

## APPELLATE CIVIL.

*Before Jenkins C.J., and N. R. Chatterjea J.*

DEBENDRA NATH DAS

*v.*

BIBUDHENDRA MANSINGH.\*

1915  


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 May 24.

*Letters Patent Appeal—True result of cancelling therein of a judgment of reversal of a single Judge of the High Court—Leave to appeal to Privy Council—Letters Patent, 1865, cls. 15, 36, 39—Civil Procedure Code (Act V of 1908), ss. 110, 115—“Court immediately below.”*

In an appeal under clause 15 of the Letters Patent (or Charter) the cancelling of a judgment of reversal passed by a single Judge of the High Court results in an affirmance of the decision of “the Court immediately below.”

Such a Judge sitting alone is not a Court subordinate to the High Court; and thus no decision of a single Judge can be revised under s. 115 of the new Code.

APPLICATION for leave to appeal to His Majesty in Council by Debendra Nath Das, the defendant.

The plaintiff, Bibudhendra Mansingh Bhrmabar Rai, is the proprietor of *killa* Dompara in which mouza Gayalbarek is situated. On the 7th June 1911, the plaintiff's predecessor executed a *mokarari* lease in respect of 257 *mans*, 9 *gants*, and 15 *biswas* of land in the said mauza in favour of one Gokulananda Chowdhury who, on the 17th July 1907, executed a deed of relinquishment in favour of Debendra Nath Das, the present defendant. Under the terms of the said lease (which left the lessee no option of converting it into a tenure by bringing the land under cultivation by establishing tenants on it), the lessee

\* Application for leave to appeal to His Majesty in Council, No. 2 of 1914.

at his own cost made the land fit for cultivation by cutting a canal and constructing a *bund* and cultivated it for some years. Subsequently the land was cultivated by under-raiyats who were supplied with seed by the lessee in return for a share of the produce. A record-of-rights under Chapter X of the Bengal Tenancy Act (VIII of 1885) having been ordered to be prepared in the permanently settled estate of *killa* Dompara, the defendant (lessee) was at first recorded as a tenure-holder; as the area of his holding was more than 100 standard bighas; but on his objecting the dispute was decided in his favour by the Assistant Settlement Officer on 18th February 1907, and he was recorded as a raiyat at a fixed rate of rent. As advised by the Director of Land Records who, on inspection of the record, took exception to the said entry, the lessor's manager on the 3rd October 1907 instituted a suit in the Court of the Settlement Officer at Dompara under section 106 of the Bengal Tenancy Act to correct the said entry in the record-of-rights regarding the defendant lessee's status. On the 20th December 1907, the Settlement Officer of Dompara decided that the defendant was a tenure-holder, and on the 16th August 1909 the Special Judge of Cuttack dismissed the defendant's appeal. Thereupon he appealed to the Hon'ble High Court, and Mr. Justice Richardson, on the 16th July 1912, decreed the appeal in favour of the defendant (lessee). But the plaintiff (lessor) having preferred a further appeal to the High Court under clause 15 of the Letters Patent, this L. P. Appeal No. 61 of 1912 was decreed on the 11th July 1913, and the decision of the Special Judge of Cuttack was restored. The defendant (lessee) then applied for leave to appeal to His Majesty in Council, as the market value of the property was above Rs. 25,000 and the appeal involved substantial questions of law.

1915  
 DEBENDRA  
 NATH DAS  
 v.  
 BIBUDHENDRA  
 MANSINGH.

1915

DEBENDRA  
NATH DAS  
v.  
BIBUDHENDRA  
MANSINGH.

*Babu Narendra Chandra Bose*, for the petitioner (defendant), submitted that as the judgment of the High Court was one of reversal leave to appeal to the Privy Council ought to be granted, as the Court of first instance to whom that matter had been referred for investigation had determined that the amount or value of the subject matter in dispute on appeal to His Majesty in Council exceeded Rs. 10,000, and the amount or value of the subject matter of the suit was the same.

*Babu Ram Charan Mitter*, for the plaintiff (opposite party). There is no provision in the Civil Procedure Code for the same case being heard twice in the High Court.

Section 96 of the Code implies and s. 110 has the words "Court immediately below," and under s. 111 of the Code no appeal lies to the Privy Council, from the decision of Mr. Justice Richardson sitting alone.

Further, this is a decision of the High Court *affirming*, and not reversing, the decision of the Court immediately below. Mr. Justice Richardson is not the 'Court immediately below,' but it is that of the Special Judge of Cuttack who was the Court of first appeal. The Code of Civil Procedure contemplates only two appeals. Besides, the value not being less than Rs. 1,000, but above Rs. 10,000 as it now appears, Mr. Justice Richardson sitting singly had no jurisdiction to hear this appeal.

If this Court had affirmed the judgment of Mr. Justice Richardson, then the appellant would have had to go to the Privy Council direct for special leave. Sections 109 and 110 of the Code reproduce clause 39 of the Letters Patent. Further, no important questions of law arise in this case.

Leave can be granted in this case only if an important question of law is involved.

*Babu Narendra Chandra Bose*, for the appellant,  
in reply. I am prepared to argue that a substantial  
question of law is involved in the present case.

*Cur. adv. vult.*

1915  
DEBENDRA  
NATH DAS  
v.  
BIBUDHENDRA  
MANSINGH.

JENKINS C. J. This is an application for a certificate that, as regards amount or value and nature, the case fulfils the requirements of section 110 of the Code of Civil Procedure or that it is otherwise a fit one for appeal to His Majesty in Council.

To ascertain the amount or value, the matter was referred to the Court of first instance (Order XLV, rule 5). That Court has determined the amount or value and has returned its report according to which the amount or value exceeds Rs. 10,000. We see no reason to dissent from that determination.

It only remains to be seen whether as regards nature the requirements of section 110 are fulfilled. The Court of first instance as well as the lower Appellate Court decided adversely to the present applicant. On appeal to the High Court, a single Judge reversed the decree of the lower Appellate Court. From this judgment of a single Judge there was an appeal to the High Court under clause 15 of the Charter with the result that the judgment of the single Judge was reversed by a Bench of two Judges. It will thus be seen that the first judgment of the High Court reversed the decree of the Court immediately below, but that this reversal was afterwards in effect cancelled with the result that the only effective judgment of the High Court affirmed the decision of the Court immediately below (section 110, Civil Procedure Code).

This appears to me to be the true result of the Letters Patent and the Code, for the Code makes no provision for an appeal within the High Court, that is

1915  
 DEBENDRA  
 NATH DAS  
 v.  
 BIBUDHENDRA  
 MANSINGH.  
 JENKINS C.J.

to say, from a single Judge of the High Court. This right of appeal depends on clause 15 of the Charter. And here I may point out that a Judge sitting alone is not a Court subordinate to the High Court, but performs a function directed to be performed by the High Court (clause 36, Letters Patent). And thus no decision of a single Judge can be revised under section 115 of the Code.

But though in this view of the matter the decree of the Court immediately below has been affirmed, it will be right to grant a certificate for there is a substantial question of law involved and it makes the case all the more a fit one for appeal to His Majesty in Council that on the question involved, a Judge, of the High Court took a different view from that which ultimately prevailed.

The certificate sought must therefore be granted that as regards amount or value and nature the case fulfils the requirements of section 110 of the Code.

N. R. CHATTERJEA J. concurred.

G. S.

*Certificate granted.*