

APPEAL FROM ORIGINAL CIVIL.

Before C. C. Ghose A. C. J. and Mitter J.

SUNDARJI SHIBJI

1932

Aug. 15, 30.

v.

MANGTULAL BAGARIA.*

Order—Subsequent order setting aside previous order—Effect on previous order—Defect of plaintiff's title, if may be cured.

If a decision is either reversed or set aside, the subsequent decision is a legal adjudication that the prior one was not law at the time it was made.

Woodruff v. Woodruff (1) relied on.

Evans v. Bagshaw (2) distinguished.

APPEAL by the defendant.

The facts of this case, so far as they are necessary for the decision herein, appear from the judgment in *Hiralal Murarka v. Mangtupal Bagaria* (3). The subsequent events are set out in the judgment of Ghose A. C. J.

Page (with him *P. C. Basu*) for the appellant. The vacating order of Ameer Ali J. cannot affect the position in this appeal. At least, before the 6th July, 1932, when Ameer Ali J. vacated the order of the 4th August, 1924. Mangtupal Bagaria had no title to maintain the suit and therefore the suit is bad. *Hiralal Murarka v. Mangtupal Bagaria* (3).

Sircar, Advocate-General (with him *S. M. Bose*) for the plaintiff respondent. After the order of Ameer Ali J. the plaintiff must be deemed to have title to maintain the suit. Any defect in his title has been cured by the vacating order. *Mangtupal*

*Appeal from Original Decree, No. 107 of 1931, in Original Suit No. 490 of 1930.

(1) 52 N. Y. Ct. App. 53.

(2) (1870) L. R. 5 Ch. 340.

(3) (1932) I. L. R. 59 Calc. 1475.

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Bagaria v. Gordhandas Manisankar Bhatt (1). That has also been indicated in the judgment in *Hiralal Murarka v. Mangtural Bagaria* (2).

P. C. Basu, in reply. The administration proceedings were not before Ameer Ali J., who, sitting as an insolvency judge, had no jurisdiction to make the order he made .

Further, the estate vested in the Official Assignee by the operation of the Insolvency Act and so it was not within the jurisdiction of the Court to give retrospective effect to its order. See section 108 of the Presidency Towns Insolvency Act. Section 8 (1) does not empower the Court to give retrospective effect.

[MITTER J. The Court surely has jurisdiction to reverse its own order so as to give retrospective effect, except perhaps in cases where rights of third parties intervene.]

Also, the Court had no jurisdiction to rehear an application made by the party in whose favour the order has been made, as has been indicated by Vaughan Williams J. in *John Roberts & Co., In re Bonzoline Manufacturing Company, Ex parte* (3).

Lastly, my client has got the benefit of the Limitation Act, for the plaintiffs' suit would now be barred. The plaintiff can succeed on the cause of action as it existed at the date when the suit was instituted. If he had no title then, he cannot maintain the suit by subsequently acquiring title. *Evans v. Bagshaw* (4), *Attorney General v. Corporation of Avon* (5), *Creed v. Creed* (6), *Prannath Shaha v. Madhu Khulu* (7), *Radhay Koer v. Ajodhya Das* (8), *Ramanadan Chetti v. Pilukutti Servai* (9).

(1) Original Suit No. 1691 of 1929.

(2) (1932) I. L. R. 59 Calc. 1475, 1481.

(3) [1904] 2 K. B. 299, 302.

(4) (1870) L. R. 5 Ch. 340.

(5) (1863) 3 De. G. J. & S. 637 (651); 46 E. R. 783 (789).

(6) [1913] 1 Ir. 48.

(7) (1886) I. L. R. 13 Calc. 96.

(8) (1907) 7 C. L. J. 262, 264.

(9) (1898) I. L. R. 21 Mad. 288.

Hiralal Murarka's case (1) does not go so far as to say that the defect in the plaintiff's title can be so cured as to enable him to maintain this suit.

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Cur. adv. vult.

GHOSE A. C. J: The present appeal arises out of a suit to recover a sum of Rs. 24,216-10-0 said to be due for minimum royalties, in terms of a lease dated the 7th November, 1919, and for an enquiry as to what further sum is payable on account of royalties.

The plaintiff is one Mangtural Bagaria. He succeeded in the Court below and hence the present appeal by Sundarji Shibji, who is one of the defendants. Only one point has been argued before us, namely, that Mangtural Bagaria was incompetent to bring this suit for the reasons which are set out in the judgment of the court of appeal in the case of *Hiralal Murarka v. Mangtural Bagaria* (2). It is not necessary for me to set out at length the reasons which led the court of appeal to hold in the last-mentioned case that the plaintiff Mangtural Bagaria was not entitled to bring a suit of the description as in the present case. The facts in that other case and the facts in this case are all alike so far as the point raised before us is concerned and they are all set out in the judgment of the learned Chief Justice and there is no question that if nothing else had happened since the date of the judgment of the learned Chief Justice the present appeal would have been governed entirely by that judgment. But what has happened is that as soon as the judgment of the court of appeal was delivered, an application was made to Ameer Ali J., as a Judge of this Court exercising Insolvency Jurisdiction, for vacating the order of the 4th August, 1924. That application was successful, the date of the order of Ameer Ali J., being the 6th July, 1932. The order of the 4th August, 1924, having been

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vacated, as if it never existed, it cannot now be disputed that Mangtural Bagaria was and is competent to maintain the suit out of which the present appeal has arisen. This is the view taken by Mr. Justice Pankridge in *Mangtural Bagaria v. Gordhandas Manisankar Bhatt* (1) decided on the 4th August, 1932, and I agree with the same.

The result, therefore, is that the sole point taken by the appellant in this appeal fails and the appeal must be dismissed with costs.

MITTER J. I agree with the learned Acting Chief Justice that this appeal should be dismissed. It appears that at the date of the institution of the suit, for recovery of a sum of Rs. 24,216-10 due for minimum royalties, the estate had vested in the Official Assignee under an order of this Court which is dated the 4th August and a defence was taken in the suit that the suit was not maintainable at the instance of Mangtural Bagaria, the respondent in this appeal, as he had no title to the estate,—the estate having vested in the Official Assignee. This defence did not prevail with Mr. Justice Buckland who heard the suit. After the appeal was filed, circumstances have intervened which go to show that the order of the 4th August, 1924, is no longer in existence. Mr. Justice Ameer Ali has vacated that order. It is contended on behalf of the appellant that the order of Mr. Justice Ameer Ali cannot have the effect of giving title to the plaintiff to sue at the date when admittedly the order was in existence. A curious question consequently arises in this case, namely, that if a decision is either reversed or set aside, what is the position of persons who have acted in accordance with the original decision? The question arises,—was the previous decision good law till it was vacated or was it a mere mistake upon which persons acted at their peril? It is to be observed, however, that in the present case the rights of third parties have not

(1) Original Suit No. 1691 of 1929.

intervened. I am of opinion that a subsequent decision is a legal adjudication that the prior one was not law at the time it was made. There is some authority to be found for this view in some of the decisions of the American Courts. See the case of *Woodruff v. Woodruff* (1), a case which I find cited in Sir Thomas Holland's classic book on the Elements of Jurisprudence.

It remains to notice an argument which has been advanced by learned counsel for the appellant that where a plaintiff has no title at all he cannot carry on the suit by subsequently acquiring a new title and amending the bill accordingly. In support of this position learned counsel for the appellant has referred to the case of *Evans v. Bagshaw* (2). That case is obviously distinguishable for here the effect of the decision of Mr. Justice Ameer Ali is that there was no decision vesting the estate in the Official Assignee at the date of the institution of the suit so as to prevent the plaintiff from maintaining the present suit. Mr. Justice Ameer Ali said distinctly that the effect of his decision was as if the prior decision vesting the estate in the Official Assignee had not existed at all. Mr. Justice Ameer Ali was merely emphasizing what the law implied.

In this view, I think the appeal ought to be dismissed and I have the satisfaction that this decision of ours does not effect the rights of any innocent third party.

Appeal dismissed.

Attorneys for appellant: *G. N. Dutt & Co.*

Attorneys for respondent: *S. C. Sen, N. K. Mitra, A. P. Roy & Co.*

S. M.

(1) 52 N. Y. Ct. App. 53.

(2) (1870) L. R. 5 Ch. 340.

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