

MANU/BH/0229/1933

Equivalent Citation: AIR1933Pat703, 146Ind. Cas.744

**IN THE HIGH COURT OF PATNA
SPECIAL BENCH**

Decided On: 11.10.1933

Appellants:**Sabitri Thakurain**
Vs.

Respondent:**Suraj Mohan Thakur and Ors.**

Hon'ble Judges/Coram:

Courtney Terrell, C.J., Saunders and Mohamad Noor, JJ.

JUDGMENT

Courtney Terrell, C.J.

1. This is an application for leave to appeal be His Majesty in Council in a case which occupied an unusual period of time in this Court. The subject matter of the appeal was a decision of the lower Court that a compromise between the appellant and the respondent should be recorded. The decision involved a sum exceeding Rs. 10,000. The first point for consideration is as to whether or not the judgment of this Court was one of affirmance. Sir Sultan Ahmad in support of this application contends that it is not a judgment of affirmance within the meaning of Section 110, Civil P.C. The decree of the lower Court was that the compromise had in fact been effected, that it was of a legal character and that there was no legal objections to its being recorded. This Court arrived at the same conclusions.

2. The Subordinate Judge in the course of his judgment expressed his opinion upon a term of the compromise by which the appellant abandoned a claim by her to a shebaitship and certain debuttar property and said that the compromise did not affect such debuttar property. Against this expression of opinion the respondents filed a cross-objection. The learned Judges of this Court held that the expression of such opinion might prejudice the claims of the parties to such debuttar property. They disagreed with the opinion of the Subordinate Judge thereon and said that in their view the whole estate including the debuttar property was affected by the compromise. They allowed the cross-objection and set aside the observations of the Subordinate Judge on this point, but they affirmed the decree that the compromise be recorded.

3. Now an appeal lies from the decree and not from the judgment which is only the expression of the reason of the Court for making that decree. It is open to an appellate Court to affirm a decree on its own reasoning and in disagreement with the reasoning of the trial Court. In my opinion the so called cross-objection by the respondent was unnecessary and was not in the nature of a cross-appeal. I venture to cite an illustration from my own experience in England though the reports are not available in India. In *British United Shoe Machinery Co. v. Simon Collier Ltd.*, which is found in the English Reports of Patent Cases the plaintiffs sued for damages and an injunction to restrain infringement of their Letters Patent. The trial Court held that the patent was invalid, but that if it had not been invalid the defendants' machine would have infringed, and therefore dismissed the suit.

4. In the Court of appeal it was held that the patent was valid, but that it had not been infringed; the suit failed and the appeal was dismissed. The House of Lords agreed with the Court of appeal that the patent had not been infringed and declined to enter into the question of the validity of the patent notwithstanding the representation of the appellants counsel that the judgment of the trial Court would prejudice any further attempt to sue upon the patent. Their Lordships said that they were concerned with the question whether the order dismissing the suit should or should not be affirmed and that the reasons in the judgment were not part of the order. They therefore dismissed the appeal.

5. In the case before us the order of the lower Court directing that the compromise be recorded has not been varied. Sir Sultan Ahmad further urged that the decree of the lower Court had been varied in the matter of costs. The lower Court had allowed costs whereas the Judges of this Court directed that the appellant should pay costs. Costs are a matter of discretion and a variation in this matter alone does not affect the question of whether the judgment of this Court is or is not one of affirmance: see *Doorga Doss v. Ramanaut Chowdry* (1859) 8 MIA 262 and *Chaitanya Charan Set v. Md. Yusuf* AIR 1922 Cal 316.

6. It is now incumbent upon us to see whether the application can be justified on the ground that a substantial question of law is involved. It is not disputed that the main issues were issues of fact pure and simple, namely, whether or not a suit had been compromised and having regard to the fact that the appellant was a purdanashin lady, whether the respondents had proved the facts necessary to make the compromise binding on her as a party to the suit and a party to the compromise. The appellant however in addition to her contentions of fact, raised certain alleged points of law and it is true that the learned Judges who heard this appeal devoted much time to listening to the arguments presented by her learned advocates, and that a considerable portion of their voluminous judgment consisted of a careful examination and rejection of each point. On behalf of the application learned Counsel (I say it with the greatest respect to him) has made what is in effect an appeal to our indulgence. He has pointed to the great length of the trial and the judgment and to the space in the latter occupied by the discussion of the so-called points of law.

7. He has correctly urged that success on any one of most of these points would entitle the appellant to succeed in her appeal and contends that the fact that two learned Judges felt themselves obliged to devote so much care to a refutation of the arguments on behalf of his client is a proof of the serious nature of the arguments and a justification of his claim to have them reconsidered by their Lordships. He has referred us to the decision in *Raghunath Prasad Singh v. Deputy Commissioner, Partabgarh* MANU/PR/0012/1927 as a statement of the principle which should guide us in the granting of leave to appeal. I am unable to regard the remarks of Lord Dunedin in that case as laying down a principle and I know of no Judge less likely to confuse the conception of bulk with that of weight.

8. We invited the learned advocate to deal with such of the points of law summarised on p. 548 of the judgment as reported in *Sabitri Thakurain v. F.A. Savi* MANU/BH/0100/1932 as he might consider substantial and worthy of presentation to their Lordships. We approached these on the basis that it was merely necessary for him to show that the points were "substantial" and not on the basis that he must convince us that the judgment was erroneous and we agreed with his contention that the substantiality of any one of these points would justify us in allowing him to carry the entire case both on facts and on every point of law to the Privy Council, for we,

unlike the Privy Council itself, cannot limit the scope of the appeal if it be allowed to proceed.

9. I have read the judgment which is, notwithstanding its bulk, a monument of patience, care and clarity. Not only are the points of law fairly stated but the decision upon each demonstrates clearly that it is already well settled and covered by statute or authority, where it is not manifestly fallacious in argument. To allow an appeal on any of one such points would be to eliminate the word "substantial" from the statute, for any general proposition can be called "a point of law" whether it has substance or not. As I understand it, the "point" should be such as to impress us that it is debatable in view of the authorities or that the authorities themselves may require re-consideration.

10. The mere fact that the Judges out of deference to the arguments exhibited patience in the hearing and care in the judgment does not establish that a point is substantial. I feel that it would be superfluous on my part to deal afresh with the contentions laid before the learned Judges or to attempt to express in my own words the conclusions at which they arrived. I would refuse leave to appeal. The respondents are entitled to their costs of this application. Hearing fee twenty gold mohurs.

Mohamad Noor, J.

11. I entirely agree. Being a party to the judgment which is sought to be appealed against to the Privy Council I would like to add a few remarks of my own. The judgment is undoubtedly bulky, but the so-called points of law on which the leave to appeal is being asked occupy a comparatively small part of it. The official report of the judgment in *Sabitri Thukurain v. F.A. Savi* MANU/BH/0100/1932 occupies 236 pages (of 12 Pat) of which the first 28 pages only give extracts from the earlier portion of the judgment which is given full in the first 104 pages (pages 7 to 110) of the report in the Supplement to the Patna Law Times, Vol. 14.

12. This part of the judgment deals with the history of the litigation (which is already 20 years old), including the disputed facts which led to the filing of the petition of compromise, and the questions whether the compromise has been proved as a fact and whether the requirements of law as laid down by the Privy Council were satisfied so as to make the compromise binding on the appellant, a pardanashin lady. The next 140 pages of the official report (pp. 408 to 548) are devoted to the examination of the position of the estate and the nature of the appellant's suit in respect of it, in order to dispose of the appellant's contentions that the compromise was manifestly unjust even if she agreed to it, and that it was an unconscionable bargain of the kind that the Court would be justified in the exercise of its inherent power in refusing to record. So far, i.e. in the first 167 pages of the judgment as given in the official report, the decisions are practically decisions of fact, and the appellant does not claim any right of appeal to the Privy Council up to this point.

13. No doubt there are in these pages some discussions of law as well the law applicable to dealings with pardanashin ladies, and the Mithila law which occupies a considerable portion of the judgment. The relevancy of the latter, though somewhat remote, arose from the appellant's two-fold case that her suit, having regard to the wife's position under the Mithila law, was so clear and she was so certain of success that she could not have compromised on the terms alleged, and secondly, that at any rate the compromise was so unjust that even if she agreed to the terms, we should

still give her relief.

14. We therefore dealt with the Mithila law to be found in the Sanskrit texts, as elaborately placed before us, though the appellant's position under that law was only a side issue bearing on a decision of fact. Our conclusion was that the lower Court was substantially right, and as I have already observed, the appellant does not claim any right of appeal to the Privy Council so far.

15. Then come the so-called points of law which were raised against the recording of the compromise and on the basis of which leave is being sought. They have been dealt with in pp. 548 to 604, the rest of the judgment consisting of a summary of our findings and orders. In these 56 pages we have discussed the eight grounds that were urged against the lawfulness of the compromise. The discussion may appear somewhat elaborate, but that is no indication that the points were really substantial. The arguments were advanced so earnestly and strenuously that we considered it only fair to all the learned Counsel appearing in the case to set out in detail what was urged before us and show what little substance there was in it.

16. As I have said, I agree with my Lord the Chief Justice that this is not a case in which leave to appeal should be granted. A question of law does not become "substantial" simply because the Judge has stated and examined it in detail in order to show that it has no substance.

Saunders, J.

17. I agree.

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