

Mst. Bhagwani of Mst. Bhagwani should be dealt with in accordance with law. As the point raised in these appeals is debatable I would leave the parties to bear their own costs.

v.
Lakhi Ram
and another

Shamsher
Bahadur, J.

K. S. K.

CIVIL MISCELLANEOUS

Before Bhandari, C. J. and D. Falshaw, J.

GURKIRAT SINGH,—Appellant

versus

GURDIT SINGH AND OTHERS,—Respondents.

Supreme Court Application No. 132 of 1958.

1959
Aug., 12th

Constitution of India (1950)—Article 133—Single Judge setting aside the order of the Lower Court—Division Bench on appeal affirming the judgment of the Single Judge—Certificate for leave to appeal to the Supreme Court—When can be granted.

Held, that where on appeal under clause 10 of the Letters Patent a Division Bench affirms the decision of a Single Judge of the Court and an appeal is proposed to be taken to the Supreme Court, the judgment sought to be appealed against, namely, the judgment of the Division Bench is a judgment affirming the decision of the court below. A certificate for leave to appeal to the Supreme Court can be granted only if the appeal involves the decision of a substantial question of law.

Application under Article 133 (1) of the Constitution of India praying that a certificate of fitness for leave to appeal to the Supreme Court of India against the judgment passed by the Hon'ble Mr. Chief Justice A. N. Bhandari and Hon'ble Mr. Justice Chopra, dated the 31st July, 1958; in L. P. A. No. 53 of 1958, whereby the judgment of Hon'ble Mr. Justice A. N. Grover, dated the 7th February, 1958, reversing that of Shri Brijinder Singh, Sodhi,

Additional District Judge, Patiala, dated the 25th January, 1957, was affirmed be granted.

A. S. AMBALVI, for Applicant.

K. C. PURI, for Respondent.

JUDGMENT

BHANDARI, C. J.—This is an application under Article 133(1) of the Constitution of India for leave to appeal to the Supreme Court. Bhandari, C. J.

A plot of land belonging to the judgment-debtor was sold in execution of a decree obtained by the decree-holder. The judgment-debtor presented an application under rule 90 of Order 21 of the Code of Civil Procedure for the setting aside of the sale on the ground of material irregularity or fraud in publishing or conducting it. The executing Court allowed the application and directed that the sold property be sold afresh. This order was, however, set aside by a learned Single Judge of this Court, and the order of the learned Single Judge was upheld by a Division Bench of which I was a member. The judgment-debtor has now presented an application under Article 133 of the Constitution of India.

The learned counsel for the judgment-debtor contends that as a learned Single Judge of this Court varied the judgment of the executing Court and as the Letters Patent Bench upheld the judgment of the learned Single Judge, the final judgment of this Court must be deemed to be the judgment of the learned Single Judge which obviously is one of variance. As the amount or value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal exceeds Rs. 20,000 and as the judgment is one of

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variance, it is contended that the petitioner is entitled as of right to prefer an appeal to the Supreme Court. I regret I am unable to concur in this contention. In *Narsingh Das and others v. Municipal Committee of Jhajjar* (1), it was held that where on appeal under clause 10 of the Letters Patent a Division Bench affirms the decision of a Single Judge of the Court and an appeal is proposed to be taken to the Supreme Court the judgment sought to be appealed against, namely, the judgment of the Division Bench is a judgment affirming the decision of the Court below. A similar view was taken in Civil Miscellaneous No. 847-C of 1955 decided on the 20th April, 1956. In this view of the case it seems to me that the judgment from which an appeal is sought to be preferred to the Supreme Court is a judgment of affirmance and a certificate for leave to appeal can be granted only if the appeal involves the decision of a substantial question of law. No substantial question of law arises for decision in the present case.

Nor is there any justification for issuing a certificate under clause (c) that the case is a fit one for appeal to the Supreme Court. The appeal does not raise any question of general public importance which requires to be decided by their Lordships of the Supreme Court.

For these reasons, I am of the opinion that the application for leave to appeal must be dismissed. Ordered accordingly.

There will be no order as to costs.

Falshaw, J.

FALSHAW, J.—I agree.

B. R. T.

(1) C.M. 250-C of 1953