

(1877) 09 CAL CK 0003
In the Calcutta High Court

Surdharee Loll

APPELLANT

Vs

Mansoor Ally Khan and Others

RESPONDENT

Date of Decision : 11-09-1877

Acts Referred:

Citation : (1878) ILR (Cal) 298

Hon'ble Judges : White, J; Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—This is an appeal from the judgment and decree of Mr. C.T. Manson, Deputy Collector, also called Extra Assistant Commissioner, of Rajmehal, which is admittedly and entirely within the Sonthal Pergannas. The appeal is valued at Rs. 5,922.

2. By Act XXXVII of 1855 of the Governor-General in Council, the Sonthal Pergannas were removed from the operation of the general laws and regulations of the Bengal Code, except so far as was thereafter provided.

3. By Section 2 of that Act¹ I the administration of civil justice was vested in officers to be appointed by the Lieutenant-Governor of Bengal. There was a proviso that all suits beyond the value of Rs. 1,000 were to be tried and determined, according to the general laws and regulations, in the same manner as if that Act had not been passed.

4. The 4th section 2 declared that all decisions in civil suits passed by such officers to the extent of the powers conferred on them were final, and it was made lawful for the Lieutenant-Governor to direct that an appeal shall lie in any class of civil suits or criminal trials from any officer appointed under the Act to any other officer appointed under the same. There was separate provision made for appeals being allowed in like manner by the direction of the Lieutenant-Governor between the officers of those pergannas inter se, and authority was also reserved to direct that any class of criminal trials should be referred for sanction to the Sudder Court. The effect of these sections, it seems to me, was

absolutely to take away the right of appeal under the general law in all civil suits tried and determined in the Sonthal Pergannas, save only in such cases as might be provided for by order of the Lieutenant-Governor of Bengal; and it does not seem to be the case that the Lieutenant-Governor, by his order, did make any case tried in the Sonthal Pergannas appealable to the Sudder Court. That was the state of the law down to 1874, when, on the 8th December 1874, Act XIV and Act XV were passed, the one called " the Scheduled Districts Act," and the other "the Laws" Local Extent Act." By the former of these Acts, the Sonthal Pergannas find their place among the Scheduled Districts of Bengal, and Act XXXVII of 1855 was repealed. By the second of these Acts, Section 3, the Acts mentioned in the first schedule, one of which is the Code of Civil Procedure, Act VIII of 1859, were declared to be in force throughout the whole of British India except the Scheduled Districts, and it is only by the provisions of the CPC that, generally speaking, the right of appeal arises in civil suits and proceedings. That being the general state of the law, it would lie upon the appellant to show that, according to Section 8, Clause (c), of the Laws" Local Extent Act, that any Act or Regulation allowing general right of appeal had been previously extended, or had been declared to be in force, in any of the Scheduled Districts. That I think is not very likely, considering that the very essence of Act XXXVII of 1855 was to take away such appeals, and consequently it would be for the appellant to show that, by any other Regulation made before or since the passing of Act XV of 1874, an appeal to the High Court had been specially allowed. Nothing of the kind has been brought to our notice. It appears to me, therefore, that, so far as our present information extends, we have no jurisdiction to entertain an appeal, and that the appeal must be disallowed. Considering first our warrant of jurisdiction, and in the next place that the objection which has been taken was suggested by the Court, we think the dismissal of the appeal should carry no costs.

White, J.

5. It appears to me that we have no jurisdiction in this case. Under Act XV of 1874, the Sonthal Pergannas is one of the Scheduled Districts to which Act VIII of 1859, viz., the Civil Procedure Code, does not extend. Looking to the exceptions mentioned in Section 8 of Act XV of 1874, it is possible that, notwithstanding this, Act VIII of 1859 may, prior to Act XV of 1874 coming into force, or subsequent thereto, have been extended to, or declared to be in force in, the Sonthal Pergunnahs by the Governor-General in Council or the Local Government. But it is for the appellant to satisfy the Court on these points, which he has not done. Prima facie, therefore, the jurisdiction of this Court is taken away, and the appellant not having shown that Act VIII of 1859 was, before or after 1874, extended to the Sonthal Pergunnahs, we must hold that we have no jurisdiction.

1. [Section 2: The administration of Civil and Criminal justice, and the collection of the Revenue, not being permanently-settled Land Administration of justice and Revenue, within the said Districts, are hereby of Revenue vested in such

officers. vested in the officer or officers to be so appointed. Provided that all Civil suits, in which the matter in dispute shall exceed the Proviso as to suits exceeding value of one Thousand Rupees shall be tried the value of Rs, 1,000. and determined according to the general laws and Regulations, in the same manner as if this Act had not been passed. Provided Collection of permanently-also, that all permanently-settled Land settled Land Revenue. Revenue shall be collected and paid at the same places and in the same manner as if this Act had not been passed.] 2. Section 4, Clause 1: All decisions in Civil suits and sentences in Criminal cases, which shall be passed by such officer or officers, to the extent of the Decisions to be final. power which may be from time to time conferred upon them respectively by the Lieutenant-Governor of Bengal, according to the provisions of this Act, shall be final. Provided that no sentence of death, passed by any such officer, shall be carried into effect until it shall have been Proviso. confirmed by the Sudder Court, and provided also that it shall be lawful for the said Lieutenant-Governor to direct that an appeal shall lie in any class of Civil suits or Criminal trials from any officer appointed under this Act, to any other officer appointed under the same, and also to direct the officer or officers appointed under this Act, to refer to the Sudder Court for sentence any class of Criminal trials. Clause 2: Upon the receipt of any Criminal trial, referred to the Sudder Court under Clause 1 of this section, the said Court shall, without submit- Procedures on references ting the proceedings for the futwa of their Law Officer, proceed to the Sudder Court. to pass final judgment, or such other order as may seem to the Court requisite and proper, in the same manner as if the trial had been referred in ordinary course by a Sessions Judge; and in any case in which sentence of death passed by an officer under this Act shall be transmitted to the Sudder Court for confirmation, the said Court may either confirm the same, or pass such other judgment warranted by law as may appear to the said Court to be just and proper.] 3. [Section 8: Nothing herein contained shall- (a) bar the power of the Governor-General in Council or the Savings. Local Government, under any law for the time being in force, to extend to any place any Act mentioned in the said first schedule; (b) extend any Act empowering the Local Government to extend the same or any part thereof, or affect in any manner the exercise of such power; (c) affect the operation of any Act or Regulation heretofore extended to or declared to be in force in any of the Scheduled Districts; (d) revive any enactment which has been repealed either generally or with reference to some special subject; (e) repealed by Act 8 of 1887 (f) repealed by Act 12 of 1891 (g) extend Act No. IX of 1861, to any part of the territories subject to the Government of the Governor of Bombay in Council; (h) repealed by Act 8 of 1887 (i) extend to the villages mentioned in the schedule to Act No. IV of 1868 any law not now in force therein; (j) extend to any of the towns of Calcutta, Madras and Bombay, any law not now in force therein; (k) affect the operation of any enactment not mentioned in any of the schedules hereto annexed.]