

Bansidhar Vs. Ratan Lal

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Court : Allahabad

Decided On : Jun-13-1930

Reported in : AIR1930All785a

Appellant : Bansidhar

Respondent : Ratan Lal

Judgement :

Mukerji, J.

1. This is an appeal against the decree passed by the learned Additional District Judge of Aligarh on review of judgment.

2. Two points have been urged before us:

1. that the learned Additional District Judge had no jurisdiction to hear the application for review of judgment; and 2. that the learned Additional District Judge failed to consider the question of limitation that had been raised on behalf of the appellant.

3. We need not go into the merits of the case. It appears that Mr. Allsop, as the District Judge of Aligarh, decided a certain appeal on 2nd January 1925. An application for review of the judgment was presented to the same gentleman on 24th July 1928 when he was still the District Judge of Aligarh. The learned District Judge rightly took cognizance of the application, but subsequently he transferred the case for decision to the Additional District Judge. It appears to us that this was not permissible to the learned District Judge under the provisions of Order 47, Rule 5, Sch. 1, Civil P.C. The language of that rule is imperative and it says:

Where a Judge ... who passed the decree ... a review of which is applied for, continues ... attached to the Court at the time when the application for a review is presented ... such Judge ... shall hear the application, and no other Judge ... shall hear the same.

4. Having regard to the provisions of the law quoted above it was the duty of Mr. Allsop to hear the application. We hold therefore that the order transferring the case to Mr. Ali Ausat, the then Additional District Judge was not correct. The question of limitation has not been decided by either Mr. Allsop or by Mr. Ali Ausat. The matter will have to be decided by the successor-in-office of Mr. Allsop.

5. It appears that Mr. Allsop having taken cognizance of the application ordered notice to issue to the opposite party. That being the case his successor-in-office is entitled to hear the application for review if it should happen that Mr. Allsop is no

longer there.

6. We accordingly set aside the decree of the Court below and remand the case to the District Judge of Aligarh with the direction that the application for review shall be re-admitted on its original number in the register and shall be heard and disposed of according to law. Costs here and hitherto will abide the result. This will include counsel's fees in this Court on the higher scale.

7. There was a cross-objection on behalf of the respondent. Obviously it cannot be entertained because of the preliminary point on which we have decided the case.

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