# Mata Prasad vs Ram Adhar Pandey And Anr. on 19 February, 1952

## Equivalent citations: AIR1952ALL535, AIR 1952 ALLAHABAD 535

JUDGMENT

Misra, J.

1. This is a Full Bench reference.

2. The defendant-appellant, Mata Prasad Pandey came up to this Court by way of appeal under Order 43, Rule 1 (u), Civil P. C. He challenged the appellate order of the learned Civil Judge, Fyzabad, passed in appeal under Order 43, Rule 1 (a), Civil P. C. remanding the case for disposal on merits under Order 41, Rule 23, Civil P. C.

3. On the date on which this appeal was first argued before a single Judge of this Court, it was conceded that a second appeal against the appellate order of remand was incompetent. It was prayed, however, that the memorandum of appeal be treated as a revision. The sole question for determination before us is whether the order of remand passed under Order 41, Rule 23 constitutes a 'case decided' within the meaning of Section 115, Civil P. C. The reference was necessitated because of a conflict between the Oudh Chief Court and the Allahabad view on the aforementioned question.

4. The suit was for recovery of possession of certain tenancy plots and for damages. The plaintiffs Earn Adhar Pandey and Sobha Kalwar claimed to be tenants of the lands on Rs. 30 per annum under a lease executed by the zemindaria, Mt. Sheopata, dated 30-5 1944. They characterized the defendant's possession as 'usurpatory' and 'illegal.' The learned Munsif in whose Court the suit was instituted held that his jurisdiction was barred by Section 242 read with Section 180, U. P. Tenancy Act as it now stands after the amendment of 1947 (Act x [10] of 1947). In appeal the learned Civil Judge came to the conclusion that the amendment did not operate to oust the jurisdiction of the civil Courts in pending cases which were rightly instituted in such Courts in accordance with the law then in force. He, therefore, remanded the suit to the trial Court with the direction that it should be re-admitted to its original number and decided on merits. The view taken by the learned Civil Judge may perhaps be affected somewhat by the recent Full Bench view in Raghuraj Singh v. Sobhaman, 1951 ALL. L. J. 56 but that matter must be left for determination by the learnsd referring Judge.

5. Section 115, Civil P. C., empowers the High Court to 'call for the record of any case which has been decided' by subordinate Courts in which no appeal lies thereto and to pass such orders as it thinks fit if it finds that injustice has been occasioned on account of an error in the exercise of jurisdiction. In cases where the order sought to be revised does not amount to a decision of a case, it is obvious that

the aggrieved party cannot invoke the aid of Section 115 and the question whether the order suffered from defects of the nature contemplated by the section would not arise. It is urged on behalf of the defendant-appellant that the remand order amounted to the decision of an appeal which must be deemed to be a distinct 'case' for the purpose of Section 115, Civil P. C. The meaning of the expression 'case decided' occurring in 8. 115, Civil P. C. has been the subject of varying decisions and a great deal of case law has clustered round the subject. In many of them the task of defining the word 'case' has been held to be almost hopeless. The meaning of that word has not been limited by any statutory exposition and it has often been found difficult to accept the view that the word has been used by the Legislature in the ordinary sense in which it is usually understood in the English language namely as any state of facts judicially considered (see the New Oxford Dictionary). The decisions have varied between the two extremes, one representing the rule laid down by Mahmud J. in Chattarpal Singh v. Raja Ram, 7 ALL. 661 and a whole string of similar cases from other High Courts and the other in which it had been laid down that the word 'care' when applied to a suit means the whole suit and the expression 'case decided' means the final adjudication of the dispute by the Court charged with its disposal. The cases of this latter type have held the field both at Allahabad and Oudh for a long time, see for example Buddhu Lal v. Mewa Ram, (43 ALL. 564 F. B.). Jathali Bhul v. Nadia, A. I. R. (19) 1932 ALL. 415, Dilsukh Rai v. Dwarka Das, 55 ALL. 169, Sheo Baran Singh v. Lachmi Narain, A. I. R. (20) 1933 ALL. 749, Ram Kumar v. Ram Chandar Sharma, A. I. R. (20) 1933 ALL. 959 (1), Gambhir Mal v. George Anthony John, A. I. R. (21) 1934 ALL. 37 (2), Sunder Lal v. Mt. Razia Begam, A. I. R. (21) 1934 ALL. 785. Shanta Nand v. Basudeva Nand, A. I. R. (21) 1934 ALL. 986, Gupata and Go. v. Kirpa Ram Brothers, 57 ALL. 17, Mukund Lal v. Gaya Prasad, 57 ALL. 977, Wali Muhammad v. Higan Lal, 58 ALL. 639, Rangnath v. Murari Lal, 58 ALL. 721, Paras Nath v. Ran Bahadur, 11 Luck. 529 F.B., Phool Chand v.Mool Ghand, 16 Luck. 79, Ram Gopal v. Ram Shanker, 17 Luck. 17, Mt. Ram Pyari v. Govind Prasad, A. I. R. (28) 1941 Oudh 623, Kushal Ghand v. Sri Narain, A. I. R. (29) 1942 Oudh 79, Sital v. Anant Lal, A. I. R. (29) 1942 Oudh 334, Thakur Chandra Pratap Singh v. Thahur Bindeshwari Prasad Singh, A. I.R. (29) 1942 Oudh 340, Mirza Igbal All Beg v. Dr. S. Abdul Ali, A. I. R. (29) 1942 Oudh 344, Bhayoley v. Bala Din, A. I. R. (29) 1943 Oudh 370, Pt. Ram Chandra v. Raja Birendra Bikram Singh, A. I. R. (29) 1942 oudh 431, Deputy Commissioner, Rae Bareli, v. Bhola Nath, A.I. R. (29) 1942 Oudh 432, District Board, Bahraich v. Ramendra Prasad Singh, A. I. R. (30) 1943 Oudh 147, District Board, Bahraich v. Th. Ramendra Prasad Singh, A. I. R. (31) 1944 Oudh 260 and Ghani v. Mustafa Khan, 1948 Oudh W. N. 133 The rigour of the extreme rule laid down in these cases has had to be relaxed in a number of instances on account presumably of its extreme hardship and it has been held for example that the disposal of an application for leave to sue as a pauper or to stay a suit under Section 10, Civil P. C. or the question whether a particular person should or should not act as the next friend of a minor or the addition of a necessary plaintiff or defendant in a suit of the legal representative of a deceased party amounts to a 'case decided' and is revisable under Section 115, Civil P. C. See in this connection, Mt. Sunder Bahu v. Mt. Mohan Dei, 13 Luck. 560, Sheo Prasad Lal v. Mt. Prakash Rani, 13 Luck. 625, Sahdeo Singh v. Sardarani Chanun Kuer, 3 Luck. 650, Mohammad Ihtisham Ali v. Lachman Prasad, 15 Luck. 641, Raisuddin v. Basti Sugar Mills, Ltd., Basti, 16 Luck. 184 and Ghuran v. Buggan, 18, Luck. 56.

6. Fortunately the controversy illustrated by the aforenamed cases does not arise in the present case for here we are only called upon to decide whether or not the decision of the appeal by the learned

Civil Judge constitutes a 'case decided'. If the appeal can be deemed to be a case, there is no doubt that it has been finally disposed of.

7. In Hevanchal Kunwar v. Kanhai Lal, 12 oudh cas 405, Evans and Sundar Lal A. J. C. held that where independent proceedings arise out of case for which the Legislature has provided an independent remedy or a different procedure, such proceedings may be a 'case' within the meaning of the section. This decision was cited with approval by Lindsay J. in the Full Bench case in Ram Sarup v. Gaya Prasad, 24 ALL. L. J. 56. Sulaiman J. who was also a member of the Full Bench emphasised the fact that the revision was from the order of the District Judge passed on appeal and observed that when the appeal was before the Judge, there was certainly a case pending before him and it was finally decided so far as he was concerned. The third learned Judge agreed with this proposition. In Mohd. Yaqub Khan v. Sirajul Haq, 1949 ALL. L. J. 288, a Division Bench of this Court likewise held in a case where the order of the appellate Court setting aside the Munsifs order and directing that the ease be tried and disposed of according to law was revised on the view that the order of the appellate Court constituted a 'case decided' within the meaning of Section 115, Civil P. C., it being observed that the lower appellate Court had entirely disposed of the appeal which was a case pending before it and further that whenever the legislature provides for an appeal against an order, it may be presumed that the proceedings terminating in the order are of sufficient importance to be treated separately from the suit itself and to form a ' case decided.'

8. The later decisions in Oudh on this point have not been uniform. In Sital v. Anant Lal, A. I. R. (29) 1942 oudh 334, Bennett J. was concerned with an order of remand passed in appeal directing that a fresh judgment should be given after issuing another commission to ascertain certain additional facts. The only case which was cited before the learned Judge in support of the revision was Motibhai Jesingbhai v. Ranchodbhai Shambhubhai, 59 Bom. 430 in which it was said that the order passed in appeal could not be deemed to be an interlocutory order. The point was not discussed fully in the Bombay decision and Bennett J. came to the conclusion that the view was entirely obiter. The Pall Bench case in Ram Sarup v. Gaya Prasad, 24 ALL. L. J. 56 was not cited before him and the considerations upon which it rested were not urged. In Bhagoley v. Bala Din, A. I. r. (29) 1912 Oudh 370, a Division Bench of the Oudh Chief Court laid down on the strength of Shyam Sundar v. Sheoambar, A. I. R. (8) 1921 Oudh 176 (1) that where an appellate Court sets aside an order of the Court of first instance returning a plaint for presentation to the proper Court under the powers conferred in this behalf by Order 7, Rule 10, Civil P. C., and orders that the suit be disposed of according to law, the order is merely interlocutory in its nature inasmuch as it does not decide or terminate the suit and is, therefore, not open to revision under Section 115, Civil P. C. 16 may be mentioned, however, that the revision in Shyam Sundar's case waa against the decision on a preliminary issue regarding jurisdiction and was directly hit by the rule that no revision lies against an interlocutory order. In District Board, Bahraich v. Th. Ramender Prasad Singh, A. I. R. (31) 1944 Oudh 260, a Division Bench of which I was a member decided the point on the basis of the two earlier decisions just referred to and the Full Bench cases report, ed in Paras Nath v. Raj Bahadur, 11 Luck. 529 and Lal Chand Mangal Sen v. Behari Lal Mehr Chand, 5 Lah, 288. The point was answered thus:

> "There is no doubt that if the trial Court had held that it had jurisdiction and proceeded to decide the suit, the older deciding the question of jurisdiction would not constitute the decision of case. It would then have been an order on one of the issues and would at best be the decision of a branch of the case. We consider that there is no essential difference between such an order and the one where the trial Court holds that it had no jurisdiction to try the suit and the order is reversed on appeal. The effect of the order of the lower appellate Court in our view is that the issue as to jurisdiction of the trial Court has now been determined in the plaintiffs' favour. Whether the decision in that behalf is of the trial Court or that of the appellate Court is immaterial. If the order of the trial Court would be interlocutory the order of the lower appellate Court is equally so. There was never a separate record of the proceedings relating to the question of jurisdiction nor do we think that the appellate record could be regarded as a distinct and independent case so as to attract the revisional jurisdiction of this Court."

I have reconsidered the point in the light of the arguments now addressed to us and of Ram Sarup v. Gaya Prasad, 24 ALL. L. J. 56 and Mohd. Yaqub Khan v. Sirajul Haq, 1949 ALL. L. J. 288 and I have no hesitation in agreeing that the appellate order constitutes the decision of a case which could and should be regarded as a separate proceeding with a separate record and even if the rule against interlocutory orders is considered to be sound the decision of the issue which came up before the appellate Court could not be put on the same footing as its disposal by the trial Court where the question of jurisdiction, was nothing more than one of the question involved in the whole suit. We are not at present concerned with the decision of an issue of jurisdiction of trial Court which might be deemed to be an interlocutory order and hit by the rule in Paras Nath's case and we need not, therefore, go into the merits of that rule. That there was in the present case a separate appellate record which terminated in a decision does not admit of any doubt and so far as the order of the lower appellate Court is concerned, it is clear that there was a complete adjudication of the appeal, I am inclined to agree with the rule adopted by the Full Bench in Ram Sarup v. Gaya Prasad, 24 ALL. L. J. 56 and to modify the view to which I gave expression in District Board, Bahraich v. Th. Ramendra Prasad Singh, A. I. R. (31) 1944 oudh 260. I hold that the order against which the applicant invokes the revisional powers of this Court is a 'case decided' under Section 115, Civil P. C., and the revision is competent.

9. Let the ease now be laid before the Hon'ble Kidwai J. for disposal.

Malik, C.J.

10. I agree.

Chandiramani, J.

11. I agree.

Agarwala, J.

12. I agree and have nothing to add.

Beg, J.

13. I agree.

Misra, J.

14. Judgment pronounced in open Court today.