

(1950) 10 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 55 of 1949

Beg Ram and Another

APPELLANT

Vs

Charan Das and Others

RESPONDENT

Date of Decision : 03-10-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1908 — Section 3

Citation : AIR 1951 HP 16

Hon'ble Judges : Chowdhry, C.J

Bench : Single Bench

Advocate : R.N. Malhotra, for the Appellant; Tek Chand, for the Respondent

Final Decision : Allowed

Judgement

Chowdhry, J.—This is a plaintiffs' application in revision under para. 35 (1) (a), Himachal Pra-desh (Courts) Order, 1948. They sued the defendants in the Court of the Senior Subordinate Judge at Kasumpti for possession of a certain immovable property as nearest reversioners to the estate of the last maleholder of that property. For the determination of the Question whether the plaintiffs were such reversioners, they had to prove a pedigree, and they filed in that connection a certified copy, EX. Y, of an entry in a register. The learned Subordinate Judge by an order dated 16-5-1949 rejected this document holding on the authority of AIR 1935 132 (Privy Council) and on an interpretation of Section 90, Evidence Act, that the document, being a copy of a copy, was not admissible in evidence. It is against this order that the plaintiffs have come up in revision.

2. Two preliminary objections have been taken on behalf of the defendants-respondents: (1) that the application is barred by time, and (2) that no revision against the aforesaid order lies.

3. On the question of limitation it appears that, allowing for the time taken in

obtaining a copy of the order in question, there was a delay of seven days in filing the present application. There was a delay, that is to say, if ninety days from the date of the order be taken as the period of limitation for filing an application in revision. Applications in revision are not governed by any law of limitation, so that it has been held in some cases, for example, in AIR 1942 340 (Oudh) that) the proper Article applicable is Article 181, Limitation Act, which prescribes a period of three year. On the other hand, it is the practice of certain High Courts not to entertain petitions in revision filed beyond ninety days. That is the practice in the High Court at Mahant Goswami Krishnadevanand Ramji Vs. Mahant Kapildeo Ramji, and in the Rangoon High Court (vide Daw Po v. U Po Hmyin, AIR 1940 Ran 91 : (1940 R. L. R. 237). Even in Oudh it was held in a later ruling of the same year, that is, in AIR 1942 392 (Oudh) that ordinarily if an application is filed beyond the period prescribed for an appeal (ninety days) it ought to be considered to have been unduly delayed, This Court came into being only about two years ago (on 15-8-1948 to be exact), so that, I agree with the learned counsel for the plaintiff-applicants, it could not be said that any such practice had grown up here. No ruling of this Court was cited by the learned counsel for the defendants respondents that the ninety-days rule was applied in the case of any revision. On the principles, however, that the interests of the State require that a period should be put to litigation (*Interest reipublicae ut sit finislitium*), and that a party who is not prompt in asserting his claim does not deserve the aid of the State in enforcing it (*Vigilantibus, non dormientibus jura subveniunt*) it is necessary that the exercise of every right should be subject to a period of limitation. A right of revision, though more limited in scope than a right of appeal, is nonetheless a right, so that, if no period of limitation is specifically prescribed therefore in the Limitation Act it is expedient that the ninety-days rule of limitation in the case of an appeal should also be adopted in the case of a revision. It may be taken in future that this practice will be followed in this Court as well. Considering that there was nothing to lead the present applicants to the conclusion that that was the practice obtaining in this Court, I would not throw out this application as time barred because it was filed with a delay of seven days. Seven days is not such a long period that the applicants might be deemed to have been guilty of laches. The first objection on the ground of limitation, therefore, fails.

4. Coming now to the second ground of objection, the present application in revision has been filed, as adverted to above, under para. 35 (1) (a), Himachal Pradesh (Courts) Order, 1948. Although under sub-para. (3) of this paragraph, Section 115, Civil P. C., 1908, shall not apply to Himachal Pradesh, the aforesaid provision whereunder this revision has been filed, with one exception, *mutatis mutandis* the same as Section 115. The exception is that the word illegal in Clause (c) of Section 115, Civil P. C., has been omitted from Clause (a) of sub-para, (1) of para. 35 of the aforesaid Order. The said sub-para. (3) appears to have been enacted because revisions in Himachal Pradesh have been allowed on grounds in addition to those set forth in Section 115, Civil P. C., and these are

laid down in Clause (b) of sub-para. (1) of para. 35. For purposes of the present application, however, it is not necessary to consider these additional grounds since the present application has been filed under sub-para. (1) (a) of the paragraph. This sub-paragraph lays down as follows :

"35. (1) The Court of the Judicial Commissioner may call for the record of any case which has been decided by a Civil Court subordinate to it and in which no appeal lies to it, and

(a) if the Civil Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction with material irregularity,"

It was urged on behalf of the plaintiffs-applicants that in rejecting the aforesaid document the learned Subordinate Judge acted in the exercise of his jurisdiction with material irregularity. The preliminary objection taken on behalf of the defendants-respondents is that in rejecting the said document the lower Court could not be said to have acted in the exercise of its jurisdiction with material irregularity, and that therefore this revision does not lie.

5. In support of his objection the learned counsel for the defendants respondents placed reliance on the Privy Council ruling *Bal-krishna Udayar v. Vasudeva Ayyar* A. I. R. 1917 P. C. 71: 40 Mad. 793 which lays down as follows:

"The section applies to jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it. The section is directed against the conclusions of law or fact in which the question of jurisdiction is not involved."

It was argued by him that no question of jurisdiction was involved in the present case, and that therefore no revision would lie simply because the lower Court had come to a wrong conclusion of law in rejecting the document. This contention of his that if no question of jurisdiction be involved, Section 115 (c), Civil P. C., did not authorize the High Court to interfere and correct gross and palpable errors of subordinate Courts, is further supported by another Privy Council ruling reported as AIR 1949 156 (Privy Council) But the hypothesis on which his argument proceeds, namely, that no question of jurisdiction is involved in the present case, is, in my opinion not correct. And this for the following reasons.

6. The locus classicus for the interpretation of the aforesaid words in Section 115 (c), Civil P. C., or in para. 35 (1) (a), Himachal Pradesh (Courts) Order, as to whether a Court has acted in the exercise of its jurisdiction with material irregularity is the Privy Council ruling reported as *Rajah Amir Hassan Khan v. Sheo Baksh Singh* 11 I. A. 237 : (11 Cal. 6 P. C.), in which it was laid down as follows:

"The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears

that they had perfect jurisdiction to decide the question which was before them and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

In interpreting the above ruling it was laid down by Wanchoo J. in *Abdul Majid and Others Vs. L. Daleep Singh and Others*, as follows:

"It seems to use, therefore, that the material word in Section 115, Sub-section (c) is "acted." This clause will apply when the Court "acts" illegally or with material irregularity in the exercise of its jurisdiction. It cannot apply to cases where the Court merely comes to ft wrong decision on a question of fact or law. The use of the word "acted" indicates the true position and limits this clause to that class of cases where the Court having jurisdiction violates any rule of law or of procedure prescribing the mods In which such jurisdiction SB to be exercised. The arriving at a conclusion or decision is only a mental operation and the Court cannot be said to be "acting" in so coming to a conclusion or decision on a question of law or of fact."

His Lordship then cited illustrations of a Court "acting" illegally or with material irregularity in the exercise of its jurisdiction as distinguished from merely "deciding" wrongly. The first class of cases cited by him, to which the provision in question applies, is the one where the Court, though it has jurisdiction, has not followed the procedure provided by law, e. g., where a Court, without giving the party an opportunity to amend an application for permission to sue as a pauper, rejects it under Order 33, Rule 5 (a), Civil P. C., on the ground that it was not framed and presented in the manner prescribed by Rules 2 and 3. The second class of cases cited consist of those where the Court does not at all apply its mind to the relevant provision of an enactment. As an instance of this class of oases he cited *Khun Khun Chaube Vs. Mahabir Chaube and Others*, where a Judge decided a matter without reference to a section of the Act which was applicable to the matter under consideration. Thirdly, there are cases where the Court completely ignores an authority of the High Court as to the law applicable to the case. Lastly, he cited the class of cases where the Court invents a kind of arbitrary rule and "acts" on its basis, or "acts" in defiance of admitted facts of the case. All these are cases in which a Court "acts" with material irregularity in the exercise of its jurisdiction, and it does not merely decide a question of fact or law wrongly.

7. The learned counsel for the defeadants-reapondents cited certain rulings where it has been held that an application in revision u/s 118, Civil P. C., does not He on the ground that certain evidence had been rejected by the trial Court. One of those rulings was *Ram Oudh v. Government of Burma* A. I. R. 1939 Ban. 448 : (1939 R. L. R. 591). Another case cited by him was is a *Adam v. Bai Mariam*, A. I. R. 1927 Bom. 664 : (101 I. C. 385).

Both these rulings, however, proceeded on the view that no question of

jurisdiction was involved simply because the trial Court had come to a wrong conclusion of law in rejecting the evidence. In the present case also, if it were merely a question of the learned Subordinate Judge of Kasumpti having come to a wrong conclusion of law in rejecting the document filed? by the plaintiffs, applicants there could be no doubt that no revision would lie. But if it should; appear that in rejecting the document the learned Subordinate Judge "acted" with material irregularity in the exercise of his jurisdiction (a point which did not arise in the aforesaid Bombay and Rangoon rulings cited by the learned counsel for the defendants-respondents), the present application in revision would certainly lie on the authority of the aforesaid Privy Council ruling in Rajah Amir Hassan Khan's case,. (11 I. A. 237 : 11 Cal. C. P.C.), as interpreted by the Allahabad High Court in Abdul Majid and Others Vs. L. Daleep Singh and Others,

8. Applying the above principle to the acts of the present case, I shall not consider the elaborate arguments propounded by the learned counsel for the parties on the question whether the learned Subordinate Judge was or was not right in arriving at the conclusion of law that the document in question was not admissible in evidence. Indeed, if that were the only point calling for determination, I would agree with the learned counsel for the defendants-respondents that the present application in revision did not lie. I find, however, that the present is a case falling under the last category of the cases enumerated in Abdul Majid and Others Vs. L. Daleep Singh and Others, in which a Court is deemed to have acted illegally or with material irregularity in the exercise of its jurisdiction. It appears from the record of this case that the register, of which Ex. Y is a certified copy, had been summoned by the plaintiffs-applicants and filed in Court by their witness Tulsi Ram, who described himself as the Qanungo record-keeper in sub-tehsil Bhajji. The entry purports to be dated the 29th of the Chet in samwat 1968, and it was contended by the learned counsel for the plaintiffs-applicants that the entry in the register bore the signatures of three dignitaries of Bhajji State, Shri Kunwar Sahib Vijaya Singh Madarul-Muham, Upadhyaya Umadutt Wazir and Suwarna Ram Kotwal. It was, therefore, argued by him that the entry in the register was an original document more than thirty years old which had been summoned from proper custody, and that therefore it was admissible in evidence. The learned Subordinate Judge, however, did not at all consider that register but simply held with respect to the copy Ex. Y that it was in admissible in evidence. Obviously, the register was a valuable document coming from the records of Bhajji State, and it was, therefore, not considered safe that it should remain on the record of the present suit. The only thing that the plaintiffs-applicants could, therefore, have done, in the circumstance, and which they actually did, was to have summoned the original and after proving the original, if it at all required to be proved, to have filed a certified copy of the same and allowed the original to be sent back to the record room of Bhajji State. The proper and appropriate document which the learned Subordinate Judge should, therefore, have taken into consideration was the register and not its copy, Ex. Y. In omitting to do so he will no doubt be deemed to have acted in

defiance of a fact patent on the face of the record and therefore to have "acted" with material irregularity in the exercise of his jurisdiction within the intendment of Para. 35 (1) (a) of the aforesaid Order. The present application in revision is, therefore, well-founded and it must be allowed. At the same time, nothing further should be done than to set aside the order in question and to direct the learned Subordinate Judge to consider the admissibility or otherwise of the register in question. I do not find myself called upon to enter into the question whether the register itself was or was not, admissible in evidence. Firstly, the register is not before me and therefore it is not possible for me to assess the value of the aforesaid arguments put forward by the learned counsel for the plaintiffs-applicants in regard to its contents. Secondly, the admissibility or otherwise of the register is not a point to which the learned Subordinate Judge directed his attention, or on which he recorded any finding. That being so, the point must be decided by the trial Court, and it is not for this Court sitting in revision to do so for the trial Court.

9. Having regard to the facts that there was delay, though condonable delay, in the filing of the present application, and that the plaintiffs applicants do not appear to have drawn the attention of the trial Court to the fact that the proper document to be considered by it was the register and not the copy Ex. V, I would make no order as to the costs of this revision.

10. The application in revision is allowed, the order of the learned Subordinate Judge of Kasumpti dated 16.5.1949 is set aside and he is directed, on the plaintiffs taking necessary steps in that behalf, to reaummon the register of which EX. Y is a certified copy and to consider the admissibility or non admissibility, as the case may be, of that register. I make no order as to the costs of this revision.