A

# ASHO DEVI

v.

# DUKHI SAO & ANR.

*August* 8, 1974

[P. JAGANMOHAN REDDY, M. H. BEG AND A. ALAGIRISWAMI, JJ.]

B *Letters Patent of the Patna High Court, Clause* 10—*Appeal under—From Judgment of single Judge of the High Court in first appeal—Restrictions imposed by S.* 100, *Code of Civil Procedure*, 1908, *whether applicable—Held, appeal lies on both questions of fact and of law.*

The plaintiff/appellant filed a money suit against the defendant for recovery of Rs. 7,865·70 due from him on account of sale of grains and Rs. 1,512·90 as interest. The defendant admitted the purchase of grain but denied stipulation of interest C contending that he had borrowed Rs. 6,000/- from the plaintiff for the marriage of the grand-daughters at the rate of 12 annas per hundred per month. The trial Court, after considering the evidence, decreed the suit. In a first appeal to the High Court, the single Judge allowed it and reversed the judgment and decree of the trial court. Against this judgment of the single Judge the plaintiff preferred a Letters Patent Appeal. The question, whether a Bench of the High Court in an appeal from the judgment of a single Judge of that court in a first appeal could consider all matters which a single Judge could have decided and is not limited by the restrictions imposed by s. 100 of the Code of Civil Procedure, was referred to a Full D Bench. By majority, the Full Bench held that the findings of fact by the Single Judge are binding on them and they cannot go into those questions in a Letters Patent Appeal.

On appeal by certificate, this Court set aside the judgment of the full Bench of the High Court and

HELD: (i) The limitations on the power of the Court imposed by Ss. 100 and 101 of the Code of Civil Procedure cannot be made applicable to an Appellate Court E hearing a Letters Patent Appeal from the judgment of a single Judge of that High Court in a first appeal from the judgment and decree of the Court subordinate to the High Court, for the simple reason that a single Judge of the High Court, is not a Court subordinate to the High Court. In view of the decision of this Court in *Alapati Kasi Viswanathan* v. *A. Sivarama Krishnayya and others* and the consistent view held by almost all the High Courts on the question under consideration, this appeal must succeed.[613 C, G; 614 B]

F *Alapati Kasi Viswanathan* v. *A. Sivarama Krishnayya and Ors.* C. A, No. 232 of 1961 decided on January 11, 1963 followed.

*Ladhi Prasad Jaiswal* v. *Karnal Distillery Co. Ltd. and others* [1964] 1 S.C.R. 270, applied.

*Umrao Chand* v. *Bindraban Chand* I.L.R. 17, All. 475 ; *Mulpura Venkataramayya* v. *Devabhaktuni Kesavanarayana* A.I.R. 1963 A. P. 447 at p. 448 (F.B.) ; *M/s. Baldeo Das Ram Narayana* v. *Smt. Maina Bibi and another* 76 (C.W.N.) 996, at p. 1002; *Nilkanth Mahaton and others* v. *Munshi Singh and others* A.I.R. 1965 Pat. 141 ; *Maimoon Bivi and another* v. *O. A. Khajee Mohindeen and another* A.I.R. 1970 G Mad. 200 at p. 203 ; *Velji Bhimsey & Co.* v. *Bachoo Bhaidas* I.L.R. 48 Bom. 691 at p. 696; *Pt. Devi Charan* v. *Durga Pershad & Ors.* A.I.R. 1967 Delhi 128 at p. 130 ; and *Bawa Singh* v. *Jagdish Chand and others* A.I.R. 1960 Punjab 573 at pp. 574-575 approved.

*Ramsarup Singh* v. *Muneshwar Singh and others* A.I.R. 1964 Pat. 74 overruled.

*Jugal Kishore Bhandani* v. *Union of India* (1965) Bihar L.J.R. 24, referred to.

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1758 of 1967.

Appeal from the Judgment and Decree dated the Ist September, 1959 of the Patna High Court in First Appeal No. 146 of 1955.

*S. C. Aggarwala*, *S.S. Bhatnagar* and *V. J. Francis*, for the appellant.

*D. Goburdhan*, for respondents nos. 1—3.

The Judgment of the Court was delivered by

JAGANMOHAN REDDY, J.—The question in this appeal by certificate is whether a Bench of the High Court of Patna in an appeal from the judgment of a Single Judge of that Court in a first appeal can consider all matters which a Single Judge could have decided and is not limited by the restrictions imposed by s. 100 of the Code of Civil Procedure.

A few facts may be stated in order to better comprehend the question posed before us. The plaintiff/appellant filed a money suit against the defendant for recovery of Rs. 7,865/7/—due from him on account of sale of grains and Rs. 1,512/9/- as interest. The defendant admitted the purchase of grain from the appellant but denied stipulation of interest. The case of the defendant was that he had borrowed Rs. 6,000/- from the plaintiff for the marriage of the grand-daughters at the rate of 12 annas per hundred per month. The Trial Court, after considering the evidence, decreed the suit. In a first appeal to the High Court, the Single Judge allowed it and reversed the judgment and decree of the Trial Court. In the judgment it was observed:

(a) "The court below seems to have been influenced by the statement of the defendant in paragraph 5 of the written statement where he averred that he sometimes purchased grains from the plaintiff. But this statement is of no consequence."

(b) "The non-examination of the defendant and non-production of the account books were immaterial."

(c) "The three witnesses examined on her (appellant) behalf have been found to be unreliable. She has adduced no other evidence in support of the claim."

Against this judgment of the Single Judge the plaintiff preferred a Letters Patent appeal. In view of a sharp conflict of decisions on the scope of clause 10 of the Letters Patent of the Patna High Court, the question earlier set out was referred to a Full Bench. In the Full Bench, two Judges Narasimham, C.J., and R. K. Choudhary, J., took the view that the findings of fact by the Single Judge are binding on them and they cannot go into those questions in a Letters Patent appeal. In this view they followed *Ramsarup Singh* v. *Muneshwar Singh and Others*(1) as laying down the correct law. The view taken in the Division Bench case of *Jugal Kishore Bhadani* v. *Union of India*(2) to the contrary was held to be too wide. U. N. Sinha, J., gave a dissenting judgment. The view taken by him is, however, consistent with the consensus of opinion of the other High Courts as also of this Court which unfortunately was not brought to the notice of the learned Judges of the Patna High Court probably because it does not seem to have caught the eye of any of the law reporters. Clause 10 of the Letters Patent of the Patna High Court is analogous to clause 15 of

(1) A.I.R. 1964 Patna 76. (2) (1965) Bihar L.J.R. 24.

A other Chartered High Courts, namely, Calcutta, Madras, Bombay or clause 10 of the Allahabad High Court. There is no dispute that an appeal lies to a Division Bench of the High Court from the judgment of a Single Judge of that Court in appeal from a judgment and decree of a court subject to the superintendence of the High Court. The only question is whether the power of a Division Bench hearing a Letters Patent appeal under clause 10 of the Letters Patent of Patna B High Court or under the analogous provisions in the Letters Patent of other High Courts is limited only to a question of law under s. 100 of the Code of Civil Procedure or has it the same power which the Single Judge has as a first Appellate Court in respect of both questions of fact and of law. The limitations on the power of the Court imposed by ss. 100 and 101 of the Code of Civil Procedure cannot be made applicable to an Appellate Court hearing a Letters Patent appeal from the C judgment of a Single Judge of that High Court in a first appeal from the judgment and decree of the court subordinate to the High Court, for the simple reason that a Single Judge of the High Court is not a Court subordinate to the High Court. This Court in *Ladli Prasad Jaiswal* v. *Karnal Distillery Co. Ltd. & Others*(1) had occasion to observe that a Single Judge deciding a first appeal may be a Court immediately below the Court hearing a Letters Patent appeal, but he is not a Court D subordinate to the High Court. As long ago as 1895, a similar question arose under the provisions of Chapter XLII of Act No. XIV of 1882 which were analogous to the provisions of ss. 100 and 101 of the Code of Civil Procedure. A Bench of the Allahabad High Court consisting of Edge, C.J., and Banerji, J., in *Umrao Chand* v. *Bindraban Chand*(2), after noticing the contention that the appeal before them could not be dealt with in a same way in which the first appeal to the High E Court might be dealt with would place the appeal under s. 10 of the Letters Patent in the same position as an appeal to which Chapter XVII of the Code of Civil Procedure applies, held that no such limitation would apply because Chapter XVII limits the right of appeal from a decree passed in appeal by a Court subordinate to the High Court. They observed that the appeal to the High Court having been a first appeal and not an appeal to which Chapter XVII of the Code of Civil F Procedure applies, the parties to the appeal are entitled to question not only the law, but the findings of fact of the Judge of that Court from whose judgment or decree that appeal had been brought under clause 10 of the Letters Patent. It would be otherwise, if the appeal to that Court had been an appeal to which Chapter XVII of the old Code of Civil Procedure applied. To the same effect are the decisions in *Mulpura Venkataramayya* v. *Devabhaktuni Kesavanarayana*(3); G *Messrs Baldeo Das Ram Narayana* v. *Smt. Maina Bibi & Another*(4) which followed the decision of Andhra Pradesh High Court and disagreed with the decision of the Patna High Court in *Ramsarup Singh's case* (supra); *Nilkanth Mahaton and others* v. *Munshi Singh & Others*(5); *Maimoon Bivi and another* v. *O. A. Khajee Mohideen & Another*(6); *Velji Bhimsey & Co.* v. *Bachoo Bhaidas* (7), in which it was observed

H (1) [1964] 1, S.C.R. 270.
(2) I.L.R. 17, All. 475.
(3) AIR (1963) A.P. 447 at p. 448 (F.B.).
(4) 76 C.W.N. 996 at p. 1002
(5) AIR (1965) Pat. 141.
(6) AIR (1970) Mad, 200 at p. 203.
(7) I.L.R. 48 Bom. 691 at p. 696.

that under clause 15 of the Letters Patent an appeal lies from that decree, without any limitation being imposed upon the powers of the Appeal Court and the whole decree lies open before the Court; *Pt; Devi Charan* v. *Durga Pershad & Ors.* (1) and *Bawa Singh* v. *Jagdish Chand and others.*(2) We may also mention that a five-Judges Bench of this Court in *Alapati Kasi Viswanathan* v. *A. Sivarama Krishnayya and Ors.* (3)—an unreported judgment—had dealt directly with this question. Wanchoo, J., speaking for the Court observed :

> "The first contention urged before us on behalf of the appellant is that the Letters Patent Bench was not authorised in law to reverse the concurrent findings of fact of the Subordinate Judge and the learned Single Judge of the High Court. It is submitted that a Letters Patent appeal stands on the same footing as a second appeal and it was therefore not open to the Letters Patent Bench to reverse the concurrent findings of fact of the two courts below. We are of opinion that this contention is not correct. A Letters Patent appeal from the judgment of a learned Single Judge in a first appeal to the High Court is not exactly equivalent to a second appeal under s. 100 of the Code of Civil Procedure, and therefore it cannot be held that a Letters Patent appeal of this kind can only lie on a question of law and not otherwise. The matter would have been different if the Letters Patent appeal was from a decision of a learned Single Judge in a second appeal to the High Court. In these circumstances it will be open to the High Court to review even findings of fact in a Letters Patent appeal from a first appeal heard by a learned Single Judge, though generally speaking the Letters Patent Bench would be slow to disturb concurrent findings of fact of the two courts below. But there is no doubt that in an appropriate case a Letters Patent Bench hearing an appeal from a learned Single Judge of the High Court in a first appeal heard by him is entitled to review even findings of fact. The contention of the appellant therefore that the Letters Patent Bench was not in law entitled to reverse the concurrent findings of fact must be negatived."

In view of this decision and the consistent view held by almost all the High Courts in this country on the question under consideration, this appeal must succeed.

We accordingly set aside the judgment of the Full Bench of the Patna High Court and remand the matter for being heard and disposed of in accordance with law. In the circumstances of the case, we make no order as to costs.

S.B.W. *Appeal allowed.*

(1) AIR (1967) Delhi 128 at p. 130.
(2) A.I.R. (1960) Punjab 573 at pp. 574-575.
(3) C.A. No. 232 of 1961 decided on January 11, 1963.