

RAM DAYAL

v.

NARBADA AND ANOTHER

December 22, 1972

[A. N. GROVER, K. K. MATHEW AND A. K. MUKHERJEA, JJ.]

Practice and Procedure—Special leave when may be revoked.

Rule 97 of the Rajasthan High Court Rules, 1952, states that where a special appeal from the judgment of one judge does not lie unless such judge has declared that the case is a fit one for appeal, an application for such declaration may be made orally before or at the time when the judgment is delivered and that the Court shall thereupon record an order granting or refusing to grant such declaration.

In the present case, the only question was whether there was proof that a person was dead, as not having been heard of for more than 7 years, on the date his wife executed a gift deed with respect to property worth about Rs. 200. The appellant did not avail himself of the provision for leave to appeal to a Division Bench. He however obtained special leave from this Court, under Art. 136, but in the petition for special leave, the fact that no application was made to the Single Judge of the High Court for leave to appeal to the Division Bench, was not stated.

HELD: The special leave must be revoked, because, (a) the appellant had not exhausted all his remedies in the High Court before invoking the jurisdiction of this Court, and (b) the value of the property involved is too small and the question of law involved is of no public importance. [198E]

The Union of India v. Kishorilal Gupta and Brothers, A.I.R. 1959 S.C. 1362 and *The State of Bombay v. M/s. Ratilal Vadilal and Brothers*, A.I.R. 1961 S.C. 1106, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1559 of 1967.

Appeal by certificate from the judgment and order dated February 22, 1967 of the Rajasthan High Court in S.B. Civil Regular Second Appeal No. 202 of 1965.

Naunit Lal, for the appellant.

B. D. Sharma, for the respondents.

The Judgment of the Court was delivered by.

MATHEW, J. This is an appeal, by special leave, from a decree of the High Court of Rajasthan passed in appeal by which it dismissed the suit for recovery of possession of the plaint property filed by the appellant.

A One Ram Prasad was the owner of the property in question. He was not heard of by his wife Pani since 1950 for more than 7 years. On June 4, 1962, she made a gift of the property to the appellant, Ram Dayal, on the basis that Ram Prasad was dead.

B The appellant, alleging that respondents forcibly took possession of the property, filed the suit for declaration that he was the owner of the property and for recovery of its possession.

The respondents contended that Ram Prasad was alive on June 4, 1962, that his wife had no right to execute the gift deed and that the appellant was not in possession of the property at any time.

C The trial Court held that there was no proof that Ram Prasad was dead on June 4, 1962, and, therefore, his wife was not competent to execute the gift deed and dismissed the suit.

D In appeal, the Court held that Ram Prasad must be deemed to have been dead at the time when the gift deed was executed by his wife and so the gift was valid and reversed the decree of the trial Court.

It was against this decree that the appeal was filed before the High Court. The High Court reversed the decree of the appellate Court and restored the decree of the trial Court on the ground that there was no proof that Ram Prasad was dead on the date of the execution of the gift deed.

E The respondents have filed an application for revocation of the special leave to appeal on the ground that the appellant did not avail himself of the provision for leave to appeal to a division Bench of the High Court and that the value of the property in question is only Rs. 200.

F We heard counsel on both sides on the question of the revocation of the special leave to appeal and we are of the opinion that the leave to appeal should be revoked.

G Section 18(2) of the Rajasthan High Court Ordinance, 1949 (Ordinance No. XV of 1949) provides :

H "Notwithstanding anything hereinbefore provided, an appeal shall lie to the High Court from a judgment of one Judge of the High Court made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court where the Judge who passed the judgment declares that the case is a fit one for appeal."

Rule 97 of the Rajasthan High Court Rules, 1952, states that where a special Appeal from the judgment of one Judge does not lie unless such Judge has declared that the case is a fit one for appeal, an application for such declaration may be made orally before or at the time when the judgment is delivered and that the Court shall thereupon record an order granting or refusing to grant such declaration. In this case, it is admitted that no application was made at or before the time when the judgment was delivered for leave to appeal to a Division Bench. The fact that no such application was made was also not stated in the petition for special leave.

In *the Union of India v. Kishorilal Gupta and Brothers*⁽¹⁾ the Court said that although this Court has jurisdiction to entertain an appeal against the order of a Court when an appeal lay from that order to another Court, the Court should not give special leave and thereby shortcircuit the legal procedure prescribed. In *the State of Bombay v. M/s. Ratilal Vadilal and Brothers*⁽²⁾ this Court held that the proper course for an appellant is to exhaust all his remedies (including those in the High Court) before invoking the jurisdiction of this Court under Art. 136.

We are also of the opinion that the value of the property in question is too small and that the question of law involved is not of such paramount public importance that we would be justified in entertaining the appeal. It has become imperative that no case be taken on the file of this Court which does not rise to the measure of importance which this Court has set for itself. One case is not just one case more, and does not stop with being just one more case. By revoking the special leave we would be discouraging future applications for special leave of a similar kind, and thereby enforcing those rigorous standards in this Court's judicial administration which alone will give us the freshness and vigour of thought and spirit that are indispensable for wise decisions in the causes that are legitimately committed to us (see *Frankfurter, J. in Ex-parte Peru*⁽³⁾).

Time is required for adequate reflection in those causes. Reflection is a slow process. Wisdom, like good wine, requires maturing (see *Kinsella v. Krueger*⁽⁴⁾).

We revoke the special leave to appeal and dismiss the appeal with costs.

V.P.S.

Appeal dismissed.

(1) A.I.R. 1959 S.C. 1362.

(3) 318 U.S. 578 (1943).

(2) A.I.R. 1961 S.C. 1106.

(4) 351 U.S. 470 (1956) 483—485.