# FULL BENCH.

*Before Sir Francis W. Maclean, K. C. I. E., Chief Justice, Mr. Justice Rampini, Mr. Justice Brett, Mr. Justice Mitra and Mr. Justice Doss.*

1908
May 5.

## SATYENDRA NATH RAY CHAUDHURI
*v.*
## KASTURA KUMARI GHATWALIN.*

*Civil Procedure Code (Act XIV of 1882), s. 199—Judgment—Judgment written after transfer of the judge from the place, where the case was heard, if valid.*

The judgment, referred to in section 199 of the Civil Procedure Code, which can be pronounced by a Judge's successor, may be written after he has ceased to exercise jurisdiction in the place, where the cause of action in the suit to which the judgment relates, arose, owing to his transfer or proceeding on leave.

*Mutty Lall Sen* v. *Deshkar Roy*(1) held inapplicable. *Parbutty* v. *Higgin*(2) and *Sundar Kuar* v. *Chandreshwar Prasad Narain Singh*(3), followed.

SECOND APPEAL by defendants Nos. 1 and 9.

The facts of the case appear from the Order of Reference, which was as follows:—

These are two appeals against one decision, dated the 21st November 1905, of Mr. W. H. Thomson, who describes himself as "late Subordinate Judge of Deoghur, now Subordinate Judge of Dumka."

The facts are these. The plaintiff Srimati Thakurani Kastura Kumari Ghatwalin, through the manager, appointed by the Court of Wards to manage the estate of her deceased husband, sued to eject certain defendants from lands in the Sub-Division of Deoghur. The principal defendant was the defendant No. 1, Lala Brij Behari Sahai. There were other defendants, who were sub-lessees under Lala Brij Behari. The learned Subordinate Judge speaks of them as "sub-defendants." The plaintiff obtained a decree. Some of the defendants compromised the case with her. The only defendants, who are dissatisfied with the decree of the Subordinate Judge, are the defendants Nos. 1 and 9; and they have preferred these two appeals to us, the appellant in appeal No. 68 being the defendant No. 9, and the appellant in appeal No. 147 being the defendant No. 1.

* Reference to a Full Bench in Appeals from Original Decrees Nos. 68 and 147 of 1906.

(1) (1867) 9 W. R. 1. (2) (1872) 17 W. R. 475.
(3) (1907) I. L. R. 34 Calc. 293.

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The grounds of appeal taken in this Court are *first*, that the Subordinate Judge is wrong in holding that the land in dispute is not held upon a permanent tenure, and *secondly*, that the judgment of the Subordinate Judge is not legal, because it was pronounced after he had ceased to be Subordinate Judge of Deoghur, or to exercise powers in that Sub-Division, having been appointed Subordinate Judge in another Sub-Division of the Sonthal Parganas, namely, the Sadar Sub-Division, Dumka.

It is unnecessary for us to deal with the first of these two grounds of appeal, because we consider that the second ground should prevail and that the suit should be remanded to be disposed of in a legal manner by the Subordinate Judge of Deoghur.

The suit was instituted before, and tried, by Mr. Thomson, when he was Subordinate Judge of Deoghur, but by an order of the Local Government (to be found in the *Calcutta Gazette* of the 4th January 1905, page 7, and dated the 31st December 1904) Mr. Thomson was transferred to Dumka and ceased to be Subordinate Judge of Deoghur on the 17th January, 1905. On this date he recorded the following order: "Defendants refuse to argue or to file written arguments. I am making over charge to-day and all the parties want me to write the judgment, so the record must be sent to Dumka, to which place I am going on transfer."

Then on the 21st November 1905, that is after a lapse of 10 months, he wrote his judgment and sent it with the following order to the then Subordinate Judge of Deoghur: "Judgment written and signed. Let the record be returned to the present Subordinate Judge of Deoghur for favour of delivery of judgment." It is to be presumed that the present Subordinate Judge of Deoghur, Mr. McGavin, delivered the judgment, but it is noticeable that the decrees were signed by Mr. Thomson. The legality of the proceedings is impugned by the appellants before us; and we have no doubt that they are illegal. The provisions of section 199 of the Code of Civil Procedure allow a judge to pronounce a judgment written by his predecessor, but not pronounced. But this must mean, we think, a judgment written by a judge, when he is holding office, in which he is succeeded by another officer, and who, simply because he has not time to pronounce the judgment, which he has already written, has to leave the task to his successor. The section cannot in our opinion cover a case, such as the present, in which Mr. Thomson ceased to be Subordinate Judge of Deoghur on the 17th January 1905 and was then succeeded in office by another gentleman, when he proceeded to the Sadar Sub-Division of the Sonthal Parganas, namely, Dumka, where, after a lapse of about 10 months, he wrote his judgment.

We may note that we find from the *Calcutta Gazette* of the 11th May 1904 (page 667) that by an order of the Local Government, dated the 9th May 1904, Mr. Thomson was vested with the powers of Subordinate Judge within the local limits of the Deoghur Sub-Division. He had, therefore, no power of a Subordinate Judge in the whole district, and by the subsequent order of the 31st December 1904, it is clear that, when he made over charge of his office to the Subordinate Judge of Deoghur, he entirely ceased to have any powers in that Sub-Division.

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We therefore consider that we should set aside the judgment and decrees of the Subordinate Judge, so far as the defendants Nos. 1 and 9 are concerned, and remand the suits to the Subordinate Judge of Deoghur, to proceed with them as provided in section 191 of the Civil Procedure Code.

We are, however, met with the judgment of a Division Bench of this Court, in *Sundar Kuar* v. *Chandreshwar Prasad Narain Singh*(1), in which it has been held that the judge, who has heard the evidence in a case, is entitled under section 199 of the Civil Procedure Code to write his judgment and send it to his successor for delivery, although the judgment was written by him after he had taken leave or left the post, which he was occupying, when he heard the case. Two other cases have been cited to us, *viz.*, *Mutty Lall Sen* v. *Deshkar Roy*(2), and *Parbutty* v. *Higgin*(3). The former, which is the decision of a Full Bench, is in favour of the view we take. The latter is in favour of the view taken by the learned judges who decided the case of *Sundar Kuar* v. *Chandreshwar Prasad Narain Singh*(1). But there is this distinction between the case of *Parbutty* v. *Higgin*(3) and the present case, that in *Parbutty* v. *Higgin*(3) the Subordinate Judge, who tried the case, had made up his mind about it before making over charge to his successor. In the present case, Mr. Thomson had not done so, and apparently took 10 months to come to a decision in the case. But we do not rest our decision on that ground. We think it is clear that under section 199, a judgment, which can be pronounced by a judge's successor, must be one written by the judge, while he holds office, and not one written after he has ceased to exercise jurisdiction owing to his transfer, his taking leave, or his retirement. To hold otherwise may be convenient, but in our opinion is contrary to the meaning of section 199 and may lead to gross irregularities and abuses.

We must therefore refer this question to a Full Bench and we accordingly do so and invite them to decide—"Whether the judgment referred to in section 199 of the Civil Procedure Code, which can be pronounced by a judge's successor, is one which must be written by the judge, while holding office as judge, or whether it may be one written after he has ceased to exercise jurisdiction in the place, where the cause of action in the suit to which the judgment relates arose, owing to his transfer or proceeding on leave."

*Babu Dwarka Nath Chakravarti* (*Babu Tarak Chandra Chakravarti* and *Babu Girija Prasanna Ray Chaudhuri* with him) for the appellants. Can a judgment written by a Sub-Judge, when he had reverted as a Munsif, be regarded as a judgment? *Mutty Lall Sen* v. *Deshkar Roy*(2) is clearly in point and in my favour. *Parbutty* v. *Higgin*(3) does not follow *Mutty Lall Sen* v. *Deshkar Roy*(2) and *Sundar Kuar* v. *Chandreshwar Prasad Narain Singh*(1) goes still further. [MACLEAN C. J. The object of s. 199 is to

(1) (1907) I. L. R. 34 Calc. 293. (2) (1867) 9, W. R. 1.
(3) (1872) 17 W. R. 475.

relieve the parties of suspense and delay.] [MITRA J. Section 199 was introduced in the old Code after the decision in *Matty Lall Sen* v. *Deshkar Roy*(1), apparently to get rid of the previous decisions]. The word "predecessor" in s. 199 means "predecessor while writing judgment". [MITRA J. It is then an useless section? If he could write, he could deliver the judgment also in most cases].

The unreported judgments of Mitra J. in S. A. 2264 of 1902, decided on the 24th January 1905, and in S. A. 2239 of 1905, decided on the 1st February 1905, are in my favour. [MITRA J. In those cases this point does not appear to have been argued.] On the merits, the case was not really gone into thoroughly. [MACLEAN C. J. The defendants refused to argue.] But the Subordinate Judge was going away that day. If the counsels and the record were before him when he wrote the judgment, he could have consulted them in case of doubt. [MACLEAN C. J. If he had, he could leave the matter to his successor]. [MITRA J. Suppose he has no doubts? And do you think that the state of mind of the judge, when he wrote the judgment, was not exactly what it would have been, if he had written the judgment, when he heard the case?] I am taking an extreme case.

[Doss J. *Girjashankar Narsiram* v. *Gopalji Gulabbhai*(2) agrees with *Sundar Kuar* v. *Chandreshwar Prasad Narain Singh*(3) in principle.]

*Babu Ram Charan Mitra* for the respondent was not called upon.

MACLEAN C. J. The question submitted to the Full Bench is whether the judgment, referred to in section 199 of the Civil Procedure Code, which can be pronounced by a judge's successor, is one, which must be written by the judge, while holding office as judge, or whether it may be one written after he has ceased to exercise jurisdiction in the place, where the cause of action in the suit, to which the judgment relates, arose, owing to his transfer or proceeding on leave. I think the language of the

(1) (1867) 9 W. R. 1. (2) (1905) 7 Bom. L. R. 951.
(3) (1907) I. L. R. 34 Calc. 293.

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section is a little involved, and the real question, which is raised by this Reference is, whether the decision in the case of *Sundar Kuar* v. *Chandreshwar Prasad Narain Singh*(1), which held that the judge, who has heard the evidence in the case, is entitled under section 199 of the Civil Procedure Code to write his judgment and to send it to his successor for delivery, although the judgment was written by him after he had taken leave or left the post, which he was occupying, when he heard the case, is correct.

The question seems to me to depend entirely upon the construction of section 199 of the Code of Civil Procedure. It is a very short section, and in my judgment, its construction is not susceptible of any real difficulty. The section runs as follows:—"A judge may pronounce a judgment written by his predecessor, but not pronounced." In this case, the suit was heard by Mr. Thomson, when he was Subordinate Judge of Deoghur, and he was subsequently transferred to Dumka and ceased to be Subordinate Judge of Deoghur on the 17th January 1905. On that date he recorded the following order "Defendants refuse to argue or to file written argument. I am making over charge to-day and all the parties want me to write the judgment; so the record must be sent to Dumka, to which place I am going on transfer." I regret Mr. Thomson took ten months to write his judgment. He however did write it and sent it to his successor at Deoghur to deliver and he did deliver it. It is urged that this is illegal and that section 199 does not justify such a procedure. In my opinion, it does. There is nothing in that section, which indicates directly or indirectly that the judgment of the judge, who is leaving the Court, must be written by him, before he has left. That is the point urged by the learned Vakil for the appellant. Apart from authority, and had it not been for the respect I feel for the view of the referring Bench, I personally should entertain no doubt upon the question of the construction of the section. And it seems to me that the authorities are in favour of the view I have expressed. I have already referred to the case of *Sundar Kuar* v. *Chandreshwar Prasad Narain Singh*(1), which is the last authority upon the

(1) (1907) I. L. R. 34 Calc. 293.

point. There is a similar decision in the case of *Girjashankar Narsiram* v. *Gopalji Gulabbhai*(1), in which the Court held that section 199 was a clear answer to a similar objection. As regards the older cases, the case of *Parbutty* v. *Higgin*(2) is an authority against the present appellant; and the earlier case *Mutty Lall Sen* v. *Deshkar Roy*(3) has no application to the question now under discussion; for section 199 was not in existence, when that case was decided; besides, the facts of that case are obviously different. All that was then held was that the opinions (reduced to writing) of judges, who heard the case, but who had ceased to be judges of the High Court before judgment was pronounced, could not be treated as judgments, but must be regarded as mere memoranda. Two of the judges had retired and the third had died, before judgment was delivered. That is not the present case.

Before I part with the case, I desire to express strongly that the judge, when transferred, ought not to have allowed such an inordinately long period as ten months to elapse before sending his judgment to his successor. He ought to have done so—as quickly as he reasonably could, and I hope this will be done in future.

I therefore answer the question by saying that the judge, who heard the evidence in the case, is entitled under section 199 of the Code of Civil Procedure to write his judgment and send it to his successor for delivery, although the judgment was written by him after he had left the judicial post, which he was occupying, when he heard the case.

The result is that the appeal is sent back to the Division Bench, which made the reference, with this intimation of our opinion.

The appellant must pay the costs of this Reference.

RAMPINI J. I do not wish to press the view I expressed in the Reference: I agree with the learned Chief Justice.

(1) (1905) 7 Bom. L. R. 951. (2) (1872) 17 W. R. 475.

(3) (1867) 9 W. R. 1.

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BRETT J.

BRETT J. I agree with the learned Chief Justice.

MITRA J. I agree with the learned Chief Justice. Babu Dwarka Nath Chakravarti, in the course of his argument, referred to two cases (Appeals from Appellate Decrees Nos. 2264 and 2239 of 1905) decided by me in the beginning of the year 1905. The facts of those cases are clearly distinguishable from those of the present case, and I think the question, which has now been argued, was not argued before me in those cases.

DOSS J. I agree in the judgment of the learned Chief Justice.

S. M.