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Case Analysis
How to find out Ratio Decidendi and Obiter Dictum of a Case?

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Abstract

Mainly, there are three sources of law, the legislation is the most prompt source of law, judicial precedent takes years for maturing in the shape of law and custom requires long and immemorial user to crystallize into law. A million-dollar question is which part of the long judgment takes the shape of law? Ratio decidendi is the reason for the decision and is binding on future courts whereas obiter dictum is the things said by the way by the judges. The thrust of this research paper is how to find out and segregate the ratio of a case from its obiter dictum. A novice in the field of law may ask a question as to where is the proof of judge made law? This research paper is being written for the novices in the field of law so that they may understand as to what is a case analysis? What is doctrine of ratio decidendi and how to find out the same out of a lengthy judgment? Case analysis is a more practical research tool, and it is directly derived from the need of the judiciary, legal practitioners and law students.

Keywords: ratio decidendi, obiter dictum, per-incuriam, merger, stare decisis, case analysis, frustration, head notes, legal eagle, material fact, decorum of hierarchy of courts, single operative order, judgment in rem and personum, res judicata, Waumbaugh's test, Goodhart's test, vitamin in lemon juice, descriptive and prescriptive ratio, inadvertence, lack of care, syllogism.

Introduction

Judicial activism and public interest litigations have given pace to judge made law in India. Law declared by Supreme Court of India is binding on all courts within territory of India. This authority of Supreme Court as precedent is found in Article 141 of the Constitution of India. The English doctrine of *stare decisis*, which means "let the decision stand in its rightful place" is interpreted in this research paper. This doctrine developed as a result of progress made in law reporting. But the million-dollar question is which portion of a long judgment is law and is binding upon the future courts? What is binding is the *ratio decidendi,* i.e., the principle of law applicable to the legal problems disclosed by the facts of the case before the court. Another

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important question is how to find out the *ratio decidendi* of a particular case. The two tests namely Waumbaugh's test and Goodhart's test are discussed in this research paper to find out the *ratio decidendi* of a case. The obiter dicta[1] are the observations of the judges which are not precisely relevant to the issues before them, and it includes things said by the way, by the judges. These dicta have the force of persuasive authority and are not binding upon the courts. This research shall focus how to identify *ratio decidendi* and *obiter dictum* while analyzing a judicial decision.

Case Analysis

The case law analysis means studying judgments decided by the Hon'ble Supreme Court and High Courts and drawing essential conclusions on how the courts apply certain norms and how they interpret them. Case law analysis is an innovative and effective instrument to help to improve the uniform application of law. The case law analysis results in an analysis document that generalizes case law and highlights the trends of the courts. The standpoints and findings expressed in the analysis are not binding to the judges. But the *ratio decidendi* of the judgment is binding on the future courts.

The objectives of case analysis include generalizing case law, making it available to legal fraternity, generalizing problems related to court proceedings and supporting the legal training for novices in the field of law. Later portion of this writing deals with the exercise as how to find out the ratio decidendi of a decided case. For this extraction a very simple case based on doctrine of frustration of law of contract, *Satya Brat Ghose v. Mugnee Ram Bangur and Company Limited*[2] is being taken up.

For case analysis, it is important to learn as to how to read a case? If the judgment of *Kesava Nanda Bharti v. State of Kerala*,[3] runs in 703 pages, how to sort out 7 relevant lines out of it? In the first reading, you are required to make z shape reading, i.e., read the first and last line of each and every paragraph and tick out the most relevant paragraphs. In this way quickly scan the entire judgment, try to read the mind of the judge, observe the important aspects like head notes, the cited case laws and legal provisions. Use your second reading of most relevant paragraphs to carve out at least one or two research questions. Then find out questions of law and questions of facts. While reading a judgment the reader should centralize his attention majorly towards the legal issues, though the facts are to be noted for having a clear picture of the case. One should critically analyze the judgment and utilize one's own legal knowledge in ascertaining the accuracy of the judgment. Behave like a 'Legal Eagle' and ask yourself "why" and try to reach upon a decision as that of a judge of court of law. Researcher has to ensure who was the plaintiff and who was the defendant when the case was filed in the court of original jurisdiction? The suit was filed for violation of which law? What was the root cause or cause of action for filing the suit? What issues were involved in the case? What tests or rules were taken into account while writing the judgment? What was the decision of the trial court, first appellate court, High Court and finally of the Supreme Court. Let us apply this methodology to the case in hand.

[1] Obiter dicta is the plural of obiter dictum
[2] AIR 1954 SC 44
[3] AIR 1973 SC 1461

As an example, in the case of Satya Brat Ghose v. Mugnee Ram Bangur & Company Ltd.[4]*,* the defendant company entered into a contract to sell a plot of land to the predecessor of plaintiff Satya Brat Ghose on 5-8-1940 in Lake Colony scheme and received a sum of Rs. 101/- as earnest money. Final sale deed was to be executed within one month of completion of roads and drains on payment of balance sale consideration. The land to be sold was requisitioned for military purposes because II world war was already on, which continued from 1-9-1939 to 2-9-1945. The company failed to execute the sale deed. The plaintiff filed a suit for specific performance of the contract. The plaintiff pleaded that contract was subsisting and he was entitled to get a deed of conveyance executed in his favour. The defendant company pleaded that the contract stood discharged by frustration by supervening events like war and requisition of land to be sold.

The Trial Court decreed the suit of the plaintiff. The *first appeal was* filed in *the appellate court of District & Sessions Judge* and the appellate court dismissed the first appeal and the suit remained decreed. In the *second appeal, the High Court* allowed the appeal of appellant, and the suit of the plaintiff was dismissed on the ground of *doctrine of frustration,* and it was held that contract stood frustrated because of requisition order issued by the Government and the contract has become void. The aggrieved party approached to the *Supreme Court, and Supreme Court* allowed the appeal and decreed the suit. It was held by the Supreme Court that most material thing was that there was no time limit within which roads and drains were to be constructed. Secondly, war was already going on when the parties entered into contract. Thirdly, requisition order for military purposes was of a temporary nature and it did not affect the fundamental basis upon which the agreement rested or struck at the root of the adventure. Thus, the contract was not frustrated at all, and the company was bound to sell the plot of land to the plaintiff.

We have four judgments in this case. According to *doctrine of merger,* it is well established principle of law that where an appeal or revision is provided against an order/decision of a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law. Thus, the *ratio decidendi* of Satya Brat Ghose case is to be extracted from the decision of the Supreme Court. The doctrine of merger is a common law doctrine that is rooted in the idea of maintenance of the decorum of hierarchy of courts and tribunals. The doctrine is based on the simple reasoning that there cannot be, at the same time, more than one operative order governing the same subject matter.

The decision of Satya Brat Ghose has to be seen from two aspects: -

(i) What the case has decided between the plaintiff and defendant and

(ii) What principle of law has it laid down?

This case has decided that the suit of plaintiff for specific performance for sale of plot of land was decreed because case has been heard and all appeals have been taken or the time for appeal has elapsed. All the parties to the dispute and their successors are bound by the court's

[4] See supra note 2

findings on all the issues raised between the parties and on question of facts and law necessary to the decision of such dispute.

These matters are now *res judicata* between Satya Brat Ghose and the Company and cannot be the subject of further dispute. But the court's findings will not be conclusive except as between Satya Brat Ghose and Company since it is a judgment in personum. Only in certain circumstances, such findings may also be binding on third parties when the judgment is in rem as against the whole world, e.g., a judgment, decree or order passed in exercise of probate, matrimonial, admiralty or insolvency jurisdictions.[5] As against persons not parties to the suit, the only part of the judgment which is conclusive, is the general rule of law for which the decision is the authority.

In this case, it was decided that requisition order was temporary one, and the requisition and occupation of land for the military purposes was also temporary and at the close of World War II, the military establishments were removed from the land where disputed plot was situated, and this does not frustrate the contract between the parties. The suit of the plaintiff was decreed, and Company was bound to sell particular plot number to Satya Brat Ghose. This rule of law, which is binding on future courts, is called the *ratio decidendi* of the case that is the proposition applied or acted upon by the court or regarded as binding by the court.

Ratio Decidendi and Obiter Dictum

There are two parts of a judgment. One is *ratio decidendi* and second part is the *obiter dictum*. *Ratio decidendi* is the rule acted upon by the court whereas obiter dicta are suggestive of the trend of the thinking of the court. Suppose a judge illustrates his reasoning by reference to some hypothetical situations and considers the law applicable to those situations or suppose the judge decides a case on one ground only and then gives his decision on other grounds. Strictly speaking, hypothetical situations neither arise before the court, nor, in the second case, having arrived at a decision on one ground, the court has any cause to travel to the other grounds if they are needless for the decision. These observations are called obiter dicta, i.e., observations by the way, and are not binding. Whatever is not *ratio decidendi* is the *obiter dictum* in a case. According to Salmond,[6] there are two ways to find out the ratio decidendi of a case, one is Reversal test (Waumbaugh's Test) and other is Material facts test (Goodhart's Test): -

Reversal Test (Waumbaugh's Test) -

According to this test, we should take the propositions of law put forward by the judge, reverse or negate it by putting the word 'not', and then see, if its reversal would alter the actual situation and judgment. If yes, then the proposition is the ratio or part of it. If the reversal makes

[5] See section 41 Indian Evidence Act, 1872

[6] For full details see, Salmond on Jurisprudence, A treatise by Fitzgerald, 12th Edition, London: Sweet and Maxwell, 1966.

no difference, then such a proposition is not the ratio of the case. In Satya Brat Ghose's case if we apply the reversal test then position will be:

> *"the requisition order was not a temporary one and occupation of military forces was not removed, hence, the contract between the parties got frustrated and became void, and the Company cannot be compelled to execute the sale deed of plot of land."*

The reversal test shows that this proposition of law was the *ratio decidendi* of the case because the reversal by addition of word 'not' has completely altered the actual situation and the judgment.

Material Facts Test (Goodhart's Test) -

According to this test, we will have to find out the most material facts, which the judges consider as material and their decision on them. According to this test only those propositions of law are authoritative in so far as they are relevant to the facts in issue in a case. In Satya Brat Ghose's case, the most material fact and decision thereupon was that the requisition order was a temporary one and occupation of military was removed, and as such it does not frustrate the contract. Hence, the decision of the court on this issue amounts to ratio decidendi of the case which is binding on all the subordinate courts.

According to Benjamin Cardozo,[7] following are the Jurisprudential rules for finding out of the *ratio decidendi* of a case: -

(i) It must be a necessary step to the conclusion.

(ii) It must be directly related to the issue.

(iii) It must come from dispute of law, and not from dispute of facts.

(iv) It must be argued in the court.

(v) The facts of the precedent case shape the level of generality.

(vi) The later courts will decide the level of generality.

(vii) When a precedent has multiple reasons, all reasons are binding.

(viii) The ratio may come in multiple forms like, a common law rule or interpretation of statute/rules.

(ix) Where there are multiple judges, ratio is extracted out of majority opinion.

(x) When ratio cannot be determined, later courts may not be bound.

(xi) Unstated assumptions are not the ratio.

[7] For further details see, Cardozo, Benjamin N., "The nature of Judicial process" 1921

Ratio decidendi is binding on future courts whereas obiter can have persuasive value only. However, the obiter of the apex court is binding on all the future courts. Ratio decidendi is like invisible vitamins in lemon juice.

Descriptive and Prescriptive Ratio -

According to Professor Julius Stone[8], the ratio may be *descriptive or prescriptive*. The descriptive ratio is from the original case and prescriptive ratio is how the ratio may be applied to the future cases. We may be able to identify the ratio in the decided case, but it is not possible to directly apply it to a future case for the simple reason that the precedent case and the future case will never be precisely identical. There will always be distinctions between the two. The probabilities of identical facts occurring in the future are very slim. Thus, there is a need of level of generality and application of syllogism for the survival of the doctrine of ratio decidendi.

The law declared by Supreme Court of India is binding on all the courts within the territory of India under Article 141 Constitution of India. But the word courts do not include Supreme Court itself, which means that the Supreme Court is not bound by ratio decidendi of its own decisions and can change its declared law in future decisions. Prior to independence, this doctrine of judicial precedent was first recognized in Government of India Act, 1935.[9] But what is law? The ratio decidendi of a case when repeatedly followed by the courts gives rise to a law which is known as 'Judge Made Law', according to the 'Doctrine of Judicial Precedents'[10] Judicial precedent is a legal principle, or rule created by a court decision. This decision becomes an example or authority, for judges deciding similar issues later. The doctrine of stare decisis obligates courts to look to precedent when making their decision. Thus, judge made law is also a good source of law. However, a ruling of higher courts against the express provisions of law is not to be followed as precedent and is not binding according to doctrine of per-incuriam which means ruling given "through inadvertence" or "through lack of care" when court of record has acted in ignorance of any previous decision of its own or if a subordinate court has acted in ignorance of a decision of the court of record or the decision is against express statutory provisions of law. The lower courts are free, however, to depart from an earlier judgment of a superior court where earlier judgment was decided "per incuriam" In England, there is no written Constitution and the judge made law is the chief source of law in U.K.

Head Note v. **Ratio Decidendi**

The head note of a law journal is sometimes misleading. Truly speaking, head note is the mind of the editor of the journal whereas the *ratio decidendi* is the mind of the judges. So, students should be cautious while reading a judgment. They can take help of the head note of a law journal, but they should extract the *ratio decidendi* independently.

[8] For further details see, Julius Stone, "Social dimensions of law and justice" 1966.

[9] See section 212 of Government of India Act, 1935

[10] For further details See Cordozo, Benjamine N, "The nature of judicial process" 1921 edition.

Few Proofs of Judge Made Law in India

a) *Savitri v. Govind Singh Rawat*,[11] A break through judgment of Supreme Court of India awarding interim maintenance to ladies during pendency of main application under Section 125, Cr.P.C. 1973. Later on, Cr.P.C., 1973 was amended and provision for interim maintenance was inserted in Section 125.

b) *Keshwananda Bharti v. State of Kerala*,[12] it was held that Parliament has power to amend the Constitution, but its basic features cannot be amended. The word 'basic features' is nowhere mentioned/defined in our Constitution, and it is a judge made law.

c) *Hussainara Khatoon v. Home Secretary, Bihar*[13] – it was held that under trials who are in jail for a period more than the maximum term imposable on him on conviction should be released from the jail forthwith. Later on, Cr,P.C., 1973 was amended and above-mentioned judge made law was inserted in Section 436A of Cr.P.C. The Cr.P.C., was further amended and it was inserted that where a person has, during the period of investigation, inquiry or trial under this code, of an offence under any law (not being any offence for which the punishment of death has been specified as one of the punishment) undergone detention for a period extending up to one half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the court on his personal bond with or without sureties. Law Commission of India[14] has recommended amendment in section 436-A of Cr.P.C., 1973 that this limitation of one half should be reduced to one third for offences for which the maximum punishment provided for that offence is up to 7 years.

d) *Vishaka v. State of Rajasthan*[15] – According to judgment and guidelines of Supreme Court issued in this case, the Parliament enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This is one of the best illustrations of judge made law.

e) *D.K. Basu v. State of WB*[16] - According to judgment and directions issued in this case relating to the rights of the arrestees and persons in police custody, Cr.P.C., 1973 was amended by the Indian Parliament. Judge made law was converted into statutory law.

f) *Shayara Bano v. UOI*[17] - The custom of triple talaq among Muslims was held unconstitutional by the Supreme Court. Later Parliament made the practice of triple talaq as offence under Muslim Women (Protection of Rights on Marriage) Act, 2019 punishable up to three years imprisonment.

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[11] AIR 1986 SC 984
[12] AIR 1986 SC 1461
[13] AIR 1979 1369
[14] See Law Commission of India, 268th Report, Annexure-A, page 111.
[15] (1997) 6 SCC 241.
[16] (1997) 1 SCC 416
[17] 2017 SCC Online 963.

Conclusion

There are three main sources of law, i.e., legislation, custom and judicial precedent. The legislation comes into force the moment its enforcement is notified by the Government. The custom takes a long and immemorial time to mature into law, but the judicial precedent takes the shape of law when it is consistently followed by the future courts. Thus, for following the ratio decidendi, which gives rise to law, according to the doctrine of stare decisis under Article 141 of our Constitution, future courts will have to wait till the final verdict of the apex court. Law students can become legal eagle by learning the art of case analysis, extracting and using the doctrine of ratio decidendi in moot court competitions by not only strengthening their own arguments but at the same time by demolishing the arguments of their opponent.