of adding a party to the original suit, the stage for making such a party having come to an end, the mere fact that the suit is still continuing in appeal does not authorise the setting aside of the decree already passed. The point may be illustrated by another example. After a suit has been decided by the trial court and is pending in appeal, the procedure is altered for presentation of plaints by providing that a suit will be instituted by presenting a plaint to the court concerned personally by the Plaintiff. That being an amendment in procedure, can it have the effect of setting aside all that has taken place in the suit and restarting the suit by a fresh presentation according to the new amendment.

We may take another illustration. If there is an amendment in the procedure prescribed for recording of evidence, which provided that witnesses will be taken up, in a particular order and it will not be, as under the old rules in the choice of the Plaintiff to produce his witnesses in any order he likes, but that evidence having been recorded, judgment having been delivered; by the trial court, when the case is pending in appeal such an amendment" comes into force, can it be said that on account of this amendment all the evidence recorded and judgment delivered by the trial court must be nullified and a fresh trial ordered. I think that this leads to the inevitable answer that this, cannot be the result of such an amendment. After all it is a mere presumption of law that when the procedure is altered it is meant to be applied to all pending litigations. But this principle cannot be carried forward to such an extent as to undo what has already been

done and to prejudice any party which has obtained a decision in its favour.

In *Gardner v. Lucas* 1878 (3) AC 582 relied upon by the learned Counsel for the Respondents it was observed:

Alterations in the form of procedure are always retrospective, unless there is some good reason or otherwise why they should not be.

9. It was suggested that the State of UP was a necessary party to suits u/s 209 because the Government was the proprietor of the land in dispute and it should know who has been held to be a tenant and is therefore liable to pay rent to the Government I am unable to agree. A successful party will have to get his name entered in the revenue records which are in the custody of the Government officials and when the entries are so made, the Government and its officials will certainly come to know who has been held to be a tenant. It was also suggested that the transfer of holdings is prohibited under certain circumstances and in case of an illegal transfer both the transferor and the transferee lose their right. If the Government is made a party, the Government can object to the validity of the transfer so that no decree would be passed in favour of any of the parties. But if an illegal transfer has taken place, any decision, between the transferor and the transferee cannot bind the Government and whosoever may succeed in the litigation, the Government may eject them on the basis of the illegal transfer. It is not, therefore, necessary for the Government to be impleaded in the case itself to raise a controversy extraneous to the suit which the Plaintiff wants to fight against the Defendant.

10. No other point was argued before us. Having considered the matter very carefully, I am of the opinion that the first question must be answered as follows:

There is no effect of the amendment of Section 209 of the UP ZA and LR Act introduced by Act No. XXI of 1962 on pending appeals.

The second question must be answered as follows:

It is not obligatory on the appellate court after the above amendment to direct impleadment of the State Government and set aside a validly obtained decree without going into the merits of the case.

Let the papers be returned to the learned single Judge with the above answers.

Asthana, J.

11. I have the benefit of reading the judgment and opinion delivered by my brother B. Dayal. I agree with the answers given by him to the questions referred. I, however, would like to add that the amendment to Section 209 of the UP ZA and LR Act making it incumbent upon the Plaintiff to implead the State as a necessary party was introduced when the writ petition was pending in the High Court. Board of Revenue and the sub-ordinate revenue courts had no occasion to apply the said amendment but they proceeded on a view of law which prevailed in the Board. The question relating to the effect of the amendment

hardly arose in the petition Under Article 226 of the Constitution. Since our brother S.N. Singh, however, framed the questions and referred them for opinion by a larger bench and the Division Bench has referred those questions to the Full Bench, I do not think I should adopt a different course and I concur with my brother, B. Dayal, in being a party to answer the questions.

Beg, J.

12. I have had the advantage of having read the opinions of my learned brothers, B. Dayal and Asthana, JJ. and I concur with the conclusions reached by them. The observations made by my brother Asthana, J., raise a question which has, strictly speaking, not been referred to us at all. Nevertheless, in so far as the circumstances in which the questions to be answered by us could arise may also be said to be before us, we may examine the manner in which the questions to be answered by us have evidently arisen and been referred to us.

13. Undoubtedly, there was no question of applying the amendment while the suit of the Petitioner, Ram Bux, u/s 209 of the UP ZA and LR Act (hereinafter referred to as the Act) was pending in the court of the Assistant Collector, First class, Turabganj, district Gonda, opposite party No. 3. That suit was decreed on 10-3-1960 in accordance with the law as it then existed. Shyam Prasad, opposite party No. 4, then filed an appeal which was allowed on 31-5 -1961, by the Additional Commissioner, Faizabad opposite party No. 2, on the ground that the Gram Samaj and the State Government should have been impleaded as necessary parties to the suit and the case was remanded for retrial. The Petitioner Ram Bux then filed a second appeal before the Board of Revenue, opposite party No. 1, which was also dismissed before the amendment.

14. The Petitioner thereafter filed the writ petition which came up before our learned brother S.N. Singh for final hearing. It seems that Singh, J. was inclined to allow the writ petition on the ground that the Gram Samaj and the State Government were not necessary parties at all in a suit u/s 209 of the Act before its amendment. Otherwise, the questions we have to answer could not arise. The counsel for the opposite party No. 4 apparently confronted with this situation, raised the question before Singh, J. that, in any case, the amendment of Section 209 of the Act made the State Government a necessary party so that it was obligatory for the Board of Revenue and the Additional Commissioner to implead the State Government under the amended provisions even if it was not a necessary party before the amendment. The result of allowing the writ petition without disposing of this objection would have been to issue a writ which would have become infructuous if the revenue courts had once again, resorting to the amendment, passed a similar order and litigation between the parties would have been prolonged. The well established principle that this Court will not issue writs or orders which may be defeated or become futile may have been transgressed. In any case, the objection that the law had been amended in such a way that it had to be given a retrospective operation having been raised as an obstacle in the way of an order allowing the writ petition, it became necessary

for this Court to decide that objection. A Division Bench decision in Jagdish Pd. v. Board of Revenue (Special Appeal No. 624 of 1964, decided on 6-10-1964) was cited in support of the objection. In this way, a reference for a decision by a larger Bench became, I may point out, very necessary for a satisfactory disposal of the writ petition. The questions framed by Singh, J. were referred by a Division Bench consisting of our learned brothers Broome and Satish Chandra, JJ. for a decision by a larger Bench evidently because this Division Bench did not agree with the view taken by another Division Bench of this Court in Special appeal No. 624 of 1964 Jagdish Prasad v. Board of Revenue and Ors. The Division Bench also obviously took the view that a reference of the questions raised to a larger Bench was necessary.

15. The Division Bench which decided Jagdish Prasad's case (supra) applied the general principle that procedural amendments have a retrospective effect upon pending actions. It passed a short order holding that the Board of Revenue had not acted illegally in taking the view that the amendment of Section 209 of the Act, which we have to consider, made it obligatory to implead the State Government as a party, so that the Board of Revenue was obliged to allow the second appeal before it and remand the case for retrial. The distinction between proceedings pending in the trial court and those pending in the appellate court, which could be made out on the strength of the ratio decidendi of a Full Bench decision of this Court in Sobha Nath v. Ram Baran (supra) does not appear to have been brought to the notice of the Division Bench which decided Jagdish Prasad's case (supra).

It had been held by the Full Bench in Sobha Nath's case (supra):

A decree is a good decree till it is set aside in appeal and in fact no confirmation of a decree in appeal is necessary in order to give validity to it. The question as to what law should be given effect to would arise in an appeal only if the decree was not a good decree or had ceased to be a good decree and the appellate court decides to set aside the decree passed by the trial court, but if it is found that the decree already passed had been passed by a competent court and would also be a good decree on the merits under the law as it stood on the date when the appeal came up for hearing, such a decree would not be affected by any amendment of the procedural law made subsequent to the passing of the decree.

It was also observed there:

In the present case a decree had already been passed in favour of the Plaintiff by a competent Court and so long as the decree stood as a good decree on merits, the decree holder had a subsisting right to execute the decree and to this extent he had also acquired a vested interest.

16. It is true that the above mentioned Full Bench case was one in which the forum for the hearing of the suit itself had been altered. One forum for the trial of the suit was removed and had been substituted by another forum. The amendment had been effected by a repeal and substitution of a new provision in

the place of the old and repealed provision. In the case before us, the amendment we have to consider introduces an additional requirement which the Plaintiff's suit u/s 209 of the Act has to pass before it could be decreed. Nevertheless, I think that the ratio decidendi of the Full Bench decision is available for application in the present case. A procedural amendment adding a condition to the success of suit could not have a more drastic effect upon the decree already passed validly than a repeal which deprived the court, which had passed a decree, of power to pass such a decree. It may be mentioned that Section 6 of the UP General Clauses Act provides that a repeal will neither affect "anything duly done" nor "affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed." Could an amendment of the procedural law regulating the trial of a suit have a greater effect if it takes place without a repeal? I think not. If such a procedural amendment as the one we have before us could not affect the validity of decrees already passed in accordance with the procedure applicable at the trial stage, the general principle that the amendment of a procedural law should be given a retrospective operation must be subject to the exception that a right under a decree obtained, as a result of the operations of the procedural machinery, will not be disturbed unless the amendment specifically or necessarily requires that this should be done. A right acquired under a decree passed, which was in accordance with the law existing at the time of the passing of the decree, is certainly analogous to a vested right. The right subsists so long as it is not taken away by the decree of a superior court passed in substitution of the decree of the trial court. 17. When the intention of the legislature is that the decrees already passed should be re-opened by reason of a procedural amendment, the legislature should and it invariably does, either expressly or by a necessary implication of the words used, provide that. It is of course a matter of interpretation of a legislative provision whether an amendment is intended to operate prospectively or so retrospectively as to reopen the validity of acts already performed. In construing procedural amendments, the general principle applied is laid down as follows in Sutherland's "Statutory Construction" 1943 edition, volume I, page 436:

However, as in the case of original acts, in the absence of a saving clause or statute or some other clear indication that legislative intent is to the contrary, provisions added by the amendment that affect procedural rights--legal remedies--are construed to apply to all cases pending at the time of its enactment and all those commenced subsequent thereto, whether the substantive rights sought to be enforced thereby accrued prior or subsequent to the amendment, unless a vested right would thereby be impaired. But the new provisions will not affect a proceeding entirely closed before the amendment became effective.

18. It is contended, in answer to this line of reasoning, that the proceeding was not entirely closed inasmuch as the appeal continues a suit. No doubt it has been held repeatedly that an appeal is a "continuation" of the suit. It was recently held

by the Supreme Court in Subodh Gopal Bose Vs. Ajit Kumar Haldar and Others, that "a pending appeal is a continuation of the suit out of which it arises" and that the suit may be said to be "pending" in appeal. Again, it was held in Shyam Sunder Lal v. Shagun Chandra 1963 AWR 121 FB that an appeal is a continuation of the suit so that the word "suit" as used in Section 15 of the UP (Temporary) Control of Rent and Eviction Act, III of 1947, included an appeal. In each of the two cases cited above it was held, on a consideration of the language of the statute, that the intention of the legislature was to retrospectively affect rights acquired under decrees already passed before the amendment.

19. The true meaning and effect of a legislative provision, introduced as an amendment of the existing law, often cannot be fully understood without examining its legislative antecedents and the circumstances in which the amendment was made. In order to comprehend the object of a statutory provision properly, so as to determine its legislative intent satisfactorily, we are "entitled and in many cases bound, to look at the law at the date of the passing of the Act", not only the common law but the law as it then stood under previous statutes" (per Fletcher Moulton, L.J. in *McMillan v. Dent* (1907) 1 Ch. 107 at p. 120. This seems to be necessary for applying the celebrated *Mischief Rule*, contained in *Hcydon's* case, so as to discover "the true reason of the remedy" which was designed to overcome some shortcoming of the law. We may, therefore, glance at the relevant statutory provisions which existed before the amendment.

20. Section 209 of the Act, intended for ejectment of persons unlawfully occupying land, may be compared with the corresponding provision found in Section 180 of the UP Tenancy Act, 1939, while Section 229-B of the Act, meant for suits for declaration of rights, may be compared with the corresponding provisions of Section 59 of the UP Tenancy Act, 1939. It will be notice that, while in suits for declaration of rights u/s 59 of the UP Tenancy Act, 1939, the "landholder" and u/s 229B of the Act, the State Government and the Gaon Sabha, were considered as necessary parties, neither the "landholder" in suits u/s 180 of the UP Tenancy Act, 1939, was considered a necessary party nor was the State Government a necessary party in suits u/s 209 of the Act before the amendment was made. The reason for this distinction seems clear. Suits for declaration of rights, either u/s 59, UP Tenancy Act, 1939, or u/s 229B of the Act, necessarily mean that relief is claimed against those who can lawfully confer rights to occupy or to hold land. But, such a declaration of rights does not become automatically necessary in suits under either Section 180 of the UP Tenancy Act, 1939, or, after the abolition of zamindari, in suits under the corresponding provisions of Section 209 of the Act. The rights of the Plaintiffs of particular suits u/s 180 of the UP Tenancy Act 1939, or, under the corresponding Section 209 of the Act, may be so well established that they do not need any declaratory reliefs. What is the object of compelling such Plaintiffs to seek unnecessary declarations or reliefs or to implead a party not needed by the Plaintiffs for obtaining reliefs claimed? Would such compulsion, in every case u/s 209 of the Act, without regard for the

particular facts of the case or the needs of the Plaintiff, not make litigation more cumbersome and expensive? We are not concerned here with questioning the policy or wisdom of the amendment. We may, however, take such questions into consideration in trying to find out the legislative purpose or intent so as to determine the ambit of the amendment properly. I think we can also consider such matters in deciding whether a liberal or strict interpretation should be given to an amendment capable of more than one construction.

21. The amendment does not, in my opinion, constitute a declaration of the pre-existing position under the law, making the State Government a necessary party in all suits for ejectment of persons occupying land contrary to law. The amendment was not designed to protect the rights of the Plaintiffs or the Defendants who may be necessary parties to suits u/s 209 of the Act according to basic principles of the law of pleadings. Their rights and interests were already well protected under the law as it stood before the amendment. The amendment does not also amplify powers of the court to do justice between the contending parties by adding to the armoury of reliefs obtainable under the law. In cases where new procedural powers are conferred in the interest of better administration of justice the amendments have been given retrospective effect so as to enable both the trial and the appellate courts to use them on the ground that no litigant has vested rights in matters of procedure.

22. What then is the apparent object of the amendment? The amendment which we have to consider seems only intended to enable the State Government to get notice to the claims of the parties in suits u/s 209 of the Act, so that, if necessary, it may adopt an appropriate stand with regard to the claims. If this is the object of the amendment, as it appears to be, the question of notice of the proceedings and a correct stand with regard to the claims of the parties would appropriately arise at the institution of the suit or while the suit is still in the trial court. If the amendment was meant to go further, so that the State Government had to be notified of the claims of the parties even when the suit had passed the trial court and reached the appellate stage, a few words, such as "whether the suit is in the trial or in the appellate court," could easily have and would have been added so that the matter was not left in any doubt whatsoever.

23. The amendment of 1962, whatever may be the reason for making it, reads as follows:

209(2). To every suit relating to land referred to in Clause (a) of Sub-section (1) the State Government shall be impleaded as a necessary party.

The result of the amendment is that what was a properly instituted suit would become defective unless the State Government is impleaded. The amendment only adds a condition or fetter upon the rights of Plaintiffs to obtain decrees. We are entitled, I think, in the light of the observations already made above, to interpret such a fetter strictly and restrictively so as to exclude from its purview, if this is reasonably possible, proceedings which have passed the stage when

they could be so fettered.

24. Although an appeal may be a continuation of the suit, it cannot be said that it is equivalent of an institution of the suit so that all proceedings in the suit gone through already in the trial court must be repeated in the appellate court. The suit proceeds from stage to stage. If it has passed all the stages of the trial court so as to result in a valid decree, the suit, in the appellate stage, is not governed by the same procedure which regulates the suit at the trial stage. Even similar steps at the two stages can only be taken under conditions and circumstances which are different. For example, a party has a right to lead evidence at the trial stage provided the evidence is relevant and admissible. But, at the appellate stage, there is only a right to lead further evidence provided special circumstances, bringing the case within the scope of Order 41, Rule 27, Code of Civil Procedure, are proved. It may be pointed out that Section 107, Code of Civil Procedure, does not confer powers and duties upon the appellate courts which are identical with those of trial courts. The appellate court has to perform "as nearly as may be the same duties" and not "the same duties" as are conferred by the CPC upon the courts of original jurisdiction. If the trial court could not possibly have performed a duty because it was imposed later by an amending Act no question of automatic performance of that duty by the appellate court arises unless the amending Act expressly or by necessary implication provides that the appellate court should do so. It may also be mentioned that Section 99, Code of Civil Procedure, prohibits setting aside of decrees of trial courts for errors, defects and irregularities which do not affect the merits of the case or the jurisdiction of the trial court. Thus, there are specific provisions regulating the respective powers and duties of trial courts and appellate courts. These powers and duties are not identical but distinct and different in a number of respects.

25. If an amendment of law, merely making it obligatory to implead a party not necessary to implead for giving relief to the Plaintiff, could not affect the validity of decrees already passed, it would not be obligatory upon an appellate court to implead what may be spoken of as the "statutory" necessary party unless the decree in the suit under appeal was itself passed after the amendment, or, unless the amendment itself gave an indication that it must be so applied to suits pending in appeal also. I find no such indication in the language of Section 209(2) of the Act. The language used here is, at least, reasonably capable of being restricted in its application upto the stage when a suit is pending in the trial court. If two interpretations of a provision are possible, we have to resort to canons or principles of construction, which may conflict, before making the choice.

26. The ordinary and basic presumption that statutory provisions operate only prospectively is displaced, in the case of procedural amendments, by the presumption that such amendments operate retrospectively because nobody has a "vested" right in procedure which only determines the manner in which courts dispense justice in enforcing substantive rights. When, however, the ground upon

which the presumption of retrospectivity of procedural amendments rests is itself seriously disturbed, the presumption would no longer be available. In Maxwell's "Interpretation of Statutes" (XI edition page 219) it is observed "But a new procedure would presumably be inapplicable where its application would prejudice rights established under the old relying on Ex-parte Phoenix Bessemer Co. (1876) 45 L.J. Ch. 11 or would involve a breach of faith between the parties."

27. In the present case, there is another presumption emerging from a consideration of consequences of giving the amendment such a retrospective effect as to invalidate decrees already passed under the unamended law. Such an effect would entail so much unnecessary loss of time and money of parties, who had already litigated under the old procedure, as well as waste of time and energies devoted by officers of court set up at public expense, that it could be presumed that such a consequence could not be intended by the legislature without using language which would compel us to reach such a conclusion. The choice of one of two possible interpretations of a statutory provision by a consideration of the consequences of each interpretation is a well recognised mode of construction. In Maxwell's "Interpretation of Statutes" (XI edition, at page 78) the broad proposition, followed by a discussion of it, is thus stated:

Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to consider the effects or consequences which would result from it, for they often point out the real meaning of the words. There are certain objects which the legislature is presumed not to intend and a construction which would lead to any of them is therefore to be avoided.

28. I, therefore, respectfully concur with the answers given by my learned brothers to the questions before us.

29. The answers to the two questions referred to this Full Bench are as follows:

(1) The amendment of Section 209 of the UP ZA and LR Act introduced by Act No. XXI of 1962 has no effect on pending appeals.

(2) It is not obligatory on the appellate court after the above amendment to directly implead the State Government and set aside a validly obtained decree without going into the merits of the case.

30. Let the papers be returned to the Learned Single Judge with the above answers.