

L. Har Saran Dass And Ors. vs Mukandi Lal And Ors. on 22 November, 1950

Equivalent citations: AIR1951ALL514, AIR 1951 ALLAHABAD 514

JUDGMENT

Malik, C.J.

1. This is an application under Articles 226(1) and 227(1) of the Constitution of India read with Sections 115 and 151, Civil P. C. A suit was filed before the First Munsif of Bulandshahr by Mukandi Lal claiming that he was the reversioner of one Bakshi Ram. The plaintiff claimed possession of the property on the ground that after the death of the widow the succession had opened in his favour. The widow in her lifetime had made several transfers and the transferees were also impleaded as parties to the suit. Some property in Mussoorie had been transferred to the applicant who were residents of Mussoorie. A plea was taken on their behalf that the learned Munsif of Bulandshahr had no jurisdiction to entertain the suit about the property situate in Mussoorie which had been transferred to them. The issue of jurisdiction was framed as a preliminary issue and the learned Munsif came to the conclusion that he had jurisdiction to hear the case. The view taken by him was that there was one cause of action on the death of the widow and the plaintiff was entitled to take advantage of Section 17, Civil P. C. Reliance was placed on behalf of the defendants on certain observations made by a learned Judge of this Court in the case of Karam Singh v. Kunwar Sen, A.I.R. (29) 1942 ALL. 387 : (I.L.R. (1942) ALL. 862). The learned Munsif, however, thought that that decision was distinguishable and that, in any case, the observations were obiter. It is not necessary for us to express any opinion on the merits as the question may arise later when an appeal is filed against the final decision of the learned Munsif.

2. The argument advanced by learned counsel is that under Article 227 of the Constitution the High Court has been given power of superintendence and the word 'superintendence' includes administrative as well as judicial Superintendence. Learned counsel for the applicants has relied on the decision of other High Courts in India where the Courts had taken the view that under the corresponding provision of Section 107, Government of India Act of 1915 'superintendence' was interpreted to include judicial as well as administrative superintendence. This view was, however, not approved by a Full Bench of this Court in the case of Makund Lal v. Gaya Prasad, 1935 A. L. J. 549 at p. 553 : (A. I. R. (22) 1935 ALL. 599 F. B.). Learned counsel has urged that by reason of the decision in Buddhu Lal v. Mewa Ram, 43 ALL. 564 : (A.I.R. (8) 1921 ALL. 1 F.B.) a revision under Section 115, Civil P. C. is barred, and the applicants, therefore, can invoke the provisions of Articles 226 and 227 of the Constitution and ask for the correction of the error made by the lower Court in assuming jurisdiction when it did not have it. Learned counsel has further pointed out that under Section 21, Civil P. C., no objection as to the place of suing can be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible

opportunity and unless there had been a consequent failure of justice. Learned counsel has urged that even though his clients have taken the objection at the earliest possible opportunity but that by itself would not suffice and before they can successfully urge the plea they would have to show that there had been a consequent failure of justice. We do not want to express any opinion whether under Article 227 of the Constitution, in the exercise of its power of superintendence, this Court has not only administrative superintendence but also judicial superintendence. That point may have to be considered in a suitable case where the Court may be of the opinion that it was necessary to pass orders under these Articles. The power, given under Articles 226 and 227 of the Constitution should, we are clearly of the opinion, be restricted to interference in cases of grave dereliction of duty for which no other remedy is available and which would have serious consequences if not remedied. It cannot be seriously urged that any such grave consequence would follow if the suit is tried by the Munsif at Bulandshahr and not by the Court at Mussoorie. In any case, if any such serious consequence does follow, then under Section 21, Civil P. C., the Court of appeal shall have the right to correct the error, if any, made by the Munsif.

3. We see, therefore, no reason to entertain this application and it is dismissed.