

APPELLATE CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Bennet.

BARAMDEO PANDE (PLAINTIFF) v. DEBIDATT SINGH
AND OTHERS (DEFENDANTS)*

1930
July, 3.

Civil Procedure Code, order XX, rule 2—Judgment written by Judge after retirement and pronounced by his successor—Validity.

Where a District Judge retired from office with effect from the 4th of October, 1927, and wrote a judgment on the 9th of October, 1927, in an appeal which had been heard by him while in office, and the judgment was pronounced by his successor, it was *held* that the judgment was validly pronounced, within the meaning of order XX, rule 2, of the Civil Procedure Code.

There does not appear to be any ground for drawing a distinction between the writing of a judgment while a Judge is on leave and the writing of a judgment by a Judge who has gone on retirement.

Chinnu Pillai v. Kalimuthu Chetti (1), *Fort Gloster Jute Manufacturing Co. v. Chandra Kumar Das* (2), *Lachman Prasad v. Ram Kishan* (3), and *Satyendra Nath Ray v. Kastura Kumari* (4), referred to.

Mr. N. Upadhiya, for the appellant.

Mr. P. L. Banerji, for the respondents.

MUKERJI and BENNET, JJ.:—This is a second appeal by a plaintiff against a decree of the lower appellate court dismissing his suit. There are only three grounds of appeal and all are based on the same point that the presiding officer had no jurisdiction to pass a judgment, because he had retired from office on the 4th of October, 1927. We are not referred to any notice in the Gazette or in the Civil List to show the actual date of retirement, but the counsel says that he has a letter from the Registrar of this

*Second Appeal No. 194 of 1928, from a decree of A. Hasan, District Judge of Azamgarh, dated the 9th of October, 1927, reversing a decree of S. Ifikhar Husain, Subordinate Judge of Azamgarh, dated the 23rd of April, 1927.

(1) (1911) I.L.R., 35 Mad., 47 (51). (2) (1919) I.L.R., 46 Cal., 978.

(3) (1910) I.L.R., 33 All., 236. (4) (1908) I.L.R., 35 Cal., 756.

1930

BARAMDEO
PANDE
v.
DEBUDAIT
SINGH.

Court to the effect that the retirement of the learned District Judge, Chaudhri Abdul Hasan, took effect from the 4th of October, 1927. We may, however, point out that this statement does not show on what date the resignation of the District Judge was actually accepted, and in the ordinary course it would be accepted at a date long subsequent to the 4th of October, 1927, the date from which it had retrospective effect.

The judgment was signed on the 9th of October, 1927, and was pronounced in court by the successor of the District Judge on the 17th of October, 1927. The short question before us is whether this judgment was validly pronounced under order XX, rule 2, which states: "A Judge may pronounce a judgment written but not pronounced by his predecessor."

It was argued for the appellant that when the Judge who wrote the judgment retired, he ceased to be a Judge at all, and therefore that he cannot be considered to be the predecessor of the Judge who pronounced the judgment within the meaning of order XX, rule 2. No definite authority was shown for this argument. But reference was made to a number of rulings. In *Chinnu Pillai v. Kalimuthu Chetti* (1), there was a ruling of a Full Bench of the Madras High Court and at page 51 it is stated that as one of the five Judges who heard the appeal argued had resigned office, the Chief Justice directed that the Bench which would deliver judgment would consist only of the four remaining Judges. No definite decision was made as to whether the judgment of the learned Judge who had resigned was a judgment valid in law or not, but at page 57 that judgment is appended and it was appended under the orders of the Chief Justice. No authority for the proposition can be deduced from this ruling.

(1) (1911) I.L.R., 35 Mad., 47 (51).

1980

 BARAMDO
 PANDE
 v.
 DEBIDATT
 SINGH.

A reference was also made to an English ruling, but as it was not shown that the rules of the High Court in England are similar we cannot say whether anything could be deduced or not from this English ruling.

The appellant further relied on *Fort Gloster Jute Manufacturing Co. v. Chandra Kumar Das* (1). In this case there were two Subordinate Judges working in the same district and one had to go to another district for some days in the month. He wrote a judgment which was pronounced during his absence by the other Subordinate Judge. Clearly the other Subordinate Judge was not his successor within the meaning of order XX, rule 2, and apparently on this ground the procedure was considered irregular, but it was held that such an irregularity was not material and would not give any right to a court of appeal to reverse the decree of the lower court. This is in accordance with section 99 of the Civil Procedure Code, which states that no decree shall be reversed on account of any error, defect or irregularity in any proceeding in the suit, not affecting the merits of the case or the jurisdiction of the court.—

Two other rulings may be referred to, one of which is *Lachman Prasad v. Ram Kishan* (2). In this it was laid down that where a judgment is written by a Judge, who is transferred, then his successor has discretion under order XX, rule 2, either to pronounce the judgment or not to pronounce it and to come to a decision himself on appeal. Another case in point is *Satyendra Nath Ray v. Kasturba Kumari* (3), which was a decision of a Bench of five Judges. In this it was held that a judgment may be written by a Judge after he has been transferred or has gone on leave and may be pronounced by his successor. We note that in that case there was an

(1) (1919) I.L.R., 46 Cal., 978.

(2) (1910) I.L.R., 38 All., 286.

(3) (1908) I.L.R., 35 Cal., 756.

1939

BARAMDEO
PANDE
v.
DEBIDATT
SINGH.

interval of ten months after the Judge had gone on leave before he sent the judgment to his successor to pronounce, and it was held that the pronouncing of such a judgment was a correct procedure under section 199 of the former Code of Civil Procedure of 1882, which corresponds to order XX, rule 2.

Some attempt has been made to draw a distinction between a judgment written after a Judge had retired and a judgment written while a Judge is on leave. It is true that when a Judge is on leave he will, on return from leave, take over charge again of his judicial office, but during the period that he is on leave he does not possess any judicial powers or functions or jurisdiction. We can see no distinction drawn between the writing of a judgment while a Judge is on leave and the writing of a judgment by a Judge who has gone on retirement. In fact if the distinction which the learned counsel seeks to draw were drawn, then it would lead to an absurd conclusion. If it were to be held that a judgment written on retirement is invalid but a judgment written on leave is not invalid, then there might arise a case of a judgment written during leave which is held to be valid, but owing to the officer subsequently going on retirement and his retirement dating back to the commencement of his leave, then the same judgment ought to be invalid.

We may note that rule 2 is without any qualification of the word "predecessor". On the argument of the learned counsel for the appellant the word "predecessor" would have to be qualified by some such phrase as "who is still in service or who is on leave or who has been transferred." As the rule is without any qualification, we consider that there is no authority for introducing such a qualification into the rule.

We consider, therefore, that the procedure of the lower appellate court was perfectly correct. No other ground of appeal has been taken in the memorandum. Accordingly we dismiss this appeal with costs.

1930

BARAMDEO
PANDE
v.
DEBIDATT
SINGH.

Before Mr. Justice Mukerji and Mr. Justice Bennet.

RANCHHOR AND OTHERS (DEFENDANTS) v. BANSIDHAR (PLAINTIFF) AND DURGA PRASAD AND ANOTHER (DEFENDANTS).*

1930

July, 4.

Bundelkhand Alienation of Land Act (Local Act II of 1903), section 16—Simple mortgage by member of agricultural tribe—Remedy by sale prohibited whether mortgage in favour of member of agricultural tribe or not—Simple money decree.

Section 16 of the Bundelkhand Alienation of Land Act, 1903, bars any remedy by sale in enforcement of a simple mortgage by an agriculturist in favour either of an agriculturist or of a non-agriculturist.

In a suit for sale upon a simple mortgage executed by an agriculturist in favour of another agriculturist, the decree which could be granted was a simple money decree.

Dr. K. N. Katju, for the appellants.

Messrs. *Iqbal Ahmad and Shabbir Hasan*, for the respondents.

MUKERJI and BENNET, JJ.:—This is a second appeal by three defendants, who are transferees from a mortgagor. The facts are that on the 19th of February, 1916, Mst. Sarawan the mother and guardian of a minor, Tunde, executed a simple mortgage deed for Rs. 775 in favour of the plaintiff Bansidhar. Tunde died while he was a minor and his widow, defendant No. 1, Mst. Larhai *alias* Raja Beti executed a sale deed of her right to redeem in favour of defendants Nos. 2 to 5, the appellants before us. The plaintiff has brought a suit to enforce his simple mortgage

*Second Appeal No. 196 of 1928, from a decree of Sarup Narain, Subordinate Judge of Jhansi, dated the 17th of November, 1927, modifying a decree of Shiva Shankar Lal, Munsif of Orai, dated the 16th of March, 1927.