

LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

RIKHI RAM AND ANOTHER (DEFENDANTS)

Appellants

versus

DHANPAT RAI AND ANOTHER

(PLAINTIFFS)

GOPI MAL AND OTHERS

(DEFENDANTS)

} Respondents.

1930

Jan. 16.

Letters Patent Appeal No. 98 of 1929.

Civil Procedure Code, Act V of 1908, Order XLV, Rule 15—Jurisdiction of High Court—to consider or discuss the effect of the order in Council—Letters Patent Appeal—from order of Single Bench in the matter.

The successful appellant to His Majesty in Council obtained from the High Court an order transmitting His Majesty's order in Council for execution, whereupon the respondents applied for certain directions to be sent to the Execution Court, disallowing certain costs, reducing certain items and declaring interest not to be claimable, etc., and an order to that effect was granted by the Judge in Chambers accordingly.

Held, that the order of the Judge in Chambers amounted to a "judgment" appealable under section 10 of the Letters Patent of the Lahore High Court.

Hurrish Chunder Chowdhry v. Kaisunderi Debi (1), followed.

Premlall Mullick v. Sumbhoonath Roy (2), not followed.

Held further, that when the High Court acts under order XLV, rule 15 of the Code of Civil Procedure, it cannot consider or discuss the effect of the order in Council. The Judge in Chambers had therefore no jurisdiction to pass the judgment under appeal.

Premlall Mullick v. Sumbhoonath Roy (2), followed to this extent.

(1) (1883) I. L. R. 9 Cal. 482 (P.C.). (2) (1895) I. L. R. 22 Cal. 960.

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v.
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Appeal under clause 10 of the Letters Patent from the order of Harrison J., dated 22nd February 1929.

JAGAN NATH, AGGARWAL, for Appellants.

MEHR CHAND MAHAJAN, SHAMAIR CHAND, and MUHAMMAD AMIN, for Respondents.

BROADWAY J.

BROADWAY J.—This appeal has arisen out of a pre-emption suit brought on the 7th of October 1919 against Rikhi Ram, Miri Mal, Bhiku Mal, Partapa Mal and others. The sale attacked had been made in favour of Rikhi Ram who had sold a quarter of the property purchased by him to Miri Mal and later another quarter to Bhiku Mal and Partapa Mal.

The suit was dismissed by the trial Court on the 13th of June 1920; but on appeal to this Court proved successful.

Rikhi Ram and Miri Mal thereupon preferred an appeal to His Majesty in Council which was accepted on the 15th of June 1928 (1).

In due course Rikhi Ram and Miri Mal applied to this Court for an order transmitting His Majesty's order in Council for execution. This was done. Later Dhanpat Rai, Piare Lal and others (plaintiffs-respondents) moved this Court under Order XLV, rule 15 of the Civil Procedure Code, praying that certain directions be sent to the Court executing the order in Council. Thereupon the learned Judge in Chambers examined the order in Council and gave certain directions, disallowing certain costs, reducing certain items and declaring interest not to be claimable. Finally, in dealing with the question of mesne profits, he directed that the executing Court

(1) See (1929) I. L. R. 10 Lah. 75 (P. C.).

should first go into the question whether any mesne profits, were claimable and then decide what amount, if any, should be allowed.

Against this order of the learned Judge in Chambers dated the 22nd of February 1929 Rikhi Ram and Miri Mal have filed an appeal under clause 10 of the Letters Patent.

On the same day, *i.e.* the 22nd of February 1929, the learned Judge in Chambers also granted an application made by Bhiku Mal and Partapa Mal for transmission of the order in Council for execution on their behalf. In doing so the learned Judge in Chambers carefully pointed out that this would be subject to any objections which might be taken by Rikhi Ram and Miri Mal. Rikhi Ram and Miri Mal have appealed under clause 10 of the Letters Patent also against this order.

In my judgment it is perfectly clear that the order passed on the application made by Bhiku Mal and Partapa Mal was a proper order and the appeal (No. 99 of 1929) therefore must be dismissed.

In Letters Patent Appeal No. 98 of 1929 Mr. Mehr Chand Mahajan for the plaintiffs-respondents raised an objection to the effect that no appeal was competent, inasmuch as the High Court in transmitting the order in Council for execution was performing a function which was purely ministerial, and in support of this position relied on *Premalal Mullick v. Sumbhoonath Roy* (1). At the same time he very frankly and properly drew attention to *Hurrish Chunder Chowdhry v. Kalisunderi Debi* (2), which, to my mind, concludes the question and renders the

(1) (1895) I. L. R. 22 Cal. 960. (2) (1883) I. L. R. 9 Cal 482 (P.C.).

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appeal competent. There Pontifex J. for certain reasons declined to make an order for transmission. Their Lordships of the Judicial Committee held that the order of Pontifex J. was a judgment, and that therefore an appeal under the Letters Patent was competent.

On the merits, it seems to me that *Premalal Mullick v. Sumbhoonath Roy* (1), is an authority for holding that the judgment of this Court appealed against was *ultra vires*, as in my judgment, when this Court acts under Order XLV, rule 15 of the Civil Procedure Code, it cannot consider or discuss the effect of the order in Council. The learned Judge in Chambers had therefore no jurisdiction to pass the order under appeal relating to (1) the items of costs claimed, and (2) the interest asked for.

I would therefore accept this appeal and set aside so much of the directions as deal with these two matters. I would leave the parties to bear their own costs in this Court.

SHADI DAL C.J.

SHADI LAL C.J.—I concur.

N. F. E.

Appeal accepted.