

(2008) 07 KL CK 0083
In the High Court Of Kerala
Case No : C.R.P. No. 1047 of 2007

Dr. Wilson Paul and Others	Vs	APPELLANT
Dr. P.P. Pathrose and Others		RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 24
Constitution of India, 1950 — Article 227

Citation : (2008) 07 KL CK 0083

Hon'ble Judges : M. Sasidharan Nambiar, J

Bench : Single Bench

Advocate : Dinesh R. Shenoy, for the Appellant; G. Rajagopal, Thomas M. Jacob and P. Lean Jose, for the Respondent

Judgement

M. Sasidharan Nambiar, J.—Petitioners are the Respondents 1 and 2 in T.OP. 467 of 2007 on the file of District Court, Ernakulam. First Respondent filed a petition for transfer. Learned District Judge as per order dated 26-9-2007 allowed the petition and transferred O.S. 52 of 2007 from the file of Munsiff Court, Perumbavoor to Sub Court, Perumbavoor for joint trial with O.S. 153 of 2007. Though Petitioners subsequently filed a review petition it was dismissed.

2. The learned Counsel appearing for Petitioners and first Respondent were heard.

3. Learned Counsel appearing for Petitioner argued that learned District Judge did not consider whether the properties in both the suits are the same and on the assumption that the subject-matter in both the suits are the same, transfer was ordered. It was argued that the properties are different altogether and third Respondent in the Transfer OP is not a party to O.S. 153 of 2007 and in such circumstances the case should not have been transferred.

4. Learned Counsel appearing for first Respondent argued that revision itself is not maintainable as it is against an order of transfer. Relying on the observation of Division Bench of this Court in Ariamma Sachariah Vs. Rose Elizabeth Kurian,

where it is observed that if the parties are aggrieved by the order of transfer passed by the District Court u/s 24 of Code of Civil Procedure, they can approach High Court under Article 227 of Constitution of India to redress their grievance, learned Counsel argued that the remedy if at all is only to file a petition under Article 227 and a revision under 115 of CPC will not lie. Relying on the Full Bench decision of this Court in Balan Vs. Sivagiri Sree Narayana Dharma Sanghom Trust, it was argued that fact that no appeal will lie is not a ground to entertain a revision. Relying on the decision of a learned Single Judge of High Court of Gujarat in Harshad BabubhaiAmin v. Pravinaben Chandrakant Patel(3) it was argued that by the impugned order no case is decided, and so Section 115 cannot be invoked and therefore on that ground it is to be dismissed. The learned Counsel also argued that on merits also there is no reason to interfere with the impugned order. Learned Counsel fairly submitted that High Court of Karnataka in M.V. Ganesh Prasad v. M.L. Vasudevamurthy(4) has taken a divergent view and held that an order u/s 24 of CPC is a final order and it is revisable.

5. No appeal is provided against a final order passed u/s 24 of Code of Civil Procedure. The question is whether in such circumstances a revision will lie. Section 115 of the CPC provides that High Court may call for records of any case which has been decided by any court subordinate to the High Court and in which no appeal lies and exercise revisional jurisdiction if it appears to the court that Clause (a) or (b) or (c) is satisfied. The proviso restricts the power to revise in respect of interlocutory orders passed. The High Court of Karnataka in Ganesh Prasad's case (supra) proceeded on the basis that as far as the proceeding u/s 24 of CPC is concerned it came to an end by disposing the petition and therefore proviso to 115 is not applicable and being the final order, the order is revisable. But the question is whether the order passed in the transfer petition could be taken as a case decided as provided u/s 115 of the Code of Civil Procedure. I am inclined to follow the decision of the learned Single Judge of Gujarat High Court Harshad Babubhai Amin Vs. Pravinaben Chandrakant Patel and Others, on this aspect. It reads as follows:

(7) Thus, the twin conditions contemplated by principal section and proviso thereto are that the order impugned must fall within the expression "case decided" and such order must have the effect of finally disposing of the suit or other proceeding if it had been made in favour of the party applying for revision.

(8) No order which by itself does not adjudicate and decide any right of a party, which is subject of the suit can be held to be a "case decided" which, as already noticed, is a sine qua non for exercising the power u/s 115 of the Code. An order transferring the suit from the file of a Judge to the file of Anr. Judge does not decide any right of the party to the suit.

(9) Likewise, the order by which a suit is transferred from the file of one Judge to the file of Anr. Judge cannot, by any stretch of imagination, be taken to have the effect of finally disposing of the suit or other proceeding even if it had been made

in favour of the party applying for revision.

By the impugned order rights of the parties was not decided. Therefore it cannot be said that it is a case decided so as to attract Section 115 of the Code. It is only an interlocutory order as provided in the proviso and so the revision is not maintainable. Even if the order is revisable on the facts, I do not find that the order is to be interfered. The question whether joint trial is to be ordered is a matter not to be decided by the District Judge, but by the learned Sub Judge to whom both cases were transferred. The Sub Judge is to consider whether suits are to be tried jointly or separately.

Revision petition is disposed of as above.