

(1968) 04 GUJ CK 0001

In the Gujarat High Court

Case No : Civil Revision Application No. 371 of 1968

Bai Galal Ramshi

APPELLANT

Vs

Vrajlal Ichhashanker and Others

RESPONDENT

Date of Decision : 05-04-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115, 80

Citation : AIR 1969 Guj 159 : (1969) GLR 561

Hon'ble Judges : J.M. Sheth, J

Bench : Single Bench

Advocate : K.M. Parikh, for the Appellant; D.U. Shah, for the Respondent

Judgement

J.M. Sheth, J.—This is a revision petition filed by the original defendant against the plaintiffs-opponents u/s 115 of the Civil Procedure Code. The opponents filed a Civil Suit No. 31 of 1967 in the Court of the Civil Judge. (J.D.) Talaja for recovery of possession of suit land from the petitioner. According to them, they are the owners of the suit land and are in possession of it. The petitioner obstructs their possession and has made an application in the Mamlatdar's Court to have it mutated to her name, claiming the land to be hers.

2. The petitioner filed a written statement on 24th July, 1967 and denied the claim of the opponents and challenged the maintainability of the suit.

3. On 9th February, 1968. by an application Ex. 21, she sought permission for an amendment of a written statement By that application she wanted to take up three further contentions in regard to maintainability of the suit. One of them was that there was a previous suit between the parties and due to the decision given in that suit, the suit was barred by res judicata. Another contention was that, the suit being a suit for taking possession of the suit land on the ground of ownership, the market value of the land being over 10,000/- rupees at the date of the suit, the Court has no jurisdiction to hear the suit. The alternative contention that was to be taken up was that the suit was barred by limitation.

Another alternative contention was about adverse possession.

4. The learned Civil Judge, Junior Division, Talaja, Mr. R.H. Nanavati, rejected this application on the ground that the suit was filed on 24th July, 1967 and there was absolutely nothing to prevent the defendant from taking up all the contentions that she now proposes to take. Merely, because the proposed contentions are important, they cannot now be permitted to be taken up. All the proposed contentions are new. He, therefore, does not see any reason to allow that application at that stage. On these grounds, the application has been rejected by the learned Civil Judge. This is one of the impugned orders which is assailed in this revision application by the petitioner. Another application, Ex. 22 was given stating that the value of the subject-matter being over Rs. 10,000/-, the Court has no jurisdiction to hear the suit. She therefore, prayed that before hearing of the suit commenced, Mamlatdar or any other officer be appointed as a Commissioner for making the valuation of the land which according to the petitioner, can be valued at Rs. 35,000/-. That application was also rejected stating that the applicant may lead evidence herself to substantiate her contention, if permissible. The petitioner has come in revision against that order also.

5. The learned Advocate Mr. Parikh, appearing on behalf of the petitioner, firstly contended that the learned Civil Judge had committed an illegality by ignoring the provisions of law and thereby had failed to exercise the jurisdiction vested in him. He urged that before the recording of evidence commenced, the petitioner had sought permission to allow her to amend the written statement. The contentions which the petitioner intended to take up by that amendment were very material contentions and most of them were contentions of law, which would go to the root of the case, if the petitioner succeeded in showing the soundness of those contentions. He conceded to the position that those contentions were new contentions. The amendment application, which sought for a permission to take up those contentions, cannot be rejected on the aforesaid grounds. These were the additional grounds which the petitioner wanted to urge in support of her say that the suit was not maintainable as well as entertainable and should be dismissed. She was not making out any new case. These were the only new grounds to support her case that the suit was not maintainable and the suit should be dismissed on that ground.

6. He also invited my attention to the provisions of Order 6, Rule 17 of the Civil Procedure Code. He also urged that the present case would also be covered by Clause (a) or (b) of Section 115 of the Civil Procedure Code, as the petitioner wants to take up a contention regarding jurisdiction. The petitioner also wants to take up a contention regarding res judicata. She wants to take up a contention regarding limitation. All these questions are questions which, if decided in favour of the petitioner, would go to the root of the case and the suit would be liable to be dismissed on those grounds. It was, therefore, urged that the present case was also covered by Clause (a) or (b) of Section 115 of the Civil Procedure Code.

In my opinion, this argument of Mr. Parikh is not well founded. The Court has not decided the correctness or otherwise of these contentions. What the Court has decided is whether this amendment application should be allowed or not. The question therefore, that really arises for consideration will be whether the case is covered by Clause (c) of Section 115 of the C. P. Code or not.

7. The learned Counsel Mr. D.U. Shah, appearing on behalf of the opponents, firstly, contended that the present case could not be said to be a case decided within the meaning of Section 115 of the Civil Procedure Code. He, therefore, urged that no rights of the parties have been decided finally. Part of the controversy between the parties has not been decided. That being the position, the present case could not be said to be a case decided within the meaning of Section 115 of the Civil Procedure Code. He invited my attention to a decision of a Division Bench of this Court in support of his argument.

8. In the case of Shah Prabhudas Ishwardas Vs. Coparceners of a joint Hindu family of Shah Bhogilal Nathalal and Others, , a Division Bench of this Court has made the following observations:--

"A case decided within the meaning of Section 115 Code of Civil Procedure, is not confined to an entire suit or proceeding but includes an issue or a part of a suit or proceeding and if an order decides an issue or a part of a suit or proceeding, it would be a case decided within the meaning of Section 115. If an order decides some right or obligation which is in controversy between the parties in the suit or proceeding, a part of the suit or proceeding whether it forms the subject-matter of a separate issue or not, would be decided and that would be a decision of a case as contemplated by Section 115. Such an order may decide the right or obligation expressly in so many terms or it may decide the right or obligation as a matter of direct and necessary consequence. But in either case it would be a case decided, as the right or obligation would be determined and a part of the suit or proceeding relating to the controversy as to such right or obligation would be decided."

9. In the body of the judgment, at page 653 (of Guj LR) = (at p. 238 of AIR) Bhagwati, J., as he then was, speaking on behalf of the Division Bench, referred to the decision of the Supreme Court in S.S. Khanna v. P.J. Dillon AIR 1954 SC 497 and made the following observations:

"In that case the Supreme Court was called upon to consider as to which of the two conflicting views represented the correct law and after examining the nature of the jurisdiction conferred by Section 115 and the purpose for which the High Courts were invested with it, the Supreme Court pronounced in favour of the former view which gave wider and more liberal interpretation to the expression "case". The order impugned in revision in that case was an order passed by the subordinate Court holding that Major S.S. Khanna Vs. Brig. F.J. Dillon, against Khanna was not maintainable and the Supreme Court held that though that order was not a final order disposing of the suit, it was yet a case decided within the

meaning of Section 115 and, therefore, revisable under that section. Shah J. speaking on behalf of Sarkar J. and himself said:

"The expression "case" is a word of comprehensive import: it includes civil proceedings other than suits, and is not restricted by anything contained in the section to the entirety of the proceeding in a civil Court. To interpret the expression "case" as an entire proceeding only and not a part of a proceeding would be to impose a restriction upon the exercise of the powers of superintendence which the jurisdiction to issue writs, and the supervisory jurisdiction are not subject, and may result in certain cases in denying relief to an aggrieved litigant where it is most needed, and may result in the perpetration of gross injustice."

Hidayatullah J. also observed to the same effect in a concurring judgment -

"..... and the word "case" does not mean a concluded suit or proceeding but each decision which terminates a part of the controversy involving a matter of jurisdiction."

These observations clearly show that a case decided within the meaning of Section 115 is not confined to an entire suit or proceeding but includes an issue or a part of a suit or proceeding and If an order decides an issue or a part of a suit or proceeding, it would be a case decided within the meaning of Section 115, If an order decides some right or obligation which is in controversy between the parties in the suit, or proceeding, a part of the suit, or proceeding, whether it forms the subject matter of a separate issue or not, would be decided and that would be a decision of a case as contemplated by Section 115. Such an order may decide the right or obligation expressly in so many terms or it may decide the right or obligation as a matter of direct and necessary consequence as in the case before the Supreme Court. But in either case it would be a case decided, as the right or obligation would be determined and a part of the suit or proceeding relating to the controversy as to such right or obligation would be decided."

Applying those tests, it was held by the Division Bench that the question whether particular documents were promissory notes and eventually inadmissible in evidence on account of insufficiency of stamp was a question which having been decided by the trial Court, was a case decided within the meaning of Section 115 of the Civil Procedure Code. In the instant case, this petitioner wanted to amend the written statement and by that amendment, she wanted to take up certain questions which would go to the root of the case, if she succeeded in showing that those contentions were well founded.

10. Order 6, Rule 17 of the CPC runs as under :--

"The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

A plain reading of that rule indicates that amendment can be allowed at any stage of the proceedings. The learned trial Judge was, therefore, not at all justified in rejecting this amendment application on the ground that this amendment application has been given after a long-time. No doubt, the Court is empowered in an appropriate case to put the petitioner who wants to amend the application to terms. This rule further lays down that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. In the instant case, by this application, the petitioner wants to take up such contentions. For determining the real questions in controversy between the parties, it was necessary to allow this amendment.

That has been refused by the learned trial Judge. If this amendment application is not allowed the direct and necessary consequence would be that this petitioner would be prevented from taking up these contentions and show to the Court that the suit is not maintainable. If this amendment is allowed and if the petitioner succeeds in her contentions, she would be able to show that this suit should be thrown out on these grounds. The direct and necessary consequence of refusing such an amendment is that this petitioner is deprived of showing that this suit is not maintainable as well as entertainable by the trial Court. In my opinion, the present case will be covered within the ratio laid down by a Division Bench of this Court. It will be covered by the second part, namely;

"Such an order may decide the right or obligation expressly in so many terms or it may decide the right or obligation as a matter of direct and necessary consequence as in the case before the Supreme Court. But in either case it would be a case decided, as the right or obligation would be determined and a part of the suit would be determined and a part of the suit or proceeding relating to the controversy as to such right or obligation would be decided"

11. The learned Advocate Mr. Parikh Invited my attention to a decision given by Raju J. in the case of Shah Shantilal Chunilal Vs. Shah Shantilal Fulchand and Another, . in support of his argument, that the present case would be a case decided within the meaning of Section 115 of the Civil Procedure Code. It was also a case regarding an application for amending the plaint. After reviewing several authorities and the relevant wordings of Section 115 of the Civil Procedure Code, the following observations have been made:--

"The words "case decided" have not been defined in the Civil Procedure Code. The word "case" is also not defined in the Civil Procedure Code. But the fact that the third Clause of Section 115. C. P. Code, refers to the powers of revision where the subordinate Court acted in the exercise of its jurisdiction illegally or with material irregularity would show that the words "case decided" would include an order passed by a subordinate Court in the exercise of its jurisdiction and which is not the final order. It has been observed by their Lordships of the Supreme Court in Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi, , as follows:--

"Section 115. Civil P. C. empowers the High Court, in cases where no appeal lies, to satisfy itself on three matters: (a) that the order made by the subordinate Court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise its Jurisdiction: (c) that In exercising the jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law or with material irregularity that is by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. AIR 1949 156 (Privy Council) . Therefore, if an erroneous decision of a subordinate Court resulted in its exercising jurisdiction not vested in it by law for failing to exercise the jurisdiction so vested or acting with material irregularity or illegality in the exercise of its jurisdiction the case for the exercise of powers of revision by the High Court is made out. In AIR 1949 239 (Privy Council) that subordinate Court gave an erroneous decision that the loan was a commercial loan and therefore refused to exercise jurisdiction vested in it by law and the Privy Council held that it was open to the High Court to interfere in revision u/s 115. Sir John Beaumont said at p. 142 (of Ind App):(at p. 242 of AIR):

There have been a very large number of decisions of Indian High Courts on Section 115 to many of which their Lordships have been referred. Some of such decisions prompt the observation that High Courts have not always appreciated that although error in a decision of a subordinate Court does not by itself involve that the subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under Sub-section (c), nevertheless if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law or failing to exercise a jurisdiction so vested a case for revision arises under Sub-section (a) or Sub-section (b) and Sub-section (c) can be ignored. The cases of Babu Ram and Another Vs. Munna Lal and Others, and Hari Bhikhaji v. Naro Vishva-nath. ILR (1885) Bom 432 may be mentioned as cases in which a subordinate Court by its own erroneous decision (erroneous that is in view of the High Court) in the one case on a point of limitation and in the other on a question of res judicata. invested itself with a jurisdiction which in law it did not possess and the High Court held wrongly their Lordships think, that it had no power to interfere in revision to prevent such a result. In the present case, their Lordships are of the opinion that the High Court, on the view which it took that the loan was not a commercial loan had power to interfere in revision under Subsection (b) of Section 115."

In Keshardeo Chamria Vs. Radha Kissen Chamria and Others, . both these Judgments of the Privy Council as also the previous judgments in Amir Hassam Khan v. Sheo Baksh Singh. (1883 11 Ind App 237 (PC) and Balkrishna Udayar V. Vasudeya Aiyar. 44 Ind App 261 : AIR 1917 PC 71. were reviewed and it was held that Section 115, C. P. Code applied to matters of jurisdiction alone, the Irregular exercise or non-exercise of it or the illegal assumption of it. Thus if a subordinate Court has jurisdiction to make the order it made and has not acted in breach of any provision of law or committed any error of procedure which is material and may have affected the Ultimate decision, then the High Court has

no power to interfere. But if on the other hand it decides a jurisdictional fact erroneously and- thereby assumes jurisdiction not vested in it or deprives itself Of jurisdiction so vested then the power of interference u/s 115. CPC becomes operative."

It is, therefore, clear that if a material Irregularity is committed by the subordinate Court as regards some error of procedure in the course of the trial, that order can be revised and, therefore, an order of procedure also can be revised. This clearly shows that the words "case decided include an order relating to some error of procedure....."

"I, therefore, agree with the view taken by the Calcutta and Madras High Courts that the order passed on an interlocutory application does amount to a case decided.""

Raju J. has referred to the following observations made in AIR 1925 Mad 585(2) ;--

"The powers of amendment conferred on the Courts under the present law are much wider than formerly and all amendments should be allowed as would enable the Court finally to determine all matters in controversy between the parties The High Court is entitled to set aside in revision an order of the lower Court refusing to grant amendment and to avoid the trouble, delay and expense that would otherwise be caused."

I am also in respectful agreement with the principle enunciated by the Madras High Court in that decision. I am also in respectful agreement with Raju J. that a case like the present case would be a case decided within the meaning of the words "case decided" referred to in S 115 of the Civil Procedure Code. I, therefore, reject the argument of the learned Counsel Mr. Shah that the present case is not a case decided within the meaning of Section 115 of the Civil Procedure Code.

12. It has been next contended by the learned Counsel Mr. Shah that the present case would not fall within any of the Clauses (a), (b) or (c) of Section 115 of the Civil Procedure Code. The impugned order, therefore, cannot be revised by this Court in the exercise of its revisional jurisdiction. In support of his argument also, he relied upon a decision of a Division Bench of this Court *Shah Prabhudas Ishwardas Vs. Coparceners of a joint Hindu family of Shah Bhogilal Nathalal and Others*, to which I have made a reference earlier.

13. Bhagwati J., as he then was speaking for the Division Bench, has referred to several authorities and especially the decision of the Supreme Court in *Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai*, , and quoted the following observations made by the Supreme Court:

"..... the section (Section 115 of the Code of Civil Procedure) applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The Section is not directed against conclusions of law or fact in

which the question of jurisdiction is involved."

After quoting those observations of the Supreme Court, the following observations have been made at page 655 of (Guj LR)=(at p. 239 of AIR):

"If a subordinate court has jurisdiction to decide a question before it, it may decide it rightly or wrongly, whether the question be one of law or fact, that would not bring the case within the section. It is only where the error of law or fact has relation to the jurisdiction of the subordinate Court to try the dispute that the section would be attracted. To take an example of an error of law affecting the jurisdiction of the Court, it is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court trying the proceeding. A finding on these pleas in favour of the party raising the pleas, the Court would be refusing to exercise jurisdiction vested in it and if on the other hand the erroneous decision is against the party raising the pleas, the Court would be clutching at jurisdiction it does not possess. In either case the section would be attracted: Clause (b) in the former case and Clause (a) in the latter. On principle, this proposition would appear to be unquestionable and no authority is necessary to support it but if any authority were needed, it is to be found in the following observations of Sir John Beaumont in the Privy Council case of AIR 1949 239 (Privy Council) which were quoted with approval by the Supreme Court in Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, :

". . . . if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-section (a) of Sub-section (b) and sub-section (c) can be ignored The cases of Babu Ram and Another Vs. Munna Lal and Others, may be mentioned as cases in which a subordinate Court by its own erroneous decision (erroneous, that is, in the view of the High Court), in the one case on a point of limitation and in the other on a question of res judicata, invested itself with a jurisdiction which in law it did not possess and the High Court held, wrongly their Lordships think that it had no power to interfere in revision to prevent such a result."

The position would be the same where there is an error of fact having relation to the jurisdiction of the Court. Such a case would arise where the jurisdiction of the Court depends on the existence or non-existence of a collateral fact and by an erroneous decision of that fact the Court assumes jurisdiction not vested in it or deprives itself of jurisdiction so vested"

In para 8, at pages 656 and 657 (of Guj LR) = (at pp. 239-240 of AIR), the scope and ambit of Clause (c) of Section 115 of the CPC has been referred. The relevant observations made therein are as under:

"But the question may then be asked; What about Clause (c) of Section 115? That clause empowers the High Court to interfere where the subordinate Court has acted illegally or with material irregularity in the exercise of jurisdiction. Can

the High Court not interfere in revision under this clause where it finds that the subordinate Court has wrongly decided a question of law in the exercise of its jurisdiction? If the question is asked in general terms, the answer is plainly "No". Section 115 is not directed towards correcting errors of law in the exercise of jurisdiction. As held by the Supreme Court in *Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav*, it is only if the error of law has relation to the exercise of jurisdiction illegally or with material irregularity by the subordinate Court that the High Court can correct such error of law in revision. What then is the meaning of the expression "has acted illegally or with material irregularity in the exercise of jurisdiction?" This question is also no longer open to doubt or debate. In *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, , the Supreme Court quoted with approval the observations of Bose, J. in his order of reference in AIR 1948 258 (Nagpur) and observed that:

".....the words "illegally" and "material irregularity" do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with."

It will be clear from these observations that a mere error of law in the exercise of jurisdiction is not enough. What is necessary is that the subordinate Court must have acted illegally, that is, in breach of some provisions of law or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. Vide also AIR 1949 156 (Privy Council) . This is the test which must be applied in order to determine whether the case falls within Clause (c) of Section 115."

This is a correct test laid down and I am in respectful agreement with it and I am also bound by that decision, it being a decision of a Division Bench of this Court. Applying that test in the present case, it is quite clear that this is a case where the Court has acted illegally or with material irregularity in the exercise of its jurisdiction. The Court, while refusing the amendment application, acted illegally. The reason is that it has acted in breach of the provisions of law, embodied in Order 6, Rule 17 of the Civil Procedure Code. I am, therefore of opinion that the present case is covered by Clause (c) of Section 115 of the Civil Procedure Code.

14. The learned Advocate Mr. Parikh, in support of his argument that this case will be covered by Clause (c) of Section 115 of the Civil procedure Code, invited my attention to the decision of Raju J. In the case of *Shah Shantilal Chunilal Vs. Shah Shantilal Fulchand and Another*, , to which also, I have made a reference earlier. The relevant observations are at page 701 (of Guj LR) = (at pp. 197-198 of AIR) in the following terms:--

"It is next contended that there is no material irregularity in the exercise of jurisdiction when an application for amendment is refused. As decided by their Lordships of the Supreme Court, If there is an error of law and the irregularity is

material in that it may have affected the ultimate decision, then it would come within Section 115, C.P. Code.

Order 6 Rule 17 C. P. Code, provides as under:--

"The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

If there is a breach of this provision of law, it would amount to an error in the exercise of jurisdiction. Of course, the question whether such an error is material or not would depend on the facts of each case."

15. It Is contended by the learned Counsel Mr. Shah for the opponents that this decision of a single Judge of this Court runs counter to the statement of law made by a Division Bench of this Court referred to by me earlier and also to the decision of the Supreme Court. In my opinion, there is nothing to indicate that this statement of law made by Raju J. runs in any manner counter to the statement of law made by this Court or the Supreme Court. I, therefore, held that the present case will be covered by Clause (c) of Section 115 of the Civil Procedure Code.

16. The learned Advocate Mr. Parikh also invited my attention to the case of Ishwarlal Nandlal Maula Vs. The State of Maharashtra (Now the State of Gujarat), . Mehta J. has made the following observations:

"If the subordinate Court on a patently wrong view or missing relevant considerations or on grounds not open to it holds a bar to exist when there was no bar to the trial of the suit, the error would be clearly one going to the root and affecting the jurisdiction to try the suit. If, therefore, the amendment to the plaint was not barred by Section 80 of the Civil Procedure Code, the trial Court in holding that the amendment could not be allowed in view of that bar was clearly declining to exercise jurisdiction to entertain the plaintiff's claim and such an error could be corrected u/s 115 of the Civil Procedure Code".

In this decision, several decisions of the Supreme Court and decisions of other High Courts have been reviewed. In para 3 at p. 590 the following observations have been made:--

"At the outset Mr. Vidyarthi argued that the jurisdiction of this Court u/s 115 is restricted to revise the errors of jurisdiction alone and Section 115 does not permit the Court to revise orders involving conclusions of law and facts in which questions of jurisdiction were not involved. Section 115 has now been interpreted time and again by the Supreme Court and the ratio laid down by the Privy Council in AIR 1917 PC 71, has been approved, laying down that Section 115 applies to questions of jurisdiction alone, irregular exercise or non-exercise of it or the illegal assumption of it and that section is not directed against the conclusions of law or facts in which the question of jurisdiction is not involved.

This question had recently come up before the Supreme Court in Civil Appeal No. 163 of 1963 in Pandu-rang Dhondi v. Maruti Hari D/- 26-4-1965 : (AIR 1966 SC 1531). The Bench of the Supreme Court, consisting of five Judges, approved the decisions in Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, , The learned Chief Justice, speaking for the entire Bench, pointed out that the effect of these two decisions clearly was that a distinction must be drawn between the errors committed by subordinate Courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said Court and errors of law which have no such relation or connection. It was thought undesirable and inexpedient to lay down any general rule in regard to this position as in actual practice, it would not be difficult to distinguish between cases where errors of law affect, or have relation to, the jurisdiction of the Court concerned, and where they do not have such a relation even where the section was misconstrued it was held that the provisions of Section 115 were attracted only if such statutory provisions had relation to the erroneous assumption of jurisdiction or erroneous failure to exercise jurisdiction or exercise of jurisdiction illegally or with material irregularity by the Subordinate Court. It was further observed that it was well settled that a plea of limitation or a plea of res judicata was a plea of law which concerned the jurisdiction of the Courts which tried the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the Court, and, so an erroneous decision on these pleas could be said to be concerned with question of jurisdiction which fell within the purview of Section 115 of the Code. Otherwise, an erroneous decision which had no relation to the question of jurisdiction of that Court could not be corrected by the High Court u/s 115. In that decision the question involved was one of construction of a decree, which like the construction of a document of title was no doubt a point of law, but the error of law in deciding that question was held not to involve the question of the Court's jurisdiction and, therefore, it was held that the High Court had no power to correct that decision u/s 115 of the Code Similarly, the decision on the collateral jurisdictional facts is also one directly relating to the question of jurisdiction. In Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi, , it was, therefore, held that where the necessary jurisdictional fact to be found was the date of construction of the accommodation and if the Court wrongly decided the fact and thereby conferred jurisdiction upon itself which it did not possess, it exercised jurisdiction not vested in it and the decision could be interfered with u/s 115. In the present case the question involved was whether the trial Court, rightly invoked the bar of Section 80 of the Code when it refused to entertain the claim of the plaintiff on that ground. Such a question went directly to the root and had direct relation to the jurisdiction of the Court. If, therefore, the conclusion of the trial Court that there was a bar of Section 80 to the present amendment was not warranted, If it had properly understood the relevant enactment and if it was this patently wrong view of law, which prevented it from entertaining the plaintiff's claim, the error was clearly one of jurisdiction and jurisdiction alone which could be corrected u/s 115 of the Code."

In the instant case also, the Court rejected this amendment on the ground that these are the new contentions taken up. Order 6, Rule 17 of the CPC does not prevent the party taking up such contentions even at a later stage. The Court has, therefore, really committed an error relating to jurisdiction. The Court acted illegally and with material irregularity in relation to the procedure also, which may ultimately affect the decision of the suit. The present case is, therefore, a case covered by Clause (c) of Section 115 of the CPC and it does require interference by this Court in exercise of its revisional jurisdiction.

17. Coming next to the rejection of application, Ex. 22. the Court, while rejecting that application has stated that the applicant may lead evidence herself to substantiate her contention. The order passed by the Court below Ex. 21, refusing the petitioner to amend her written statement, is being set aside. The petitioner will, therefore, be entitled to take up the contentions which she wants now to raise, as mentioned in her application Ex. 21. It is not necessary that the Court should appoint a Mamlatdar or any other officer for the purpose of making valuation of the subject-matter of the suit. The petitioner will have liberty to lead evidence on that point. The opponents can also lead evidence to show that the value of the subject-matter of the suit is as has been contended by them, I, therefore, find that that order passed below, Ex. 22, cannot be assailed in this revision petition I, therefore, do not see any justifiable reason to interfere with that order in the exercise of revisional jurisdiction.

18. The revision petition is partly allowed. The order passed below Ex. 21 on 17th February, 1967 is set aside and the petitioner is permitted to amend her written statement as prayed for, in Ex. 21. The petitioner's prayer of setting aside the order passed below Ex, 22 is rejected. Rule is modified.

19. Taking into consideration the circumstances of the case, each party is ordered to bear its own costs.

20. It is clarified that by rejection of a prayer in relation to the order passed below Ex. 22, the petitioner will not be precluded to request the Court to try the issue regarding jurisdiction after the issues are framed as a preliminary issues and allow the parties to lead evidence on that point for showing the value of the subject-matter at the date of the suit.