

(1956) 02 AHC CK 0034

In the Allahabad High Court

Case No : Supreme Court Appeal No. 25 of 1954

Tajammul Husain

APPELLANT

Vs

Mst. Qaisar Jahan Begam and Others

RESPONDENT

Date of Decision : 21-02-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Constitution of India, 1950 — Article 133, 135

Citation : AIR 1956 All 638

Hon'ble Judges : Randhir Singh, J; Kidwai, J

Bench : Division Bench

Advocate : Mohd. Ayub and Suresh Chandra, for the Appellant; Naziruddin, for Nos. 2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Randhir Singh, J.—This is an application under Article 133, Constitution of India for leave to appeal to the Supreme Court against the judgment and decree of this Court, dated 5-5-1954.

2. The application has been opposed on the ground that the value of the subject matter in appeal in this Court as also in the proposed appeal was less than Rs. 20,000/-. The suit which has given rise to the appeal in this Court was a suit for accounting and was decided by the trial court on the 1st March, 1946. The court granted a decree for Rs. 13,888/5/9. The plaintiff then came up in appeal to this Court and the appeal was valued at Rs. 19,431/0/5.

This appeal was partly allowed and the sum decreed by the lower court was enhanced by a sum of Rs. 109/9/9. There was also a cross-objection and this was valued at Rs. 6,000/-. The cross-objection was also partly allowed to the extent of Rs. 655/-. The plaintiff now wishes to go in appeal to the Supreme Court as the decree passed by the trial Court was varied in appeal.

An appeal could be instituted in the Supreme Court only if the value of the

subject matter in appeal was Rs. 20,000/- or above. The value of the subject matter in appeal in this Court was Rs. 19,431/0/5 and the cross-objection was allowed to the extent of Rs. 655/-. If these two sums are added the total amount will come to Rs. 20,086/0/5.

A sum of Rs. 109/9/9 was decreed in favour of the plaintiff in addition to the sum decreed by the trial court. This sum will have therefore, to be deducted from the total amount of Rs. 20,086/0/5 and the value of the subject matter which is now left in appeal is therefore Rs. 19,976/6/8. This is less than Rs. 20,000/- and as such the appellant has no right of appeal to the Supreme Court.

3. Another point which has been pressed on behalf of the appellant is that a right of appeal was a vested right and as this right of appeal vested in him on the date when the suit was instituted in 1940 he has a right to exercise, that right even now, irrespective of the provision of the amending Acts passed thereafter.

No doubt, before the Constitution came into force and CPC was amended, the lower limit of the valuation of the subject matter of the appeal to the Privy Council was Rs. 10,000/- only. It is therefore contended that as the value of the subject matter in the proposed appeal as also in the appeal in this Court was more than Rs. 10,000/- an appeal to the Supreme Court was competent.

This point was raised and has been dealt with exhaustively in a Full Bench decision of the Madras High Court in Gundapuneedi Veeranna and Others Vs. Gundapuneedi China Venkanna and Others, . It was held in this case, that as the court of appeal, viz., the Federal Court had been abolished and the Privy Council had ceased to be a forum of appeal no right of appeal existed on the date when these Courts were abolished.

In the present case no appeal was pending in the Privy Council or in the Federal Court and as such none could be transferred to the Supreme Court. As no provision was made in the Constitution for cases in which a right of appeal would be deemed to have vested but in which no appeal had actually been filed before the abolition of the Federal Court a right of appeal in such cases would be deemed to have been negated.

It is not necessary to reiterate the observations made in the Full Bench case of the Madras High Court with which we entirely agree, and we are of the opinion that as the value of the subject matter of the appeal in this case is below Rs. 20,000/-no appeal lies as of right to the Supreme Court. There is thus no force in the contention raised by the learned counsel for the appellant.

4. The application for leave to appeal to the Supreme Court is therefore dismissed with costs to the opposite parties.

5. Since the application for leave to appeal has been dismissed Civil Miscellaneous Application No. 1064 of 1955 is also dismissed.