

APPELLATE CIVIL.*Before Wort, A. C. J., and Dharle, J.*

MAHABIR PRASAD

1936.

April, 21.

v.

BRIJ MOHAN PRASAD.*

Code of Civil Procedure, 1908 (Act V of 1908), sections 109 and 110—variation in judgment favourable to the applicant—no right of appeal.

Where the plaintiff claimed possession of certain properties and alleged that he had executed a sale-deed in favour of the defendant, who had tampered with it and interpolated or changed certain pages and turned a conditional sale into an absolute sale. The trial judge held that the defendant had not paid the whole consideration within the time stipulated and therefore the title had not passed and the plaintiff was entitled to recover possession. He also held that defendant had forfeited the Rs. 3,000 which had been paid by him. On appeal by the defendant, the High Court affirmed the judgment of the trial court on the main question but reversed it so far as the question of Rs. 3,000 was concerned and it was held that Rs. 3,000 was not forfeited. The defendant applied for leave to appeal to His Majesty in Council.

Held, that the modification of the judgment was upon a single point and that completely in the applicant's favour, so that he had no further grievance in that matter and he could not have a right of appeal on other points on which the court have concurred without showing a substantial question of law.

Bibhuti Bhusan Dutta v. Sreepati Dutta(1) and *Narendra Lal Das Chaudhury v. Gopendra Lal Das Chaudhury*(2), followed.

Annappurnabai v. Ruprao(3), explained.

*Privy Council Appeal no. 26 of 1935.

(1) (1934) 38 Cal. W. N. 1174.

(2) (1927) 31 Cal. W. N. 572.

(3) (1924) I. L. R. 51 Cal. 969;

L. R. 51 I. A. 319.

1936.

MAHABIR
PRASADv.
BRIJ
MOHAN
PRASAD.

Homeswar Singh v. Kameshwar Singh Bahadur(1) and
Thakur Jamuna Prasad Singh v. Jagarnath Prasad
Bhagat(2), distinguished.

Application by the defendant for leave to appeal
to His Majesty in Council.

The facts of the case material to this report are
set out in the judgment of Wort, A. C. J.

Brij Kishore Prasad, for the petitioner.

Ishwarinanda Prasad, for the opposite party.

WORT, A. C. J.—This is an application for a
certificate that the case is a fit one to be taken on
appeal to His Majesty in Council.

The applicant was the defendant in the action in
which the plaintiff claimed possession of certain
property in the following circumstances.

There was a contract of sale by the plaintiff to
the defendant under which the defendant had paid
Rs. 75 as earnest money and made a further payment
of Rs. 3,000. The case of the plaintiff was that the
defendant, after he, the plaintiff, had executed the
sale deed, had tampered with it and interpolated or
changed certain pages with the result that what was
according to the plaintiff's description a conditional
sale was turned into an absolute sale. As Agarwala, J.
pointed out in the course of his judgment, what the
plaintiff meant by conditional sale was that the title
in the property should not pass until the defendant
had paid the whole of the consideration. With
regard to the fact that the defendant had not paid
the whole of the consideration within the time
stipulated, there appears to have been no dispute. In
those circumstances the trial Judge held that title
had not passed to the defendant and that the plaintiff
was entitled to recover possession; but he held in

(1) (1933) 144 Ind. Cas. 320.

(2) (1929) I. L. R. 9 Pat. 558.

addition that the defendant had forfeited the Rs. 3,000 which, as I have stated, had been paid by him.

On appeal to this Court the judgment of the trial court was affirmed as regards the main question but reversed so far as the question of Rs. 3,000 and it was held that the Rs. 3,000 was not forfeited. It will be seen, therefore, that so far as that matter is concerned, the defendant has no grievance. The substantial question in this case is whether the judgment of this Court was a judgment of affirmance; if so, it would be necessary for the applicant to shew that there was some substantial question of law within the meaning of section 110 of the Code of Civil Procedure. Dealing with the latter question, it is clear that there is no substantial question of law. The question which was in dispute in this Court and in the trial Court was substantially a question of fact. Once having decided that the document, the sale deed, had been tampered with, that the document as originally drawn up and executed by the plaintiff was what the plaintiff was pleased to call a conditional sale, it necessarily followed that the property did not pass to the defendant in the circumstances of the case the balance not having been paid. I fail to see any question of law at all and there being no substantial question of law it remains therefore to consider whether this was a judgment of affirmance. The contention of the applicant necessarily is that it was not a judgment of affirmance as the High Court has varied the judgment or decree of the trial court by holding that the sum of Rs. 3,000 was not forfeited.

The leading case with regard to this matter is a case upon which many judgments of the High Courts in India are based; at least it is the case which has been discussed by many of the High Courts in India in connexion with this question. It is the case of *Annapurnabai v. Ruprao*⁽¹⁾, where their Lordships of

1936.

MAHABIR
PRASAD

v.

BRIJ
MOHAN
PRASAD.WORT,
A. C. J.

(1) (1924) L. R., 51 I. A. 319.

1936.

MAHABIR
PRASAD
v.
BRIJ
MOHAN
PRASAD.

WORT,
A. C. J.

the Judicial Committee of the Privy Council gave special leave to appeal in these circumstances. There was a suit in which the plaintiff claimed certain property basing his claim on an adoption which was denied by the defendant. The defendant, a widow, claimed to be entitled to a sum of Rs. 3,000 per annum as maintenance. The trial Court, also the High Court, decided in favour of the plaintiff on the question of adoption. The trial court, however, allowed the widow Rs. 800 per annum as maintenance instead of her claim for Rs. 3,000. This was varied by the High Court by increasing the maintenance allowance to Rs. 1,200 per annum. It will be seen, therefore, that the amount allowed was still short of the original claim which she had made. In those circumstances their Lordships of the Privy Council in a very short opinion gave special leave to appeal but limited the appeal to the question as to the maintenance allowance.

The case of *Annapurnabai v. Ruprao*(1) was discussed by the Calcutta High Court in *Bibhuti Bhusan Dutta v. Sreepati Dutta*(2) in which the learned Judges made this observation, which I should like to adopt: "This Court", said the learned Judges, "however, has refused on the strength of *Annapurnabai's* case(1) to break away from a long course of decisions of Courts in India which firmly laid down the principle that when the appellate Court modified the original decree upon a single point and that completely in the applicant's favour so that he has no further grievance in that matter, he cannot, because of that modification, have a right to an appeal on other points on which the courts have concurred, without showing a substantial question of law". The learned Judge goes on to say "The enormity of the opposite view is so very great that a

(1) (1924) L. R. 51 I. A. 319.

(2) (1934) 38 Cal. W. N. 1174.

far more clear and express pronouncement of the Judicial Committee would be necessary to uphold it'. The learned Judge then later in his judgment referred to a decision of Rankin, C. J. and Ghose, J. in the case of *Narendra Lal Das Chaudhury v. Gopendra Lal Das Chaudhury*(1). The learned Chief Justice in the latter case referring to a previous case, *Raja Sree Nath Roy Bahadur v. Secretary of State for India*(2) and to *Annapurnabai's case*(3) said that he did not think that the latter showed that it was an erroneous view; but in construing section 110 of the Code of Civil Procedure what they had to look at was the substance and to see what was the subject-matter of the appeal to His Majesty in Council.

Now there is no decision of this Court which is to the contrary effect. The learned Advocate relies upon the case of *Homeswar Singh v. Kameshwar Singh Bahadur*(4); but as will be seen it differs from the case in hand as did the case before their Lordships of the Judicial Committee inasmuch as there was still a substantial point from which by way of appeal the appellant might benefit. It was a case on a mortgage in which the plaintiff had succeeded in the trial court in getting a mortgage decree. That decree had been varied in the High Court by giving the plaintiff not a mortgage decree but a money decree for a less amount. Again in the case of *Thakur Jamuna Prasad Singh v. Jagarnath Prasad Bhaqat*(5) the trial court had granted a decree to the plaintiff in a mortgage suit but disallowed the plaintiff's claim for interest pendente lite. There was an appeal both by the defendant and a cross-appeal by the plaintiff. The High Court dismissed the defendant's appeal but allowed the plaintiff's cross-appeal, thus modifying the decree of the trial court. That again is

1926.

 MAHABIR
 PRASAD
 v.
 BRIJ
 MOHAN
 PRASAD.

 WORT,
 A. C. J.

 (1) (1927) 31 Cal. W. N. 572.

(2) (1904) 8 Cal. W. N. 294.

(3) (1924) L. R. 51 I. A. 319.

(4) (1933) 144 Ind. Gas. 320.

(5) (1929) I. L. R. 9 Pat. 558.

1936.

MAHABIR
PRASAD
v.
BRIJ
MOHAN
PRASAD.

WORE,
A. C. J.

substantially on the same footing as the case before their Lordships of the Privy Council but from the facts which I have stated it is clear that that case is clearly different from the one before us. In my judgment I would adopt the view taken by the learned Judges of the Calcutta High Court with regard to this matter and would hold that this is in substance a judgment of affirmance and that, therefore, it is necessary for the petitioner to shew some substantial question of law. Upon that point, as I have already stated, he has failed, and in my opinion, therefore, the application for leave to appeal should be dismissed with costs. We assess the hearing fee at five gold mohurs.

DHAVLE, J.—I agree. As regards the passing of title under the sale deed in question, both the Courts were in agreement and have held against the applicant for leave to appeal to His Majesty in Council. In the circumstances of the case that was a substantial finding of fact and the decree of this Court one of affirmance. The only other disputed matter in the case was the question of forfeiture of the sum of Rs. 3,400. The trial Court held that the plaintiff was entitled to keep the money. This Court on appeal held in favour of the applicant that the plaintiff was not entitled to keep the money. In respect to this sum of money the applicant can have no further grievance. He is anxious to appeal as regards the passing or non-passing of title under the sale deed; but that is a matter on which both the Courts have, as already stated, been in agreement. Many cases have been cited before us; but the one that comes nearest to the matter before us is the case of *Narendra Lal Das Chaudhury v. Gopendra Lal Das Chaudhury*(1). The decisions cited from this Court are clearly distinguishable on the facts, though there are undoubtedly observations

(1) (1927) 31 Cal. W. N. 572.

in them that are in favour of the applicant. In the second of those decisions, I mean the case of *Homeswar Singh v. Kameshwar Singh*(1) no reference was made to *Narendra Lal Das's* case(2); and in the other there was apparently an inclination to doubt the correctness of what was said by Rankin, C. J. in *Narendra Lal's* case(2); but, as I have already indicated, the decision in this case of *Thakur Jamuna Prasad Singh v. Jagarnath Prasad*(3) is easily distinguishable on the facts. In *Narendra Lal's* case(2) the only modification made by the Court of appeal was in favour of the applicant for leave to appeal to His Majesty in Council, and it was a modification of such a character as to leave the applicant without any further grievance so far as that particular matter was concerned. In these circumstances and after discussing the decision of the Privy Council in *Annapurna's* case(4) Rankin, J. observed—"We may take it, I think, that where the amount is a question in dispute, the fact that the Courts differ and that the higher Court differs in favour of the applicant does not mean that the decision is one of affirmance, but I am not in a case of this kind prepared to say that because on a totally different point, namely, a point about the share, the applicant has succeeded and succeeded altogether so that he has no further grievance in that matter, he can without showing a substantial question of law have a right to litigate upon other points upon which both the Courts have been in agreement".

1936.
 MAHABER
 PRASAD
 v.
 BEJ
 MOHAN
 PRASAD.
 DHAULE, J

In my opinion that really concludes the matter, though the decision in that case is not directly binding on us.

Application dismissed.

(1) (1933) 144 Ind. Cas. 320.

(2) (1929) I. L. R. Pat. 558.

(3) (1927) 31 Cal. W. N. 572.

(4) (1924) L. R. 51 I. A. 319.