
(1955) 01 MP CK 0002
In the Madhya Pradesh High Court
Case No : Civil Revision No. 120 of 1954

Basanti bai

APPELLANT

Vs

Vishnu Kumar

RESPONDENT

Date of Decision : 10-01-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, 115, 141, 151

Citation : (1955) 01 MP CK 0002

Hon'ble Judges : Dixit, J

Bench : Single Bench

Advocate : A.B. Mishra, for the Appellant; Motilal Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, J.—The present petition arises under the following circumstances. The present Petitioner Basanti Bai is the wife of the judgment debtor Rameshwardayal against whom a decree of Gordhandas, father of the non-applicant No. 1 was being executed in the Court below. In execution a certain house was attached. The Petitioner raised objection to the attachment of the property claiming that it belonged to her. The executing Court decided the objection in her favour. The decree-holder against that order, came to this Court in revision (C.R. 208 of 1952).

This revision was filed on 4-12-1952 and was heard "ex parte" on 15-10-53 as Basanti Bai, the non-applicant in that case, did not appear even after service. On that date orders were passed allowing the revision and directing the execution Court to rehear the arguments and to clarify the position whether the attached property was in possession of the wife of the judgment-debtor in her, own right or only as a trustee for the judgment-debtor. As the order passed by the Court below was ambiguous as regards the possession of the objector, the case was sent back for rehearing of the arguments and for disposal of the objections.

When the case reached the execution Court Basanti Bai raised Anr. objection that

Gordhandas had died on 3-2-1953 and therefore the order passed by the High Court in revision was null and void and the order should be ignored. This objection has been disallowed by the Court below and so Basanti Bai has come in revision to this Court and, on her behalf, Mr. Anand Bihari Mishra has also filed an application u/s 151, CPC for setting aside the order dated 15-10-1953 passed by this Court in - "Gordhandas v. Mahila Basanti Bai" Civil Revision No. 208 of 1952 (MB) (A).

2. Now it is admitted that Gordhandas who belonged to Shivpuri District had died on 3-2-(1953." Neither this Court nor the "Vakil" engaged by Gordhandas was aware of his death and the arguments were heard in ignorance of that fact. The question arises whether the order dated 15-10-53 passed in Civil Revision No. 208 of 1952(A), Should be declared to be null and void?

Mr. Anand Bihari Mishra places reliance on Amarsangji Indrasangji Vs. Desai Umed, , and certain other rulings for the proposition that where the Appellant dies but "the appeal is decreed in ignorance of his death the decree passed is a nullity. Mr. Motilal Gupta, however, places reliance on "Totaram v. Kundan" AIR 1928 Lah 781(C), and urges that a decree passed after the death of a party to the suit or appeal is not an absolute nullity nor is it open to collateral attack.

3. In my opinion these rulings are not relevant inasmuch as there the question had arisen in appeals and here the question arises in revision before me which is governed by the provisions of Section 115 of Code of Civil Procedure. A revision is necessarily different from an appeal. There is a mistake in thinking that the two are identical. The main question, therefore, is whether the principle recognised in Rule 3, Order 22 of the Code of 1908 is applicable to proceedings in revision? Mr. Anand Bihari Mishra relies on "Ananda Moyi Dasi v. Rudra Mahanti" 21 Ind Cas 407 (Cal) (D), for the proposition that Order 22, Rule 3 applies also to proceedings in revision.

The judgment though of a Division Bench of the Calcutta High Court does not discuss the provisions of Section 115 nor does it give any reason for the proposition that a rule cannot be issued at the instance of a person who had died at the time the application was made and that a rule so issued is plainly a nullity. With great respect I must say that the judgment is a short and a summary one and does not satisfy me in the least.

4. A different view has however been taken in "Baksho v. Piaro" AIR 1920 Sind 120(E), and in "Naoo Mai v. Tarachand" AIR 1933 Sind 200(F). Mr. Motilal Gupta drew my attention to a recent Pakistan case "Mohammad Saddat Ali v. Administrator Corporation of City of Lahore" AIR 1949 Lah 186(FB) (G), where all the relevant rulings have been elaborately discussed and analysed and where the Full Bench came to the conclusion that Order 22, Rule 3, CPC is not applicable to revisions.

The Full Bench further held that it cannot be read in conjunction with Section 141 as this section is so drafted as to enable a Court to apply the procedure in regard

to suits to such proceedings as are in "pari materia with suits and thus original in character, and, that the procedure provided for suits would be mostly inapt and inappropriate to proceedings in revision.

The Full Bench in this case therefore held that where a party going in revision dies pending the revision petition and an application is made by his legal representatives to be brought on record after the expiry of the period of 90 days the petition for revision cannot be dismissed on the ground of abatement.

5. I am in respectful agreement with the above view. The order in revision is of its nature an essential act of the Court. In suit appeal the points to be decided ordinarily are those on which the parties are at variance. The revision stands on different footing. It is a matter between the High Court and a lower Court. Section 115, CPC reads as follows:

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears:

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

6. It will be seen from above that revisional powers can in certain cases be exercised without an application by any of the parties concerned. Whether the Court exercises its power of revision "suo motu" or at the instance of a party is immaterial. The section gives discretionary power to the High Court to interfere or not. The High Court will not usually interfere if the result of an irregularity of the lower Court has been to promote justice.

But where there has been an illegal assumption of jurisdiction or a material irregularity which had occasioned a substantial failure of justice, this Court is bound to interfere. In such cases if the record of a case has been called for by the High Court from an inferior Court for the purposes of rectifying some obvious mistake, can it be contended, that, before rectification takes place, if any of the parties happen to die and his legal representatives are not brought on record in due time the matter would abate and the High Court will have no power left to make the necessary rectification?

There is no doubt that the High Court would not pass orders which would prejudice any party to the proceedings without hearing him, and- it is only for this reason that notices are issued to all the parties concerned, so that full justice may be done. But this aspect has nothing to do with the question of abatement. Even looking to the provisions of Order 22 it appears to me that the whole theory of abatement is inapplicable to revision, applications. In this view of the matter this revision would fail.

7. As regards the application made under is, 151 it may be observed that it can be invoked only for doing real and substantial justice for the administration of which alone it exists. The applicant has to show that the order dated 15-10-53 of this Court in C.R. No. 208 of 1952 is to be set aside for the ends of justice or to prevent abuse of process of the Court. Mr. Anand Bihari Mishra has not been able to satisfy me that there has been any miscarriage of justice or the Basanti Bai, the Petitioner, who was given an opportunity in that Revision to show cause why the executing Court's order be not interfered with and who despite service did not attend this Court, has in any way been prejudiced by the order in that Revision.

Under the order dated 15-10-53 the execution Court has to hear the arguments "de novo" and has to decide whether the possession of the attached house by Basanti Bai is in her own right or is as a trustee for her husband. The Petitioner has clearly an opportunity for putting her own point of view in the execution Court; and if relief can still properly be obtained there, there is no justification for invoking Section 151. The petition is, therefore, rejected.

8. For reasons given above, I dismiss the revision with costs.