

(1953) 04 MAD CK 0031

In the Madras High Court

Case No : Civil Revision Petition No. 452 of 1951

C.P. Vasantarajan and Others

APPELLANT

Vs

Parvathammani Garu and Others

RESPONDENT

Date of Decision : 15-04-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 73

Citation : AIR 1954 Mad 201 : (1953) 2 MLJ 493

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : K. Sundararajan, for the Appellant; Suryanarayana Rao and Ramakrishna Rao, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is a civil revision petition filed against the order made by the learned Subordinate Judge of Chittoor in E. A. No. 143

of 1950 in E. P. No. 90 of 1949 in O. S. No. 34 of 1931.

2. The facts are: The applicants in E. A. No. 143 of 1950 are the decree-holders in O. S. No. 63 of 1945 for a large amount of Rs. 62,000

against the Zamindar of Punganoor. The judgment-debtor, the zamindar of Punganoor, held a decree in his favour for costs in Privy Council App.

No. 46 of 1943 arising from O. S. No. 34 of 1931 on the file of the Sub-Court, Chittoor against one Raja Mahadeva Royal Varu. That decree

was attached under Order 21, Rule 53, C. P. C. in execution of the decree in O. S. No. 63 of 1945 and the final order on that attachment petition

is ex. A-1 dated 17-6-1948.

In pursuance of that attachment the petitioners executed the Privy Council decree in E. P. No. 90 of 1949 and the legal representatives of the

judgment-debtor deposited the decree amount of Rs. 14,389-14-0 on 11-4-1950 into Court. One Rani Parvathamma holds a decree in O. S.

No. 60 of 1948 for a sum of nearly a lakh of rupees, against the Zamindar of Punganoor and she attached the Privy Council decree and the

attachment was made absolute on 27-6-1949 and she has also taken out execution in other ways against the Zamindar of Punganoor. There are

other money decrees against this Zamindar of Punganoor in O. S. No. 136 of 1946 and O. S. No. 34 of 1930 and the decree-holders therein

claimed rateable distribution.

The decree-holders in O. S. No. 63 of 1945 claimed the entire amount on three grounds (a) that it was specifically earmarked for payment

towards satisfaction of their decree; (b) that they in terms of their decree hold a charge on the foot that the words ""a charge on the Punganoor

estate"" in their decree mean moveable and Immovable properties of the Zamindar of Punganoor; and (c) that they are transferees by equitable

assignment of the Privy Council decree on the foot of a letter which is said to have been passed by the Zamindar of Punganoor.

3. The learned Subordinate Judge has exhaustively examined these three grounds and came to the conclusion that the decree-holders in O. S. No.

34 of 1931 did not make out either singly or cumulatively these grounds for claiming the entire amount. Therefore he ordered rateable distribution

and hence this civil revision petition.

4. A preliminary objection is taken by the learned advocate for the respondents that a wrong order of distribution can be contested in a suit under

Clause (2) of Section 73, C. P. C. and that this other remedy being open, the High Court should not interfere in revision in such a case. In regard

to this contention two propositions are deducible from the line of decisions on this subject.

The first proposition is that as a remedy by way of a suit is open to the aggrieved party the High Court will not as a general rule interfere in revision

in cases arising u/s 73, C. P. C. -- "Venkataraman v. Mahalingayyan, 9 Mad 508 (A); -- "Mammad v. Ramchund", 4 Mad L J 87 (B); --

"Murugappa Chettiar v. Narayanaswami Pillai", 17 Ind Cas 389 (Mad) (C); -- "V.E.N.K.R.M.V.R.M. Somasundaram Chetty Vs. Tirunarayana

Pillai, ; -- " Subramanian Chetty Vs. Ramaswami Chetty and Others, ; --

A.L.S.P.P.L. Subramanian Chetty by his agent, Narayana Chetty Vs.

Sivaswami Chetty and Others, ; -- " Chokkalingam Chettiar and Others Vs. Muthuswami Goundan and Others, ; -- " Chivaukula Sheetharamayya

and Another Vs. Mulpuru Rathamma and Others, "Sheetharamayya v. Gurunathan", 1931 Mad W N 1012 (I); -- " Alaganan Chettiar Vs.

Ramanathan Chettiar, "Ramsarandas v. Amarnath", AIR 1935 Lah 971 (K); -- "Daulat Singh v. Rupnarain", AIR 1932 Lah 96 (L); --

"Mamchand v. Roshanlal", AIR 1933 Lah 48 (M) and -- AIR 1940 302 (Nagpur) .

This, however, does not mean that the High Courts cannot interfere in revision at all because where the lower Court acts without jurisdiction or

declines to exercise jurisdiction or the remedy by suit is so inconvenient as to practically amount to no remedy or is manifestly wrong or the result

of the suit if brought would be a definite success, a revision has been held to lie. " Sankaranarayana Aiyar Firm (Insolvent) Vs. Yegnalakshmi

Ammal and Others, ; --"Viraraghava v. Farasurama", 15 Mad 372 (P); -- "Sri Krishnadas v. Chandook Chand", 19 Mad L J 307 (Q); --

Sundaram alias Mytheenbibbi Vs. Mamsa Mavuthar, Sheikkasim Mavuthar, .

5. But in regard to this second line of decisions we have to bear in mind that their Lordships of the Supreme Court have recently examined the

scope of the revisional jurisdiction of the High Courts u/s 115, C. P. C. in -- Keshardeo Chamria Vs. Radha Kissen Chamria and Others, and

have cited and approved the observations of the Privy Council in -- "Amir Hussan Khan v. Sheo Baksh Singh", 11 Cal 6 (PC) (T); --

"Balakrishna Udayar v. Vasudeya Aiyar", AIR 1917 PC 71 (U); -- AIR 1949 156 (Privy Council) and -- AIR 1949 239 (Privy Council) and the

observations of Bose J. in -- AIR 1948 258 (Nagpur) and laid down that the words ""illegally"" and ""material irregularity"" do not cover either errors

of fact or law and that they do not refer to the decision arrived at but to the manner in which it is reached and that 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. This

decision serves to show to the High Courts the limits of the jurisdiction conferred by Section 115, C. P. C.

6. The facts of the instant case show that what the petitioners are seeking is to entertain an appeal in the guise of a revision. Therefore, on the

preliminary point, I hold that a revision of the order u/s 73, C. P. C. in the circumstances of this case does not lie. This petition is therefore

dismissed with costs of Rule 4 leaving it open to the petitioners to file a regular suit if so advised.