APPELLATE CIVIL

Before R. S. Narula and C. G. Suri, JJ.

RAJ KAUR,—*Appellant.*

versus

JAGDEV SINGH AND OTHERS,—*Respondents.*

Second Appeal from Order No. 31 of 1996

July 16, 1970.

Code of Civil Procedure (V of 1908)—Order 20 Rule 2—Word "predecessor"—Interpretation of—Whether restricted to Judge of the Court at the time of writing the judgment—Judge hearing a case transferred to another State—Judgment in the case written by such Judge long after handing over the charge and pronounced by his successor—Whether valid.

Held, that there is no justification for putting any limited construction on the word "predecessor" in Order 20, Rule 2 of the Code of Civil Procedure 1908, so as to restrict the application of the rule to cases where the predecessor Judge must be a Judge of the Court in question at the time of writing the judgment, which may then be pronounced by his successor. Neither any such qualification or limitation has been enacted nor implied in the Rule and there is no warrant for doing so by judicial precedent . In order to enable a successor to pronounce a judgment not written by himself all that is necessary under Order 20, Rule 2 of the Code is that it must have been written by the person who used to preside over that particular Court before the announcing officer; and it makes no difference whether the predecessor has, before writing the judgment in the case heard by him, handed over charge of the Court, proceeded on leave or retired. Thus a judgment is not invalid merely because it has been written by a subordinate Judge long after handing over charge on his transfer to another State and pronounced by his successor. (Para 12)

Case referred by Hon'ble Mr. Justice R. S. Narula on 23rd September, 1969 to a Larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice R. S. Narula and Hon'ble Mr. Justice C. G. Suri, finally decided the case on 16th day of July, 1970.

Second Appeal from the order of the Court of Shri Shanti Swarupa, Additional District Judge; Ferozepur; dated 29th January; 1969 reversing the order written by Shri N. S. Swaraj, Sub-Judge, 1st Class, Muktsar and pronounced by Shri I. C. Aggarwal, Sub-Judge, 1st Class, Muktsar on 30th October, 1967 (granting the plaintiff a declaration to the effect that she is the owner of 5/12th share out of 1/8th share of Kartar Singh in 901-B, 9B

of land and granting her a decree for possession of the said land) and remanding the case under Order 41, Rule 23A, C.P.C., to the Court, earlier presided over by Sarvshri N. S. Swaraj and I. C. Aggarwal for disposal in accordance with law.

B. S. SHANT, ADVOCATE, for the Appellant.

H. L. SARIN, SENIOR ADVOCATE WITH A. L. BAHL, ADVOCATE, for the Respondents.

JUDGMENT

R. S. NARULA, J.—(1) The solitary question of law which calls for decision in this appeal against the appellate judgment and order of the Court of Shri Shanti Swarupa, Additional District Judge, Ferozepore, dated January 29, 1969, relating to the interpretation and scope of Rule 2 of Order 20 of the Code of Civil Procedure, 1908—"whether judgment in a case heard by a Subordinate Judge, written by that Judge after his transfer from the station and handing over charge of that Court and sent by him to his successor from a different station and a different State, and pronounced by such successor, is valid or not"—was referred by me to a larger Bench by order, dated September 23, 1969, as no authoritative pronouncement of this Court was available on the same. This question has arisen in the following circumstances:—

(2) On May 19, 1964, a suit was filed by Mst. Raj Kaur plaintiff-appellant for a declaration to the effect that she was the widow of one Kartar Singh and for possession of certain share in the deceased's share in certain land left behind by him. The defendant-respondents who are the sons and widow of Kartar Singh contested the suit. Evidence therein was closed before Shri N. S. Swaraj, Subordinate Judge, First Class, Muktsar, on August 11, 1965. The arguments in the case were heard by Mr. Swaraj and concluded before him on December 21, 1965. As he could not pronounce the order on January 21, 1966, the date fixed for the purpose, he reserved judgment in the suit on that day. In October, 1966, Mr. Swaraj was transferred from Muktsar to Ambala (the date of transfer has been erroneously mentioned as April, 1966, by the lower appellate Court). He took this case with him for writing the judgment. Before he could write or send the judgment, the State of Punjab of which Muktsar as well as Ambala formed part was reorganised with effect from November 1, 1966. As a result of the reorganisation, Muktsar fell in the new State of Punjab, and Ambala in the newly formed State of Haryana. About

a year later, i.e., in October, 1967, Mr. Swaraj wrote the undated judgment and forwarded it to his successor Mr. I. C. Aggarwal, Subordinate Judge, First Class, Muktsar, for pronouncing the same.

(3) I may seize this opportunity to express somewhat strongly that it is a matter of regret that Mr. Swaraj should have allowed such an inexcusably long period of about one year to elapse before sending the judgment to his successor, after he had taken the file with him at the time of his transfer. It was a short case, and arguments therein are stated to have been concluded on December 21, 1965. That he could not write the judgment for about ten months from December, 1965, to October, 1966, and still chose to take away the case with him, is somewhat ununderstandable. If he had chosen to take the case, he ought to have written the judgment therein as quickly as possible. I only hope that another instance of this kind would not recur in the Punjab and Haryana Courts.

(4) Mr. Aggarwal actually announced the undated but signed judgment of Mr. Swaraj on October 30, 1967, by making an endorsement under the judgment to the effect that it has been received by him from Shri N. S. Swaraj and had been announced by him in open Court, and the parties and their counsel should be informed of the same.

(5) The appeal preferred by the defendant-respondents against the decree framed by the Court of Shri Aggarwal on the basis of the above-mentioned judgment of Shri N. S. Swaraj was allowed by the Court of the learned Additional District Judge, Ferozepore, on the ground that the word "predecessor" in Rule 2 of Order 20 of the Code of Civil Procedure can only mean "predecessor Judge" which in turn means judgment written by a Judge when he was holding the office in which he is succeeded by another Judge, and that rule does not contemplate a judgment written by an officer when he ceases to exercise jurisdiction owing to his proceeding on leave, transfer, retirement or otherwise. He did not choose to follow the Division Bench and Full Bench judgments of various High Courts cited before him either because he did not consider them to be correct or because he was able to find some point of distinction therein. One common distinction which he noticed between all those cases on the one hand and the case in hand on the other was that whereas all the authorities cited before him on behalf of the plaintiff related to cases where the predecessor Judge had been transferred to another Court in the

same district or to another district in the same State or was sitting at the headquarters during leave preparatory to retirement; on the other hand, the judgment of Mr. Swaraj was written by him when he was a Subordinate Judge in Haryana State and not a Subordinate Judge of any Court in the State of Punjab. The lower appellate Court, therefore, held that the judgment sent by Mr. Swaraj could not be pronounced by Mr. Aggarwal at Muktsar; and therefore, the decree passed on such judgment was illegal and the same was accordingly set aside. The case was remanded under Order 41 Rule 23-A of the Code to the Court of Shri Aggarwal for disposal in accordance with law.

Rule 2 of Order 20 of the Code reads as follows:—

> "A Judge may pronounce a judgment written but not pronounced by his predecessor."

No such provision as the one embodied in the above-quoted rule appears to have existed in the Governor-General's Act (8 of 1859) which had been enacted for simplifying the procedure of Courts of civil judicature not established by Royal Charter. Before the analogous provision appears to have been introduced for the first time in the form of section 199 in the Code of Civil Procedure, 1877 (Act 10 of 1877); a somewhat similar question arose before the Calcutta High Court in *Mussamut Parbutty and others* v. *Mussamut Higgin and others* (1). The Subordinate Judge who had heard the suit did not find time to write judgment before he was relieved of his office, as the tenure of that particular judicial officer expired before the judgment could be pronounced. He wrote the judgment and sent it to his successor, and it was pronounced by his successor. A Division Bench of the Calcutta High Court held that the judgment was not impeachable on the ground that though written by the Judge who heard the case, it was not pronounced by him but by his successor in office. The law laid down by the Division Bench of the Calcutta High Court on April 3, 1872, in the *case of Mussamut Parbutty and others* (1), appears to have been given statutory recognition by the incorporation of section 199 in the Code of Civil Procedure (X of 1877) in the following words:—

> "A Judge may pronounce a judgment written by his predecessor, but not pronounced, and in such case he shall not be bound by section 198, except as to giving notice."

(1) 17 W.R. 475.

Sections 198 of the Code of 1877, required the Presiding Officer of a Court to pronounce judgment in open Court either at once after the hearing of arguments, or on some future day of which due notice had to be given to the parties or to their pleaders. The relevant provision was simplified while repealing the 1877 Code and re-enacting the law on the subject in the Code of Civil Procedure, 1882 (Act 14 of 1882). The heading of the provision was "power to pronounce judgment written by Judge's predecessor," and the section stated:—

> "A Judge may pronounce a judgment written by this predecessor, but not pronounced."

During the period covered by the Codes of 1877 and 1882, the question which has come up for consideration before us arose in several cases. *In Girjashankar Narsiram* v. *Gopalji Gulabbhai* (2), a Division Bench of the Bombay High Court presided over by Sir Lawrence Jenkins, C.J., held that section 199 of the Code was a complete answer to the objection that the judgment under appeal before their Lordships was illegal, inasmuch as it was written by the Subordinate Judge after he had been transferred from the station to which the case related. The learned Additional District Judge has ruled this judgment out of consideration on the ground that it is not supported by any reasons. In *Sundar Kaur* v. *Chandreshwar Prasad Narain Singh*, (3), a Division Bench of the Calcutta High Court held that a Judge who had heard the evidence in a case was entitled under section 199 of the Code of 1882 to write his judgment and send it to his successor for delivery, although the judgment was written by him after he had taken leave or left the post which he was occupying when he heard the case. The objection to the validity of the judgment on the ground that the learned Judge who had heard the case had taken leave before he put his judgment into writing and had it announced by his successor-in-office was held to be not well-founded. The precise argument which has prevailed with the Court below was advanced before the Division Bench which was repelled in the following words:—

> "We do not think it right to accede to the argument of the appellant, who asks us to place a limited construction on that section, and to say that the judgment should be written by the Judge before he had taken leave or left the post, which

(2) I.L.R. 30 B. 241.

(3) I.L.R. 34 Cal. 293.

> he was occupying, when he heard the case, * * *
> * * * * * * *
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> We think that the objection is ill-founded, and that the Judge was entitled, having heard the evidence, to write his judgment and to send it to his successor for delivery under the provisions of section 199 of the Civil Procedure Code."

The correctness of this view was later doubted by Rampini and Mitra, JJ., in their order of reference in *Satyendra Nath Ray Chaudhuri* v. *Kastura Kumari Ghatwalin* (4). The following question was referred by them to a Full Bench of the learned Chief Justice and four puisne Judges of the Calcutta High Court:—

> "The question submitted to the Full Bench is whether the judgment, referred to in section 199 of the Civil Procedure Code, which can be pronounced by a Judge's successor, is one, which must be written by the Judge, while holding office as Judge, or whether it may be one written after he has ceased to exercise jurisdiction in the place, where the cause of action in the suit, to which the judgment relates, arose, owing to his transfer or proceeding on leave."

In that case the suit had been heard by Mr. Thomson as Subordinate Judge of Deoghur who was subsequently transferred to Dumka and ceased to be a Subordinate Judge of Deoghur on the 17th of January, 1905. He passed an order in the case to the effect that its record should be sent to Dumka for writing the judgment. He then took ten months to write his judgment and sent it to his successor at Deoghur who delivered the same. Maclean, C.J., held that there was nothing in section 199 which could indicate directly or indirectly that the judgment of the Judge who was leaving the Court must be written by him before he left that Court. Maclean, C.J., proposed the following answer to the question referred to the Full Bench:—

> "The Judge, who heard the evidence in the case, is entitled under section 199 of the Code of Civil Procedure to write his judgment and send it to his successor for delivery, although the judgment was written by him after he had left the judicial post, which he was occupying, when he heard the case."

(4) I.L.R. 35 Cal. 756.

Rampini, J., did not press the view expressed by him in his order of reference and agreed with Maclean, C.J., Brett and Doss, JJ., also agreed with the Chief Justice. Mitra, J., who was a party to the order of reference also agreed with the Chief Justice with the observation that the question which had been argued before the Full Bench had not been argued before him in some earlier cases which were distinguishable.

(6) In the revised Code of 1908, the corresponding provision was incorporated in Rule 2 of Order 20 which has already been quoted by me. Only a verbal change has been made while incorporating the provisions of section 199 of the 1882 Code in Rule 2 of Order 20 of the Code of Civil Procedure, 1908. There appears to be no material distinction between the two provisions. The heading of section 199 of the 1882 Code has been adopted in Order 20 Rule 2 of the 1908 Code also. Some of the cases decided under the 1908 Code may now be noticed. In *Basant Bihari Ghoshal* v. *The Secretary of State for India in Council* (5), Sir Henry Richards, C.J., and Mr. Justice Benerji, held that a Judge may pronounce a judgment written but not pronounced by his predecessor in office notwithstanding the fact that at the time the judgment was written, the Judge who wrote it had ceased to be a Judge of the Court in which the case was tried. The law laid down by the Full Bench of the Calcutta High Court was approved by the Allahabad Bench. In *Daya Ram and others* v. *Must. Jatti* (6), Johnstone, C.J., held that a judgment written and pronounced by a Judge after his transfer was not illegal. The learned Additional District Judge has distinguished that case from the present one on the ground that the judgment in *Daya Ram's case* (6) had been pronounced by the Subordinate Judge himself on the same day at the station of his previous posting after handing over charge of his post. What is, however, of importance is that while delivering the judgment of the Lahore High Court in the *case of Daya Ram and others* (6), Johnstone, C.J., expressly approved the law laid down by the Bombay High Court in *Girijashankar Narsiram* v. *Gopalji Gulabbhai* (2) (supra) and by the Calcutta High Court in *Sundar Kaur* v. *Chandreshwar Prasad Narain Singh* (3), (supra), to which reference has already been made by me, and which judgments fully support the case of the appellant.

(5) I.L.R. 35 All. 368.
(6) A.I.R. 1916 Lah. 78

(7) The contention that a judgment written by one Judge and delivered by his colleague during the absence of the former is not a judgment within the meaning of Order 20 Rule 2 of the Code was repelled as a purely technical one by a learned Single Judge of the Calcutta High Court in *Abdul Majid and others* v. *Nur Muhammad and another* (7). In *Lilawati Kunwar* v. *Chote Singh and others* (8), it was held by a Division Bench of the Allahabad High Court that a Judge may pronounce a judgment written, but not pronounced by his predecessor-in-office notwithstanding the fact that at the time the judgment was written the Judge who wrote it had ceased to be the Judge of the Court in which the case was tried. Another Division Bench of the Allahabad High Court (Mukerji and Bennet, JJ.), went to the length of holding in *Baramdeo Pandey* v. *Debi Dat Singh and others* (9), that a judgment written by a Judge between the date of his resignation for retirement and its actual acceptance and pronounced in Court by his successor on a subsequent date was a valid judgment within the meaning of Order 20 Rule 2 of the Code.

(8) The Patna High Court has construed Order 20 Rule 2 of the Code in the same manner in *Lakhiama Jiu and another* v. *Lokenath Das and others* (10). The learned Judges held that the mere fact that a judgment written by an officer who heard and recorded the evidence is pronounced by his successor would not render the judgment illegal unless the parties affected are prejudiced and the objection to the procedure is taken promptly at the earliest possible opportunity. Reference was made to the various decisions on the subject since 1872. The earlier decisions of the various other High Courts were impliedly approved.

(9) A Full Bench of the Rangoon High Court held in *re Hargulal* v. *Abdul Gany Hajee Ishaq and another* (11), that even a judgment written by an ex-Judge after he had ceased to be a Judge is valid as a judgment which may be pronounced by his successor-in-office under Order 20 Rule 2 of the Code. The Orissa High Court interpreted Order 20 Rule 2 in the same manner in *Pratap Kishore and another* v. *Gyanendranath* (12), and made it clear that the use of the word "predecessor" in Order 20 Rule 2 is unqualified, and would,

(7) 50 I.C. 641.
(8) I.L.R. 42 All. 362=61 I.C. 932.
(9) A.I.R. 1931 All. 90.
(10) A.I.R. 1920 Patna 578.
(11) A.I.R. 1936 Rangoon 147.
(12) A.I.R. 1951 Orissa 313.

therefore, apply to any officer who had tried the case, whether he is still in service, or has been transferred, or has gone on leave. Same view was expressed by another Bench of the Orissa High Court in *Pratap Kishore Mohanty and another* v. *Gyanendranath Mohanty* (13). In that case the validity of a judgment written out and signed by a Judge after his retirement and pronounced by his successor was upheld by a Division Bench of the Orissa High Court, under Order 20 Rule 2 of the Code. The High Court of Andhra Pradesh has also followed the Orissa view and held in *Nukala Venkatesu* v. *Nanduri Suryanarayana and another* (14), that the word "may" occurring in Order 20 Rule 2 has a compulsory force and the succeeding Judge is under an obligation to pronounce the judgment that was written by his predecessor. We are not concerned in the present case with the obligation placed by Order 20 Rule 2 of the Code on the successor. On this point there appears to be some divergence of opinion between the Andhra Pradesh High Court on the one hand and the Rangoon High Court on the other. The Madhya Pradesh High Court has also held in *Dammulal and others* v. *Kalawati Devi and another* (15), that Rule 2 of Order 20 empowers the successor to pronounce the judgment which was written by his predecessor after he had ceased to have jurisdiction over the Court. Their Lordships of the Division Bench of the Madhya Pradesh High Court observed that to hold that the Judge must have jurisdiction before the judgment is written by him would be to read is Order 20 Rule 2 a limitation which in terms does not exist in it.

(10) The only case to which Mr. Harbans Lal Sarin, the learned counsel for the respondents, made reference was *Mutty Lall Sen Gywal* v. *Deshkar Roy* (16). That case related to proceedings before the Calcutta High Court. The Judges who heard the case had reduced their opinion into writing but ceased to be Judges of the High Court before judgment was pronounced. In those circumstances it was held in 1867, i.e., long before the relevant provision was made in the Code of 1877 for subordinate Courts, that the opinion recorded by the previous Judges could not be treated as judgment in the case which must be regarded as mere minutes or memoranda. That case has no relevance to the proposition before us for at least two reasons. Firstly, it was not a case of a subordinate Court and proceedings in High Court have to be conducted in accordance with the relevant

(13) A.I.R. 1953 Orissa 298.
(14) A.I.R. 1959 A.P. 16.
(15) A.I.R. 1960 M.P. 18.
(16) 1868 (9) Sutherland W.R. 1.

rules of the particular Court. Secondly, the case relates to a period before any statutory provision like Order 20 Rule 2 existed even for the trial Courts.

(11) On a careful perusal of the entire case law referred to above, and after seriously considering the contentions advanced by the learned counsel on both sides, we are definitely of the opinion that the learned Additional District Judge gravely erred in taking a view contrary to the different decisions of almost all the High Courts in holding that the judgment written by Mr. Swaraj and pronounced by Mr. Aggarwal was not a valid judgment, and in setting the same aside on that short ground.

(12) We hold that there is no justification for putting any limited construction on the word "predecessor" in Order 20 Rule 2 of the Code of Civil Procedure, 1908, so as to restrict the application of the rule to cases where the predecessor Judge must be a Judge of the Court in question at the time of writing the judgment, which may then be pronounced by his successor. Neither any such qualification or limitation has been enacted nor implied in the Rule and there is no warrant for doing so by judicial precedent. In order to enable a successor to pronounce a judgment not written by himself all that is necessary under Order 20 Rule 2 is that it must have been written by the person who used to preside over that particular Court before the announcing officer; and it makes no difference whether the predecessor has, before writing the judgment in the case heard by him, handed over charge of the Court, proceeded on leave or retired. Accordingly it is held that the judgment of Mr. Swaraj was not invalid merely because he had written it long after handing over charge of his Court and notwithstanding the fact that he was not even a Subordinate Judge in the State of Punjab at the time he wrote and sent the judgment to his successor.

(13) We, therefore, allow this appeal, set aside the judgment of the learned Additional District Judge, and remand the appeal against the decree of the Court of Shri Aggarwal to the Court of the District Judge, Ferozepore, for being heard and disposed of on merits in accordance with law. In the circumstances of the case we leave the parties to bear their own costs of this appeal. Parties may appear before the District Judge, Ferozepore, on August 17, 1970.

C. G. SURI, J.—I agree.

N.K.S.