Supreme Court of India
P. Mohammed Meera Lebbai vs Thirumalaya Gounder Ramaswamy ... on 23 August, 1965
Equivalent citations: 1966 AIR 430, 1966 SCR (1) 574
Author: M R.
Bench: Mudholkar, J.R.

PETITIONER:
P. MOHAMMED MEERA LEBBAI

Vs.

RESPONDENT:
THIRUMALAYA GOUNDER RAMASWAMY GOUNDER AND OTHERS

DATE OF JUDGMENT:
23/08/1965

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
SUBBARAO, K.
BACHAWAT, R.S.

CITATION:
1966 AIR 430 1966 SCR (1) 574

ACT:
Kerala High Court Act 1958 (5 of 1959), s. 5-Jurisdiction of Single Judge to hear appeals raised from Rs,. 1,000 under earlier law to Rs. 10,000 -Appeal valued at Rs. 3,000 filed before, but heard after, change of law -Appellant whether can claim to be heard by Division Bench.

HEADNOTE:
The appellant's suit for recovery of possession of property and mesne profits filed in 1950 was substantially decreed by the trial court. The appellant however filed an appeal before the Kerala High Court against the decree in so far as it went against him. The appeal was heard in 1960 after the Kerala High Court Act 5 of 1959 had been passed and under its provisions the appeal was heard by a single judge. When the appellant had filed his suit, and later on his appeal, the Travancore-Cochin High Court Act of 1949 was in force and under that Act the appeal would have been heard by a Division Bench. On the judgment of the High Court going against him the appellant came to the Supreme Court by special leave. It was contended on his behalf on the basis of kadhakrishan's case that the Kerala High Court Act 5 of 1959 could not retrospectively take away his right to be

heard by a Division Bench, which he had under the law as it stood when he filed his suit and appeal. Reliance was also placed on Grikapati Veeraya's case for the proposition that the institution of a suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

HELD : No party has a vested right to be heard by a specified number of judges. The Travancore-Cochin High Court Act of 1949 did not confer any right of appeal on the appellant which has been taken away by the later Act. It only provided for procedural matters which are dealt with by several High Courts under the Letters Patent. The contentions based on Radhakrishan's case and Garikapati Veeraya's case must therefore be rejected. [578 B-G]

Radhakrishan v. Shridhar, I.L.R. 1950 Nag. 532, disapproved.

Mahendra v. Darsan, I.L.R. 31 Pat. 446 and Garikapati Veeraya v. N. Subbaiah Choudhury, [1957] S.C.R. 488, referred to.

Ittavlra Mathai v. Varkey Varkey & Anr. [1964] 1 S.C.R. 495, followed.

It could not also be said that by depriving the appellant of the right to have his appeal heard by a Division Bench his further right of appeal to this Court under Art. 133 had been affected. Once it is held that no party has a vested right to have his appeal heard by more than one Judge of the High Court, no right to prefer an appeal under Art. 133 can be said to vest in him, the said right being unavailable in a ease heard and disposed of by a single Judge of the High Court. [579 A-B]

JUDGMENT:

APPELLATE JURISDICTION Civil Appeal No. 383 of 1963.

Appeal by special leave from the judgment and decree dated August 10, 1960 of the Kerala High Court in Appeals Suit Nos. 577 and 751 of 1958 and 40 of 1959.

T. N. Subramania lyer, M. S. K. Sastri and M. S. Narasimhan, for the appellant.

A. V. Viswanatha Sastri, S. N. Amjad Nainar and R. Thiagarajan, for respondent No. 1.

M. R. K. Pillai, for respondents Nos. 4 and 5. The Judgment of the Court was delivered by Mudholkar, J. This is an appeal from a judgment of a single Judge of the Kerala High Court dismissing the appellant's suit for recovery of possession of certain property and for mesne profits. It is not disputed that the only question of law which arises in this appeal is whether the appeal could be heard and disposed of by a single Judge of the High Court. The other questions raised are purely questions of fact. Article 133, cl. (3) of the Constitution clearly provides that notwithstanding anything in the article no appeal shall lie to the Supreme Court from a judgment, decree or final

order of one Judge of a High Court unless Parliament by law otherwise provides. Parliament has passed no law rendering the judgment of a single Judge appealable to the Supreme Court. Though this provision does not detract from the power of this Court under Art. 136 to entertain an appeal from a decision of a single Judge, it is the settled practice of this Court not to interfere with a finding of fact arrived at by the High Court unless it is satisfied that in arriving at the finding of fact the High Court had been guilty of -rave errors. We gave opportunity to learned counsel to point out to us if the findings arrived at by the learned single Judge of the High Court are vitiated by any grave errors. But he was unable to point out any. We, therefore, declined to permit him to address us on the findings of fact.

As regards the question of law it is desirable to set out how, according to the appellant, it arises. The suit was instituted on February 10, 1950 in the district court of Kottayam which was later transferred by it to the court of the Subordinate Judge, Meenachil sometime in the year 1956 and was substantially decreed in the appellant's favour on July 30, 1958. Three appeals were preferred against it. One was by Tirumalaya Gounder, the first defendant, and another in January, 1959 by H. B. Mohammad Rowther, 8th defendant. The appellant had also preferred an appeal against that part of the decree which was adverse to him. All these -appeals were heard together and disposed of by a ,common judgment on August 10, 1960 and the appeals preferred. by defendants I and 8 were allowed by the High Court while the appeal preferred by the appellant was dismissed. At the time the suit was instituted the Travancore-Cochin High Court Act 5 of 1125 M.E. (Corresponding to 1949 A.D.) was in force. Under s. 20 of that Act read with S. 21 all appeals to the High Court valued at an amount in excess of Rs. 1,000 had to be heard by a Division Bench consisting of two Judges of the High Court. T he appellant's suit and the appeals taken by the respondents from the District Court and the Subordinate Judge were both valued at Rs. 3,000 and, therefore, had ss. 20 and 21 of the Act been in force on the date on which the appeals were instituted unquestionably they would have had to be beard by a Division Bench of two Judges. The aforesaid Act was, however, repealed by the Kerala High Court Act, 1958 being Act No. 5 of 1959 which received the assent of the President on February 6, 1959 and came into force on March 3, 1959. The appeals were placed for hearing before a single Judge overruling, we are informed by learned counsel, the appellant's plea that they should be only heard by a Division Bench. The reason why the appeals were heard by a single Judge and not Placed before a Division Bench was that under s. 5 of the Kerala High Court Act 5 of 1959 the jurisdiction of a single Judge of the High Court to hear and dispose of appeals from an original-decree was extended to appeals in which the value of the subject matter did not exceed Rs. 10,000. According, to learned counsel the right to have the an-peals heard by a Division Bench conferred by the Travancore-Cochin High Court Act which was in force not only when the suit but also when the appeals were filed, was not taken away expressly by Kerala Act 5 of 1959 and could not be taken away by implication. In support of his contention he placed strong reliance upon the decision in Radhakrishan v. Shridhar(1). In that case, just -,is here, the jurisdiction of a single Judge to hear an appeal of a value over Rs. 2,000 was challenged, even though by an amendment to an earlier rule made by the High Court in exercise of its power under el. 26 of the Letters Patent on May 27, 1948 all appeals from an appellate decree of a District Court were to be ordinarily heard and disposed of-by a single Judge. A contention was raised on behalf of the appellant's counsel in that case that in the absence of any express provision rendering the amendment retrospective the amendment did not touch the right of an appellant which bad (1) I.L.R. [1950] Nag. 532.

accrued to him earlier to have his appeal heard by a Division Bench. The contention was upheld by the High Court. This decision was not approved of in Mahendra v. Darsan(1) on the ground that the right of a party to have an appeal heard by a Division Bench was merely a matter of procedure and could, therefore, be taken away retrospectively by implication. Learned counsel for the appellant also placed reliance upon a decision of this Court in Garikapati Veerara v. N. Subbaiah Choudhury(2) in which the following propositions were laid down :

> "(1) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.
>
> (2) The right of appeal is not a mere matter of procedure but is a substantive right.
> (3) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.
>
> (4) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the dater the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.
>
> (5) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

and learned counsel particularly laid stress on the third proposition. We are in respectful agreement with what has been laid down by this Court. But it is difficult to appreciate what benefit the appellant can obtain from what has been laid down by this Court. For, this is not a case where any right of appeal conferred by law upon the appellant has be-en taken away. The right to prefer an appeal from the judgment of the court of first instance is derived from the provisions of s. 96 of the Code of Civil Procedure. The learned counsel, however, contended that in the instant case it is traceable to the provisions of Travancore-

(1) I.L.R. 31 Patna 446.

(2) [1957] S.C.R. 488 Cochin High Court Act of 1949. That Act as its preamble shows was enacted for making provision regulating the business of the High Court of Travancore-Cochin for fixing the jurisdiction of single Judges, Division Benches and Full Benches and for certain other matters connected with the functions of the High Court. It did not purport to confer a right of appeal on the parties, but merely dealt with procedural matters, matters which are dealt with by several High Courts under the Letters Patent. Even the Travancore- Cochin Civil Courts Act, 1951 the provisions of which relate to civil courts subordinate to the High Court does not confer any right of appeal though it divides civil courts into four classes and defines their respective jurisdictions.

An objection somewhat similar to the one raised by the appellant before us was raised before this Court in Ittavira Mathai v. Varkey Varkey & another(1). Dealing with it this Court has observed at p. 514 :

> "That reason is that an appeal lay to a High Court and whether it is to be heard by one, two or a larger number of judges is merely a matter of procedure. No party has a vested right to have his appeal heard by a specified number of judges. An appeal lay to the High Court and the appeal in question was in fact heard and disposed by the High Court and, therefore, no right of the party has been infringed merely because it was heard by two judges and not by three judges. No doubt in certain classes of cases, as for instance, cases which involve an interpretation as to any provision of the Constitution, the Constitution provides that the Bench of the Supreme Court hearing the matter must be composed of judges who will not be less than five in number. But it does not follow from this that the legal requirements in this regard cannot be altered by a competent body. We, therefore, overrule the contention of the learned counsel and hold that the appeal was rightly heard and decided by a Bench of two judges."

In the circumstances, therefore, we must reject the appellant's contention based upon the decision in Radhakishan's case. (2) Learned counsel, however, contended that by de-Driving the appellant of the right to have his appeal heard by a Division Bench his further right of appeal to this Court under Art. 133 was affected and that since that right also vested in him when he instituted (1)[1964] 1 S.C.R. 495 (2) I.L.R. (1950) Nag. 532.

the suit it could not be taken away retrospectively except by an express provision. There is a simple answer to this contention. The answer is that once it is held that no party has a vested right to have his appeal to be heard by more than one judge of the High Court, no right to prefer an appeal under Art. 133 can be said to vest in him, the right under which being unavailable in case heard And disposed of by a single judge of the High Court. The argument of learned counsel thus fails.

One more point was sought to be urged by learned counsel for the appellant. The point is based upon the fact that one of the contesting respondents had raised a question as the maintainability of the suit. According to learned counsel that person being in pari delicto with the plaintiff, ought not to have been permitted to raise that question. Since the point was not raised by the appellant in either of the two courts below we declined to permit it to be raised for the first time before us.

For these reasons we dismiss the appeal with costs. Appeal dismissed.