

Gokul Chand And Ors. vs Babu Ram Ratan Lal on 26 February, 1951

Equivalent citations: AIR1952ALL423, AIR 1952 ALLAHABAD 423

JUDGMENT

Malik, C.J.

1. This is an appeal under the Letters Patent read with the U.P. High Courts (Amalgamation) Order, 1948, against an order of a learned Single Judge of this Court dismissing an appeal on a preliminary ground that no appeal lay. The proceedings were before the learned Civil Judge and an application was made on behalf of the Official Receiver for setting aside of abatement. The application was granted and it is against the order granting the application and setting aside the abatement that this appeal was filed. Section 75, Provincial Insolvency Act (Act V of [5] 1920) provides for appeals and appeals to this Court can be filed only against decisions or orders of a "District Court" as specified in Schedule I while appeals lie to the "District Court" from judgments of "subordinate Courts." District Court is defined in Section 2(b) as meaning principal civil Court of original jurisdiction.

2. The learned Civil Judge was not a principal civil Court of original jurisdiction. In Section 3 it is provided that the District Court shall be Court having jurisdiction under the Act provided that the local Government may, by notification in the local official gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act. So, it is the subordinate Court that is invested with jurisdiction and when so invested with jurisdiction it has got the same powers as the District Court, but there is no provision in Section 3(1) which makes the Civil Judge the Court of principal civil jurisdiction when there is a District Judge for that area. Subsection (2) of Section 3 makes the intention of the Legislature abundantly clear. It provides that for purposes of the Insolvency Act, a Court of Small Causes shall be deemed to be subordinate to the District Court. This was necessary as appeals do not lie from the orders of a Court of Small Causes to the District Court and it was, therefore, necessary to make it clear that even a Court of Small Causes, must be deemed to be subordinate to the District Court.

3. The decision of the learned single Judge is correct. The appeal is dismissed, but as the respondent is not represented, we make no order as to costs.