

**(1983) 05 P&H CK 0041**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 2051 of 1981**

Chanchil Dass

APPELLANT

Vs

Sajjan Singh and Others

RESPONDENT

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**Date of Decision :** 13-05-1983

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115

**Citation :** AIR 1983 P&H 442 : (1983) 1 RCR(Rent) 676

**Hon'ble Judges :** Rajendra Nath Mittal, J

**Bench :** Single Bench

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## Judgement

1. This revision petition has been filed by Chanchil Das judgment debtor, against the judgment of the Subordinate Judge, 1st Class, Rajpura, dated 29th July, 1981.

2. Briefly, the facts are that a consent decree for specific performance of the contract of sale was passed in favour of Sajjan Singh etc. decree-holders against the judgment-debtors. The decree-holders started execution of the decree in which judgment-debtors filed objections to the effect that the decree-holders did not deposit Rs. 1250/- the balance sale price on or before 21st April, 1975, which he was required to deposit. It is alleged that in that situation the decree had becomes unexecutable. The objection petition was contested by the decree-holders and it was pleaded that non-deposit of the amount on or before 21st April, 1975 was immaterial and they could execute the decree even without any deposit having been made by the said date. On the pleadings of the parties, the following issues were framed:

1. Whether the decree dated 24th march, 1975, is not executable? OPA

2. Relief

3. The executing Court held that it was not provided in the decree that in case the amount was not paid by the decree-holders on or before 21st April, 1975. The suit would stand dismissed. Consequently it came to the conclusion that the

decree did not stand satisfied and the decree-holders were entitled to execute the same. In view of the aforesaid findings, it dismissed the objections of the judgment-debtors. Only Chanchil Dass has come up in revision against the judgment of the execution Court to this Court.

4. An objection has been raised by the learned counsel for the respondents that no revision petition is maintainable under S. 115 of the Civil P. C., hereinafter referred to as the Code, against the impugned judgment as there was no error which falls within the purview of that section. In support of his contention, he has placed reliance on *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, , and *Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav*, .

5. I have given thoughtful consideration to the argument and find force in it. S. 115 of the Code inter alia provides that the High Court may call for the records of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies there to and in case the Subordinate Court appears (a) to have exercised a jurisdiction not vated in it by law or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of it jurisdiction illegally or with material irregularity, the High Court may revise the order. Clause (c) of the section was interpreted in *Keshardeo Charia's* case (supra) by the Supreme Court It was held 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. In that case, on an adjourned date, the decree-holders applied for time for giving instructions to his pleader for taking necessary steps in execution but the application was declined by the Court and the execution was dismissed as party satisfied. The decree-holder then applied for restoration of the case and the Court restored the same. On revision, the High Court set aside the order of restoration and remanded the case to the executing Court for reconsideration an disposal in accordance with the observations made in the order. The High Court was of the opinion that the executing Court was in error in restoring the case without taking into consideration the point whether the decree-holder's pleader could really take any steps in aid of execution if he had been apprised of the order of the Court dismissing the adjournment application. The question was whether the order of remand was without jurisdiction. The Supreme Court reversed the decision of the High Court and held that the High Court had exercised the jurisdiction not conferred on it by S. 115 and the Court, therefore, acted in excess of its jurisdiction when it entertained a revision against the order of the executing Court. Consequently the Supreme Court set aside that order.

6. Similar view was taken in *Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav*, In that case, the operative part of the decree said that the plaintiffs should pay to defendants Nos. 1 and 2 Rs. 3,677-12-6 within six months from the date of passing of the decree and they should recover possession of the suit property as

the heirs of Gopala free from the mortgage. It was further said that in case the plaintiffs did not pay the amount within the prescribed time, the plaintiffs shall be deemed to have lost the right of redemption for all time. The executing Court held that decree was a composite decree and on the failure of the respondents to pay the decretal amount within the time specified, their right to redeem the mortgage was extinguished by virtue of express terms contained in it. The High Court in revision construed the decree as a preliminary decree and found that the cause purporting to extinguish the equity if redemption did not affect its essential character as a preliminary decree and consequently did not in law put an end to the relationship of creditors and debtors between the parties. The matter was taken to the Supreme Court which reversed the judgment of the High Court. The following observations may be read with advantage:--

"..... While exercising its jurisdiction under S. 115, it is not competent to the High Court to correct errors of fact however gross they may or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As cls. (a)(b) and (c) of S. 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. 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 which tries 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 can be said to be concerned with questions of jurisdiction which fall within the purview of S. 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court under S. 115 ..... The construction of a decree like the construction of a document of title is no doubt a point of law. Even so, it cannot be held to justify the exercise of the High Court's revisional jurisdiction under S. 115 of the Code because it has no relation to the jurisdiction of the Court".

It is thus evident from the above observations that the jurisdiction of the High Court u/s. 115 is a limited one and it can interfere with an order of a subordinate Court if question of jurisdiction is involved therein. It cannot interfere with an order because an erroneous view on a question of law has been taken by the subordinate Court.

7. Adverting to the facts of the present case, the executing Court had the jurisdiction to interpret the decree and it has exercised that jurisdiction. Therefore, the case does not fall either in clause (a) or clause (b). The Court also did not commit any illegality or material irregularity in the exercise of its jurisdiction. It interpreted the terms of the decree which it was entitled to do. No illegality of

procedure in doing so has been pointed out. The contention of Mr. Jain is that the decree has not been properly interpreted. The case does not, therefore, fall within the purview of clause (c) as well. This Court has thus no jurisdiction to interfere with the impugned order in revision. Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, is on all fours with the present case and the observations therein fully apply to it. in view of the fact that it has been held by me that no revision is maintainable under S. 115 of the Code against the impugned order, it is not necessary to decide the case on merits.

8. For the aforesaid reasons, I do not find any merit in the revision petition and dismiss the same with no order as to costs.

9. Revision dismissed.