Hidayatullah And Anr. vs Nabi Bux on 10 December, 1952

Equivalent citations: AIR1953ALL403, AIR 1953 ALLAHABAD 403

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Bench: V. Bhargava

JUDGMENT

1. This case has had a chequered history. The plaintiff-respondent brought a suit in the Court of the Additional Civil Judge of Rampur State for a declaration that he was the owner of 23 1/2 yards of land in a lane adjacent to his house. The suit was decreed by the Additional Civil Judge and an appeal against his judgment was filed before Sita Bam Agrawala J., of the Bampur High Court. He dismissed the appeal on 20-2-1949, and against the judgment of the learned Single Judge an appeal was filed before a Division Bench. The appeal was dismissed by the Division Bench on 8-11-1949. In the meantime, the State had merged in the Centre and in the exercise of the powers conferred by ss. 3 and 4 of the Extra-Provincial Jurisdiction Act, 1947 (Act no. 47 of 1947) the Central Government passed an order dated 1-7-1949, by which a Chief Commissioner was appointed and the powers of the Nawab of Bampur were transferred to the Chief Commissioner.

2. Against a judgment of the High Court, Bampur, an appeal lay to the Ijlas-e-Humayun under the Nizamnama Adalat High Court Va Adalat hai Reyasat Rampur of 1944. The Nawab was exercising the powers of the Ijlas-e-Humayun and these powers of the Nawab were transferred to the Chief Commissioner under the order mentioned above. On 19-11-1949, the defendants filed an appeal before the Chief Commissioner and prayed that the judgment passed by the Courts in Bampur be set aside and the plaintiff's suit be dismissed. Before the Chief Commissioner could, however, deal with the appeal the State merged in U. P. on 1-12-1949, and the cases pending in the High Court, Rampur, or in the Ijalis-e-Humayun stood transferred to this Court under a Notification published in the Gazette of India (Extraordinary), dated 30-11-1949, and called the States' Merger (United Provinces) Order, 1949. It is thus that the appeal that had been filed in the Court of the Chief Commissioner has come before us for disposal.

3. We have heard learned counsel and we see no reason to admit this appeal. The appeal is concluded by findings of fact recorded by the High Court of Kampur. It was established to the satisfaction of the Courts which had heard the case that the plaintiff had proved his title to the land in suit. Some legal objections were taken to the validity of the sale deed dated 12-4-1882, which was in plaintiff's favour and those objections had no substance. The other points of law were correctly decided and learned counsel has not been able to point out any error. Learned counsel has, however, urged that the practice followed in the appeals to the Privy Council do not apply to appeals before the Ijlas-e-Humayun which never considered itself bound by concurrent findings of fact. It is pointed out that under the Nizamnama of 1944, mentioned above, jurisdiction of the Nawab was unlimited and it was open to him to go into questions both of fact and law and pass such order as he

pleased and this Court, therefore, in hearing this appeal must reconsider the evidence on the record and decide whether the decision of the learned Judges of the Rampur High Court was right or wrong.

4. It must, however, be remembered that the Nawab was exercising the prerogative rights of a Sovereign and, though it may have been open to him to pass such orders as he pleased, the appellant could not claim a right that questions of fact should be re-opened and the evidence considered afresh. The case had already come before three Courts of law of competent jurisdiction which had been constituted for determining the rights of the parties. It might be that in the exercise of the prerogative right of the Sovereign and in the absence of any well-established practice, the Nawab might have in some cases allowed concurrent findings of fact to be reopened--a fact about which we have no knowledge except the assertion of counsel but these must have been exceptional cases where some rule of natural justice had been violated or some such obvious error made on the face of the record as would induce the Sovereign to interfere. The appellant, however, cannot claim a right that the evidence on the record should be re-examined by us, though it had already been examined by three Courts, which had held against him. In our view, the rule laid down by the Judicial Committee of the Privy Council for appeals to that august body should, in the absence of any laws or directions to the contrary, govern such appeals.

5. Having read the judgment and having board learned counsel, we see no reason to admit this appeal. The appeal is, therefore, dismissed.