

Banke Bihari Lal And Anr. vs Mahadeo Prasad on 8 August, 1952

Equivalent citations: AIR1953ALL97, AIR 1953 ALLAHABAD 97

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Bench: V. Bhargava

JUDGMENT

Y. Bhargava, J.

1. This second appeal arises out of proceedings under Section 4, Encumbered Estates Act, The application under Section 4 of the Act was presented by one Shrimati Sharda who is now dead and who is now represented on the record by her sons, Bankey Behari Lal and Brij Behari Lal. One of the creditors of Shrimati Sharda was one Lal Bahadur. Lal Bahadur died and his widow Shrimati Brij Rani was brought on the record. The proceedings under the Encumbered Estates Act reached the stage when the learned Special Judge had to pass decrees under Section 14, Encumbered Estates Act, in respect of the proved debts in favour of the creditors. After the learned Special Judge had taken all the evidence for the purpose of passing decrees under Section 14 of the Act and had heard arguments, he reserved the judgment. Before the judgment could be delivered, he had the occasion to send for counsel for both the parties and then he was informed that Shrimati Brij Rani, the creditor, had died. He, however, proceeded to pass a decree in her favour in accordance with the provisions of Order 22, Rule 6, Civil P. C. This decree was passed on 12-10-1946.

An appeal against this decree was presented by the present appellants in the Court of the learned District Judge of Lucknow on 17-12-1946. When presenting the appeal, the appellants impleaded Shrimati Brij Rani as the respondent and it was on 2-1-1947, that they applied to the Court to substitute the name of the present respondent Mahadeo Prasad in place of the name of Shrimati Brij Rani. On 17-7-1947, the name of Mahadeo Prasad was substituted for the name of Shrimati Brij Rani under the orders of the learned District Judge. It was, however, felt necessary that the appellants should make an application under Section 5, Limitation Act, for condonation of the delay in bringing Mahadeo Prasad on the record in place of Shrimati Brij Rani. This application was presented on 18-7-1947. The learned District Judge rejected this application on 5-9-1947, and passed an order dismissing the appeal as being time barred. It was against this order passed by the learned District Judge that the present appeal has come up before us.

2. We entirely agree, in this case, with the learned District Judge that since Shrimati Brij Rani had died on 24-9-1946, prior to the filing of the appeal by the appellants in the Court of the learned District Judge, there could be no substitution of the name of Mahadeo Prasad in place of that of

Shrimati Brij Rani under Order 22, Civil P.C. What was required was that the appellant should have impleaded Mahadeo Prasad as the respondent straightway in the appeal. His name was brought on the record on 17-7-1947, on the basis of the application of the appellants dated 2-1-1947. It may, therefore, be assumed that the appellants impleaded Mahadeo Prasad as the respondent on 2-1-1947, but even by that date the period of limitation for filing the appeal against Mahadeo Prasad had already expired. Consequently, it was necessary for the appellants to present an application under Section 5, Limitation Act, for condonation of the delay. The appellants sought this condonation on the ground that they came to know of the death of Shrimati Brij Rani on 31-12-1946, and consequently, they applied on 2-1-1947, the very next working day of the Court, that Mahadeo Prasad's name be substituted for the name of Shrimati Brij Rani. Mahadeo Prasad respondent, in this case, contended that the appellants had knowledge of the death of Shrimati Brij Rani at a much earlier stage. In fact, his contention was that the appellants knew of Shrimati Brij Rani's death even before the judgment was pronounced by the trial Court on 12-10-1946.

The contention raised by Mahadeo Prasad was that, before the trial Court delivered the judgment on 12-10-1946, the learned Munsif, who was working as the Special Judge, had occasion to send for counsel for both the parties and then Shri Jagannath Prasad, counsel for the appellants, had informed the learned Special Judge that Shrimati Brij Rani had died. This was a contention which it was necessary for the appellants to meet before their application under Section 5, Limitation Act, could be allowed. The burden lay on the appellants to prove their want of knowledge of the death of Shrimati Brij Rani before the appeal was filed and once an objection had been raised that their counsel knew of the death earlier, it was for them to give evidence to show that that objection had no force. We find that no evidence at all was given on behalf of the appellants on this point. All that happened was that the learned District Judge, who was hearing the appeal, himself sent for Shri Jagannath Prasad and questioned him on the point. Shri Jagannath Prasad stated that he had not given any information to the learned Special Judge that Shrimati Brij Rani had died. Thereupon the learned District Judge sent for a report from the learned Special Judge who, in his report, stated that the counsel for both the parties had appeared before him in his Chambers in connection with some enquiry on a point on which he wanted clarification before delivery of judgment. It was then that the learned counsel appearing for Shrimati Brij Rani had informed him of her death. Thereupon the learned Special Judge questioned Shri Jagannath Prasad who also corroborated the fact that Shrimati Brij Rani had died. This would show that, Shri Jagannath Prasad, who acting for the appellants as their counsel know that Shrimati Brij Rani had died before 12.10-1946. There is no suggestion at all that Shri Jagannath Prasad was working in his personal capacity or that the information of Shrimati Brij Rani's death was received by him in his personal capacity. Shri Jagannath Prasad's information about her death was in his capacity as counsel for the appellants and consequently, his knowledge of the death of Shrimati Brij Rani must be held to be the knowledge of his clients for whom he was acting, viz., the appellants.

3. Learned counsel for the appellants has strenuously argued that, in this case, the learned District Judge was not justified in taking into account the report which he had obtained from the learned Special Judge about the conversation which he had with the counsel for the parties, in which the death of Shrimati Brij Rani was mentioned by the counsel for the appellant. Learned counsel's argument is that the report was not admissible in evidence at all and that the only proper way, by

which the learned District Judge could have used the statement of the learned Special Judge, was by calling the learned Special Judge in Court and examining him as a witness. We are unable to agree with this argument of the learned counsel. This was not a case where the Special Judge had any personal knowledge apart from his capacity as Special Judge dealing with these very proceedings. The facts, which had to be ascertained from him, were facts which came to his knowledge when dealing with these Encumbered Estates Act proceedings and while acting as a Court. The learned Special Judge could have used that knowledge himself at the time of delivery of judgment if it had been relevant to the points for decision before him and no exception could have been taken to the use of that knowledge. Conduct of parties in Court as well as statements which might be made by counsel for the parties to the Court can always be used by the Court, for purposes of arriving at the decision in the case, as being part of proceedings in Court. Since what happened before the learned Special Judge could have been used by him for a decision of the case as being part of the proceedings before him, it could also be used by the appellate Court because the appellate Court exercised all the powers which the trial Court had. Under Sub-section (2) of Section 107, Civil P.C., the appellate Court could exercise all the powers and perform all the duties which the trial Court could do.

The only question is as to whether, before taking notice of what had happened as part of the proceedings in the trial Court, it was necessary for the learned District Judge to examine the Presiding Officer of the trial Court or whether he could obtain that information from the trial Court by asking for a report. In our opinion, it should never be necessary for an appellate Court to examine as a witness the Presiding Officer of the trial Court in order to take notice of the proceedings which took place before that officer. It is enough for the appellate Court, in case those proceedings have not already been put down in writing, to ask the trial Court to record them in writing and send that record to the appellate Court. Under Order 41, Rule 30, Civil P.C., the appellate Court is given the power, when delivering judgment in appeal not only to take into account the evidence on the record but also to refer to the proceedings which may have taken place in the appellate Court itself or in the trial Court. If, by chance, any proceedings have not been recorded in writing and the appellate Court has reasons to believe that certain proceedings did take place, it is certainly competent for the appellate Court under Section 151 of the Code to ask the trial Court to record those proceedings and send this record of the proceedings to the appellate Court.

In this connection, our attention has also been drawn to the provisions of Section 121, Evidence Act which permits a superior Court to question the inferior Court with regard to the conduct of the Presiding Officer of that Court and with regard to the knowledge which might have been derived by such Presiding Officer in that capacity. Section 121, Evidence Act, also thus empowers an appellate Court to question the trial Court on matters relating to the proceedings before him and the answers of such questions are certainly to be taken into account when deciding the appeal because reference to proceedings is permitted under the provisions of the Civil P.C. We are, therefore, of the opinion that the learned District Judge did not commit any irregularity in taking into account the report of the learned Special Judge relating to the proceedings that had taken place before him. Learned Counsel cited several cases before us and also read out to us an extract from Halsbury's Laws of England relating to the question whether the knowledge of the Presiding Officer of a Court can be used in deciding a case. None of those cases need be discussed in detail because all of them refer to cases where the information of the Presiding Officer sought to be utilised for delivery of judgment

had been acquired by the Presiding Officer in his personal capacity and not in his capacity as the Judge presiding over the Court. In the present case, what is sought to be used by the appellate Court is not the knowledge of the Special Judge obtained in his personal capacity but a record of the proceedings which took place before the learned Special Judge in connection with this very case under the Encumbered Estates Act. Consequently, the view that has been taken by the learned District Judge that the appellants failed to show that they had no knowledge of the death of Shrimati Brij Rani up to 31-12-1946, is correct, and, on this view, the application for condonation of delay under Section 5, Limitation Act, had to be dismissed.

4. There is, therefore, no force in this appeal which is dismissed with costs.