

## REVISIONAL CIVIL.

Before G. D. Khosla and Bishan Narain, JJ

ABDUL WAHAB,—Petitioner

versus

PHIRAYA LAL,—Respondent

Civil Revision No. 594-D of 1958

*Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 34—Additional Senior Subordinate Judge—Whether competent to hear appeals under—Senior Subordinate Judge—Whether competent to transfer appeals filed in his Court to the Court of the Additional Senior Subordinate Judge.*

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*Held*, that the term "Senior Subordinate Judge" means something which is known to the public as the Court to which appeals can be taken. For the purposes of the Delhi and Ajmer Rent Control Act, 1952, it means the Court which has power to hear appeals under section 39(3) of the Punjab Courts Act and section 34 of the Delhi and Ajmer Rent Control Act. There is no bar to there being more than one such court in any given district and, for the sake of convenience, one of these courts may be known as the Court of the Senior Subordinate Judge and the other as the Court of the Additional Senior Subordinate Judge. The Additional Senior Subordinate Judge has, therefore, the power to hear appeals under section 34 of the Delhi and Ajmer Rent Control Act, 1952.

*Held*, that section 37 of the Punjab Courts Act permits delegation of the powers to transfer appeals to one of the Subordinate Judges. This was done by the District Judge and the Senior Subordinate Judge, by virtue of such delegation, is competent to distribute appeals and transfer them to the Court of the Additional Senior Subordinate Judge. Moreover, if the objection that the Senior Subordinate Judge was not competent to transfer the appeal from his Court to the Court of the Additional Senior Subordinate Judge is not taken in the latter court and the party submits to his jurisdiction, the appellate or revisional court will not interfere.

*Petition under section 35 of Act 38 of 1952, for revision of the order of Shri Pritam Singh, Additional Senior Sub-Judge, Delhi, dated the 17th September, 1958, confirming that of Sh. Shiv Charan Dass Bajaj, Sub-Judge, 1st Class, Delhi, dated the 30th January, 1958, dismissing the revision petition.*

BAWA SHIV CHARAN SINGH and R. S. NARULA, for  
Petitioner.

GURBACHAN SINGH, BHAGWANT DAYAL and SH. YOGESHWAR  
DAYAL, for Respondent.

#### JUDGMENT

G. D. Khosla, J. G.D. KHOSLA, J.—A common point of law arises in these five revision petitions (Civil Revisions Nos. 457-D and 537-D of 1957 and 427-D, 428-D and 594-D of 1958), namely, whether the Additional Senior Subordinate Judge had jurisdiction to hear appeals under section 34 of the Delhi and Ajmer Rent Control Act, 1952. We propose to decide only this question of law, the petitions on merits can then be disposed of by a learned Single Judge of this Court.

In the State of Delhi Mr. Radha Kishan Baweja has been invested with powers to hear appeals under section 39(3) of the Punjab Courts Act. His Court was known as the Court of Senior Subordinate Judge and he heard appeals under section 34 of the Rent Control Act. When the volume of these last mentioned appeals increased, it was considered necessary to empower another Court with authority to hear them. Accordingly a notification was issued by the Punjab High Court under section 39(3) of the Punjab Courts Act conferring appellate powers upon Shri Pritam Singh Pattar. Shri Jasmer Singh officiated as Senior Subordinate Judge in place of Shri Baweja for a time and by another notification Shri Jasmer Singh was also

invested with appellate powers. There were, therefore, two Subordinate Judges of the first class empowered to hear appeals under section 34 of the Rent Control Act. One of them was called "Senior Subordinate Judge" and the other "Additional Senior Subordinate Judge." Four of the above-mentioned revision petitions arise out of appellate orders passed by Shri Jasmer Singh, Additional Senior Subordinate Judge, Delhi, and one, namely, Civil Revision No. 594-D of 1958, arises out of an order passed by Shri Pritam Singh, Additional Senior Subordinate Judge. The question for our decision is whether Shri Jasmer Singh and Shri Pritam Singh Pattar were respectively competent to entertain and deal with these appeals under law. The contention of the petitioners in all these cases is that the respective Courts acted without jurisdiction.

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The argument of the learned counsel for the petitioners may be summed up briefly under four heads:—

- (1) the appeals under the Delhi and Ajmer Rent Control Act, 1952, which will hereinafter be referred to as statute, lie to the Court of Senior Subordinate Judge where the value does not exceed two thousand rupees, to the Court of District Judge where the value exceeds Rs. 2,000 but not Rs. 10,000 and to the High Court where the value exceeds Rs. 10,000. The statute does not provide for appeals to any other Court and, therefore, the appeals could not lie to the Court of the Additional Senior Subordinate Judge;
- (2) the law does not recognise the Court of an Additional Senior Subordinate Judge as such, and if a Court is designated as

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the Court of Additional Senior Subordinate Judge, it cannot exercise the jurisdiction which is vested by law in the Court of Senior Subordinate Judge;

- (3) neither the Court of Shri Jasmer Singh nor the Court of Shri Pritam Singh Pattar was the Court of Additional Senior Subordinate Judge, because in the notifications conferring appellate powers on these two officers they were not described as Additional Senior Subordinate Judges; and
- (4) the Senior Subordinate Judge had no power to transfer appeals which were filed in the original instance in his Court and were later assigned to Shri Jasmer Singh and Shri Pritam Singh Pattar, respectively.

Section 34 of the statute reads as follows:—

“34. Appeals:—(1) Any person aggrieved by any decree or order of a court passed under this Act may, in such manner as may be prescribed, prefer an appeal—

- (a) to the court of the Senior Subordinate Judge, if any, where the value of the case does not exceed two thousand rupees:

Provided that where there is no senior subordinate judge, the appeal shall lie to the district judge;

- (b) to the court of the district judge, where the value of the case exceeds two thousand rupees but does not exceed ten thousand rupees; and

(c) to the High Court where the value of the case exceeds ten thousand rupees;

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(2) No second appeal shall lie from any decree or order passed in any case under this Act."

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Section 34(1)(a) refers to the Court of the Senior Subordinate Judge. The statute, however, does not give a definition of this phrase nor does the Punjab Courts Act which defines the various classes of Civil Courts, their powers, their scope and jurisdiction. Section 18 of the Act mentions three classes of Courts (1) the Court of the District Judge, (2) the Court of the Additional Judge, and (3) the Court of the Subordinate Judge. Section 22 provides that the State Government may, after consultation with the High Court, fix the number of Subordinate Judges to be appointed. There is no objection to there being more than one Subordinate Judge in a district and in point of fact there are more than one Subordinate Judges in all the districts. Section 39 provides for the manner in which appeals are to be preferred from the decrees or orders of Subordinate Judges. Section 39(3) is in the following terms:—

"The High Court may by notification direct that appeals lying to the District Court from all or any of the decrees or orders passed in an original suit by any Subordinate Judge shall be preferred to such other Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly and the Court of such other Subordinate Judge shall be deemed to be a District Court for the purposes of all appeals so preferred."

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The expression "Subordinate Judge" is not to be found anywhere in the statute.

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The question, therefore, arises what is the Court of Senior Subordinate Judge. The application has assumed a clear unequivocal meaning. It is employed by the public to designate a definite entity. In every district there does, in fact, exist a Senior Subordinate Judge and his Court possesses certain characteristics and peculiarities which are not to be found in the Courts of the other Subordinate Judges of the first class of that district. One of the Senior Subordinate Judges is singled out and invested with special powers and he is known as the Senior Subordinate Judge. Ordinarily, the powers which he exercises are appellate powers under section 39(3) of the Punjab Courts Act, powers under section 30 relating to Indian Succession Act, Probate and Administration Act, etc., and also powers of the District Judge which are delegated to him under section 37 of the Punjab Courts Act. Occasionally enhanced appellate powers are also conferred upon a Senior Subordinate Judge. He is thus competent to dispose of certain types of business which can usually be dealt with only by the District Judge. The Senior Subordinate Judge in any particular district is usually the seniormost Subordinate Judge and an officer who has sufficient experience to deal competently with the more important work entrusted to him.

The matter, however, does not rest there. The term "Senior Subordinate Judge" has been employed in the Rules and Orders of Punjab High Court and in a series of notifications issued by the Punjab Government. Chapter 14-A, Volume I of Rules and Orders of Punjab High Court, makes mention of Senior Subordinate Judges in setting out the appellate powers which are conferred on

certain Courts. On page 5 of Chapter 20-B, Volume I, appears a notification of the Punjab High Court dated the 16th of May, 1935 in which the expression "Senior Subordinate Judge" is mentioned. On page 7 there is a notification under section 20 of the Workmen's Compensation Act. On the same page are two more notifications in which Senior Subordinate Judges are appointed Commissioners for assessing workmen's compensation. The Senior Subordinate Judge is mentioned in a large number of other notifications. Sometimes the 's' of 'senior' is small which may mean that the word 'senior' is being used as an adjective, and sometimes the capital 'S' is used which may mean that the term "Senior Subordinate Judge" is a single indivisible term designating the same of this officer or his Court. Therefore, it is clear that the term "Senior Subordinate Judge," although not defined in the Punjab Courts Act, has acquired a meaning by usage which is well recognised by law, and the question is what it will mean when we say the "Court of a Senior Subordinate Judge." As far as the Rent Control law is concerned, light is thrown by the Rules made under the Delhi and Ajmer-Merwara Rent Control Act, 1947. In these Rules the term "Senior Subordinate Judge" was defined. Rule 2(4) reads as follows:—

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“Senior Subordinate Judge’ means any Subordinate Judge in the Delhi Province who is empowered to hear appeals from other Subordinate Judges.”.

Rule 4 which is in the same terms as section 34 of the statute provided that an appeal would lie to the Court of the Senior Subordinate Judge in cases in which the value did not exceed Rs. 2,000. Therefore, as far as the Delhi Rent Control Act of 1947 was concerned, an appeal could lie to a court of a

Abdul Wahab Subordinate Judge who was empowered to hear appeals. It may be mentioned that neither the Punjab Courts Act nor the Act of 1947 placed any restriction upon the number of Subordinate Judges who could be empowered to hear appeals from other Subordinate Judges. In the State of Delhi two, three or more Subordinate Judges could have been empowered to hear appeals and all of them could have been described as Senior Subordinate Judges for the purposes of the Rent Control Act of 1947. The statute of 1952 unfortunately does not contain a definition of "Senior Subordinate Judge", but the term "Senior Subordinate Judge" was clearly known to every one and the Legislature may either have inadvertently omitted or deemed it unnecessary to repeat the definition given in rule 2(4) framed in 1947. In a case of this type continuity of intention and policy may be assumed in order to give effect to the provisions of a statute. The Courts may assume that the Legislature intended the old state of affairs to continue unless anything to the contrary appears in the statute. I am supported in this view of the matter by a decision of the Calcutta High Court in *Commissioners for the Post of Calcutta v. Suraj Mull Jalan and others*, (1). In that case the question was what was the meaning of the expression "high-water-mark", in Act 15 of 1908. There were two previous Acts dealing with the matter dealt with in that Act and under those two Acts notifications had been issued defining "high-water-mark". The previous Acts were Act 12 of 1875 and Act 10 of 1889. A notification was issued under Act 12 of 1875, and section 2 of the second Act (Act 10 of 1889) provided that the notifications issued under the previous Act were deemed to have been made and issued under that Act. In the latest Act (Act

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(1) A.I.R. 1928 Cal. 464



15 of 1908) nothing was said about the continuance of the previous notification in which the definition of the expression "high-water-mark" had been given. The Calcutta Court took the view that the Legislature intended the same definition to obtain under the new Act also. The learned Judges pressed into force the provisions of section 24 of the General Clauses Act. No violence to the provisions of the statute will, therefore, be done if the definition of "Senior Subordinate Judge" as given under the old rules of 1947 is pressed into service for giving effect to the provisions of the statute. A reference may also be made in this connection to *Jhari Singh and others v. Empror.* (1).

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It is to be observed that neither Shri Jasmer Singh nor Shri Pritam Singh Pattar was described as a Senior Subordinate Judge in the notifications which conferred appellate powers upon them, and, indeed, it is not usual to do this because these powers are conferred under section 39(3) of the Punjab Courts Act and that Act makes no mention of a Senior Subordinate Judge. The expression "Senior Subordinate Judge," as I have already mentioned, has been coined for the sake of convenience in order to define something which exists and has a clear definable entity. There is nothing in any law which is a bar to there being more than one Senior Subordinate Judge possessing appellate powers, and wherever two or more Subordinate Judges exercise appellate powers, all of them may be called Senior Subordinate Judges. For the sake of convenience the seniormost of them may be called the Senior Subordinate Judge and the others may be called Additional Senior Subordinate Judges Nos. I, II and so on.

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The learned counsel for the petitioners drew our attention to a decision of this Court in *Parkash Lal v. Sant Singh*, (1), and to a decision of the Madhya Bharat High Court in *J. B. Mangharam & Co. v. K.B. Kher and others* (2), in which the meaning of the term "District Judge" was considered. Now, it must be quite clearly stated that the term "District Judge" bears no analogy whatsoever to the term "Senior Subordinate Judge." The "District Judge" is mentioned in the General Clauses' Act and also in the Punjab Courts Act. In particular, section 20 of the Punjab Courts Act says that only one District Judge will be posted to each district. There is no such restriction upon the posting of Subordinate Judges exercising appellate powers. Section 24 provides:—

"The Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district."

This is not the case with the Court of any Subordinate Judge whether he is called simply a Subordinate Judge or a Senior Subordinate Judge. Section 30, no doubt, provides that a Subordinate Judge may exercise some of the jurisdiction of the District Court. (Under section 37 the District Judge may delegate some of his powers to any Subordinate Judge in the District, and under section 39(3) appeals may be preferred to a Subordinate Judge who is invested with special powers. The scheme of the Act, however, does not contemplate that there shall be only one Subordinate Judge favoured in this manner, although the Act clearly provides that there shall be no more than one District Judge in any particular district. The Act says

(1) A.I.R. 1951 Punjab 415

(2) A.I.R. 1956 M.B. 183

that there may be Additional Judges who may perform the same work as a District Judge, but the status of an Additional Judge is not equal to the status of a District Judge. The principle laid down in the two above-mentioned rulings is that an Additional Judge is not on a par with a District Judge. This argument cannot apply, however, to the case of a Senior Subordinate Judge, because (a) the Punjab Courts Act does not say that there is any such Court as the Court of a Senior Subordinate Judge, (b) if the "Senior Subordinate Judge" means a "Court invested with additional powers under sections 30, 37 and 39(3)", then there may be more than one such Court in any district and all such Courts can be called Senior Subordinate Judges, and (c) the term "Additional Senior Subordinate Judge" is merely a term of convenience and is not on a par with the term "Additional Judge" which has been defined in the Punjab Courts Act.

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In this view of the matter it is quite clear that the term "Senior Subordinate Judge" means something which is known to the public as the Court to which appeals can be taken. For the purposes of the statute it means the Court which has power to hear appeals under section 39(3) of the Punjab Courts Act and section 34 of the statute. There is no bar to there being more than one such Court in any given district, and for the sake of convenience one of these Courts may be known as the Court of the Senior Subordinate Judge and the other as the Court of the Additional Senior Subordinate Judge.

There is a decision of Capoor, J., *Ishwar Das Kheera v. Shiv Das Sehgal etc.* (1), in which a contrary view was taken, and the learned counsel for the petitioners has placed considerable reliance upon it. I have given this decision my very anxious

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(1) 1958 P.L.R. 688

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consideration, and with great respect to my brother Capoor I find myself unable to subscribe to the conclusions arrived at by him. He appears to think that there can be only one Senior Subordinate Judge in each district as there can be only one District Judge. He finds in the two terms an analogy which, in my view, is unwarrantable. Also it is clear that the old rules framed by the Delhi Administration in 1947 envisage the existence of more than one Senior Subordinate Judge, but as long as the Punjab Courts Act remains in force, we cannot conceive of more than one District Judge in any District. The learned counsel for the petitioners also relied on *Kuldip Singh v. The State of Punjab and another* (1). The point under consideration in that case, however, was wholly different and the Supreme Court was considering the Administrative powers of the Senior Subordinate Judge. The point under our consideration, however, is the appellate powers of the Senior Subordinate Judge.

The question of whether the Senior Subordinate Judge was competent to transfer the appeals from his Court to the Court of the Additional Senior Subordinate Judge is much simpler. No objection was taken to the transfer on this ground, and parties submitted themselves to the jurisdiction of the Additional Senior Subordinate Judge. It is one thing to say that the Additional Senior Subordinate Judge had no jurisdiction to entertain the case whatever, in which case he is *coram non judice* but quite another to say that although he had jurisdiction to entertain it, the matter did not come before him in the proper way. In the latter case, if a party submits to his jurisdiction and does not raise an objection on that ground, the appellate or the revisional Court will not interfere.

(1) A.I.R. 1956 S.C. 391

This view was taken by Scott-Smith J. In *Kishan Lal v. Jai Lal* (1). Also I find that section 37 of the Punjab Courts Act permits delegation of the powers to transfer appeals to one of the Subordinate Judges. This was done by the District Judge, and the Senior Subordinate Judge or the Court of Shri Baweja could exercise these powers by virtue of such delegation and Shri Baweja was as such competent to distribute appeals and transfer them to the Court of the Additional Senior Subordinate Judge.

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I would, therefore, hold that the Court of the Additional Senior Subordinate Judge was competent to entertain these appeals.

The revision petitions will now be placed before a learned Single Judge for disposal on merits.

*Bishan Narain J.*—I agree.

*Bishan Narain,  
J.*

*B.R.T.*

APPELLATE CIVIL.

*Before I. D. Dua, J.*

LAL DEVI,—Appellant.

*versus*

MUNI LAL AND OTHERS,—Respondents.

**Regular Second Appeal No. 683 of 1958**

*Code of Civil Procedure (V of 1908)—Section 100—  
Finding of fact—Mutation proceedings completely ignored—  
Rules of Evidence Act with regard to appreciation of evi-  
dence not followed—Whether can be interfered with in  
second appeal—Evidence of relatives in regard to blood  
relationship—Importance of—Mutation proceedings—Nature*

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(1) I.L.R. 1 Lah. 158