(1948) 01 PAT CK 0019

In the Patna High Court

Sm. Sati Bala Dasi APPELLANT

Vs

Chota Nagpur Banking Association Ltd. and Another RESPONDENT

Date of Decision : 26-01-1948

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 109

Citation : AIR 1949 Patna 448

Judgement

1. This is an application foe leave to appeal to His Majesty in Council from an appellate decision of this Court in a mortgage suit. The applicant is the mortgagor defendant. The application being for leave to appeal against an appellate order of this Court is governed by Clause (a) of Section 109, Civil P.C. It is, therefore, necessary for the applicant to show that the value of the subject-matter of the suit in the Court of first instance is Rs. 10,000 or more, and that the amount or value of the subject-matter in dispute in appeal is the same sum or upwards. So far as the amount in dispute in the appeal is concerned, it is more than RS. 10,000 as it includes post-litem interest. At the date when the suit was instituted in February 1942, the amount was less than Rs. 10,000. The defendant took an objection that the plaint had not been signed by a person authorised to sign it, the facts being that it had been signed by the Manager of the plaintiff-Bank and verified by him. On this objection the plaintiff, without conceding that the manager had no authority to sign or verify the plaint, offered to have it signed by the managing director, and this was done in July 1944. It is now contended that, if the interest between February 1942 and July 1944, be added to the amount claimed in the suit, the amount in dispute in the suit would be more than Rs. 10,000, and it has been argued by Mr. Chaudhury that the date on which the plaint was signed and verified by the managing director should be taken as the date on which the suit was instituted. Whether the manager of the bank, who originally signed the plaint and verified it, was a person authorised to do so is a question of fact which has not been tried because the defendant did not press the issue which had been framed with regard to that question after the managing director had offered to fix his signature to the plaint in verification and

had done so, and it is not now open to the defendant to raise a question of fact, namely, whether the Manager of the bank was a person authorised to sign and verify the plaint on behalf of the Bank.

2. It is then contended that the decree of this Court involves directly or indirectly some claim or question to or respecting property of the value of Rs. 10,000 or more. This contention is based on the assumption that the value of the mortgaged property is more than Rs. 10,000. In support of this contention reliance was placed on a decision of the Allahabad High Court in Nadir Husain and Others Vs. Municipal Board and Another . The material facts of that case were that the claim was for recovery of Rs. 17,000 secured by a mortgage against defendant 1 with a prayer that defendants 2 to 4 were liable to pay Rs. 7,625 under a hypothecation bond. The application for leave to appeal to the Privy Council was presented only by defendants 2 to 4, in whose case the only amount in dispute was Rs. 7,265. As the decree directed the sale of property of a greater value than Rs. 10,000 it was held that the conditions required by the second clause of Section 110 were satisfied. With very great respect, I am unable to agree with the reasoning in that case. In a mortgage suit the property which is given as security for the loan is not the property in dispute in the suit, nor is a decision that the mortgagee is entitled to recover the money which he advanced one involving either a claim to or question respecting the security. The only property in dispute in a mortgage suit is the loan advanced by the mortgagor to the mortgagee. The mere fact that, if this loan is not repaid in the time fixed by the decree, the mortgaged property will be sold does not, in my opinion, raise any question affecting the security. It was next contended that, as the decretal dues exceed Rs. 10,000, this should be taken as the value of the property in dispute for the purpose of the second paragraph of Section 110. If this were the proper construction of the section, the fixed requirement of para. 1 would be rendered nugatory. I am fortified in this view by the decision of the Madras High Court in Subramania Ayyar v. Sellammal AIR 1916 Mad 985. That was a suit for the recovery of a part of a house and for mesne profits. The plaintiff was in possession of part of the house, and that portion was not included in the suit. In any event, the value of the whole house was less than Rs. 10,000. The defendant was the applicant for leave to appeal to His Majesty in Council. Two points were taken, first, that the value of the subject-matter of the suit in the Court of first instance should be taken to be above Rs. 10,000, in view of the mesne profits which accrued after the institution of the suit, and, secondly, whether the subject-matter of the suit in the Court of first instance was above Rs. 10,000 or not, the final decree of the High Court involved a claim to a property over Rs. 10,000 in value, that is to say, that the value of the property claimed plus the mesne profits that subsequently accrued brought the value in dispute in the appeal to the Privy Council to more than Rs. 10,000. With regard to the second point, Ayyangar J., observed:

The petitioner contends that, inasmuch as the decree of his Court directs him to surrender possession of the house and to pay mesne profits, the decree necessarily involved a claim to property of over the appealable value. This construction renders the whole of Clause 1 nugatory. In this case we have to take both the clauses together so as to give meaning to both. In my judgment Clause 1 applies to cafes where the decree awards a particular sum, or property of a particular value or refuses that relief, (i.e.) to cases where the object (sic) matter in dispute is of a particular value.... If the operation of the decision is confined only to the particular object (sic) matter, Clause (2) does not apply, and unless the case satisfies the conditions in Clause (1) there is no right of appeal.

The learned Chief Justice observed:

I think that in the section as it now stands the words ''involve directly'' cannot be read as including cases which involve nothing but the actual subject-matter id dispute in the appeal. Cases which involve nothing else are in my opinon governed exclusively by Para. 1.

As I have already stated, in my view, a mortgage suit is concerned exclusively with the amount due on the mortgage to the mortgagee, and unless the amount exceeds Rs. 10,000, it does not satisfy the requirements of Para, 1 of Section 110 that the subject-matter of the suit must be above that sum. I would, therefore, reject this application for leave to appeal with costs; hearing fee, three gold mohurs.

