

Ashtbhuja Singh vs Board Of Revenue Allahabad And Ors. on 11 February, 1954

Equivalent citations: AIR1954ALL521, AIR 1954 ALLAHABAD 521

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. I have heard learned counsel for the petitioner on this petition under Article 227 of the Constitution. By this petition the petitioner challenges the correctness of an order of the Board of Revenue dated 9-12-1953 by which a second appeal was dismissed by the Board. The petitioner should have approached this court under Article 226 of the Constitution which is the appropriate provision for this purpose.

2. On merits also this petition has no force. It appears that the second appeal was first heard by one Member of the Board of Revenue. Shri A. Rauf on 22-8-1953 passed his judgment holding that he would allow the appeal, set aside the order passed by the Additional Commissioner and restore that passed by the trial court. This judgment went for concurrence to another Member Shri T. N. Srivastava who differed from Shri A. Rauf and held that he would suggest that the decree of the Additional Commissioner should be maintained and the appeal be dismissed. Consequent on this difference of opinion between the two Members, Shri A. Rauf, when the appeal came up again before him, passed an order dismissing the appeal and confirming the order of the Additional Commissioner against which the appeal was directed.

3. Learned counsel's only point is that since there was a difference between two Members of the Board of Revenue, a point of law should have been stated and referred to a third Member of the Board of Revenue under the proviso to Sub-section (2) of Section 98, C. P. C. which is applicable to a procedure before the Board of Revenue. It, however, appears that under the proviso it is discretionary for the Members of the Bench hearing the appeal to state the point of law on which they differ. If they do not choose to state the point of law but proceed to give their judgments differing from each other, the decree of the lower court from which the appeal has been filed is to be confirmed. This is exactly what happened in this case.

Learned counsel's contention was that it was compulsory for the Board of Revenue to state the point of law under the proviso and the word "may" used in the proviso should be read as equivalent to the word "shall". This contention cannot be accepted in view of a decision of a Full Bench of this Court

in -- 'Lal Singh v. Ghansham Singh', 9 All 625 (A). In that case Section 575, Civil P. C. of 1882 was Interpreted. So far as the point of interpretation in the present case is concerned, the language of the proviso to Sub-section (2) of Section 98, Civil P. C., 1908 is the same as occurred in Section 575 of the Code of C. P. C. of 1882. There have been changes in the language of the proviso but they do not affect the point which is being considered in this case, viz., that the word "may" should be interpreted as making it compulsory, if the Judges differ, to state the point of law. That decision of the Full Bench of this Court is binding on me.

4. Consequently, I have to hold that the judgment of the Board of Revenue confirming the decree of the court from which the appeal had been filed was correct and in accordance with the law. No other point has been raised which would show that the Board of Revenue exercised a jurisdiction not vested, in it or failed to exercise a jurisdiction vested in it.

5. The petition therefore has no force and is rejected.