

(1958) 04 PAT CK 0002

In the Patna High Court

Case No : Letters Patent Appeal No. 3 of 1958

Ramji Singh

APPELLANT

Vs

Musammat Chhulghhana Kuer and Others

RESPONDENT

Date of Decision : 03-04-1958

Acts Referred:

Government of India Act, 1915 — Section 107, 108
Patna High Court Rules, 1916 — Rule 2

Citation : AIR 1958 Patna 655 : (1958) 6 BLJR 362

Hon'ble Judges : V. Ramaswami, C.J;R.K. Choudhary, J;B.P. Jamuar, J

Bench : Full Bench

Advocate : Kailash Rai and B.K. Sharma, for the Appellant; Govt. Advocate and Raghunath Jha, for the Respondent

Judgement

1. This is a memorandum of appeal presented by the respondent in First Appeal No. 134 of 1949 against the judgment of a learned single Judge of this Court dated 11-12-1957. By that judgment the learned Single Judge allowed the appeal preferred by the appellants and sent back the case to the court below for grant of letters of administration to the appellants on the usual terms. The argument of learned Counsel is that under Clause 10 of the Letters Patent of the Patna High Court his client has got a right in law to file an appeal against the judgment of a learned Single Judge and that no leave of the learned Single Judge is necessary for the filing of the appeal. The opposite view-point was presented on behalf of the respondents by Mr. Raghunath Jha, who submitted that there is no right of appeal under Clause 10 of the Letters Patent from the judgment of a learned Single Judge in this case; and in view of the fact that the learned Single Judge has refused leave to the appellant it is not competent for the appellant to file a Letters Patent appeal.

2. The question at issue turns upon the proper construction of Clause 10 of the Letters Patent of the Patna High Court, which is in the following terms:

"10. And we do further ordain that an appeal-shall lie to the said High . Court of

Judicature at Patna from the judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine, in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or successors in our or their Privy Council, as hereinafter provided."

3. It is also necessary in this connection to refer to Section 108 of the Government of India Act, 1915, which states as follows:

"108. (1) Each High Court may by its own rules provide as it thinks fit for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the High Court, of the original and appellate jurisdiction vested in the court.

(2) The Chief Justice of each High Court shall determine what judge in each case is to sit alone, and what judges of the Court, whether with or without Chief Justice, are to constitute the several division courts".

4. The provisions of Section 108 of the Government of India Act, 1915 are reproduced in Section 223 of the Government of India Act, 1935 and now in Article 225 of the Constitution, which states as follows:

"225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.

Provided that any restriction to which the exercise of original jurisdiction by any of the High Court with respect to any matter concerning the revenue or concerning any act Ordered or done in the collection thereof was subject

immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

5. In our opinion, the language of Clause 10 of the Letters Patent of this High Court makes it clear that there is a right of appeal from the Judgment of one Judge of the High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and the only exceptions are judgments passed in exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the High Court and also orders made by the High Court in exercise of the revisional jurisdiction or sentence or orders passed by a Single Judge u/s 107 of the Government of India Act or in the exercise of criminal jurisdiction. Apart from these exceptions, which are expressly mentioned in Clause 10, we are of opinion that there is a right of appeal from the judgment of a Single judge of the High Court to a Letters Patent Bench in other cases. If that is the correct interpretation to be placed on Clause 10 of the Letters Patent, it follows that in the case of a First Appeal decided by a Single Judge of this Court there is a right of appeal to the High Court under Clause 10 of the Letters Patent. This appeal lies as a matter of right and no leave of the learned Single Judge who decided the First Appeal is necessary for presenting such an appeal. The view that we have expressed on the interpretation of Clause 10 of the Letters Patent is supported by a Full Bench decision of the Nagpur High Court in AIR 1940 39 (Nagpur) and also by a judgment of the Allahabad High Court in L. Ram Sarup Vs. Mt. Kaniz Ummehani, .

6. But this does not mean that all appeals filed from the judgment of a Single Judge deciding a First Appeal will be automatically admitted. The relevant rule in this connection is Rule 2 of Chap. VII at p. 31 of the Patna High Court Rules, which is to the following effect:

"2 (1) Every appeal to the High Court under Clause 10 of the Letters Patent from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of criminal jurisdiction) of one Judge of the High Court or one Judge of any Division Court, pursuant to Article 225 of the Constitution, shall be presented to the Registrar within 30 days from the date of the judgment appealed from, unless a Bench in its discretion, on good cause shown shall grant further time. The Registrar shall endorse on the memorandum the date of presentation and after satisfying himself that the appeal is in order and is within time shall cause it to be laid before a Bench for orders at an early date. It need not be accompanied by a copy of the judgment appealed against, but, if it is admitted, the appellant shall within 10 days from the admission of the appeal file a typed copy of the judgment for the use of the Court.

x x x xxx 7. This rule provides that every appeal to the High Court under Clause 10 of the Letters Patent shall be presented to the Registrar within thirty days from the date of the judgment appealed from unless the court in its discretion, on good cause shown, shall grant further time. The Registrar shall then endorse on the memorandum the date of presentation and after satisfying himself that the appeal is in order and is within time shall cause it to be laid before the Bench for orders at an early date. If and when the appeal is admitted the appellant is required under this rule to file a typed copy of the judgment appealed from, for the use of the Court. In the present case, therefore, the procedure prescribed by rule 2 of Chapter VII should be complied with; and after the Registrar is satisfied that the appeal is in order and is within time shall cause it to be laid before the Bench for orders as regards admission at an early date.