

(1998) 07 KAR CK 0092

In the Karnataka High Court

Case No : Civil Revision Petition No. 2743 of 1993

Gajanan Seshappa Hegde

APPELLANT

Vs

Venkatraman Sheshappa Hegde and Others

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Karnataka Stamp Act, 1957 — Section 35, 36, 58
Registration Act, 1908 — Section 49

Citation : (1999) 2 KarLJ 462

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri S.G. Hegde, for the Appellant; Sri R.V. Jayaprakash, for the Respondent

Judgement

1. This civil revision u/s 115 of the CPC arises from the order dated 2-7-1993 passed by learned Civil Judge, Sirsi, on I.A.VII taking the view that the document is not admissible in evidence in view of Section 49 of the Registration Act. Trial Court opined that the document is not registered and Section 49 prevents from its being admitted. The Court opined that no doubt partition may be oral, but if it is reduced in the form of a document effecting the division of properties and contains terms of bargain, it requires to be registered and once it was not registered, it was inadmissible. But it also held that it may be used for collateral purpose. Feeling aggrieved by that order, the defendants have come up before this Court u/s 115.

2. A preliminary objection has been raised as to the maintainability of the revision on behalf of the respondents by Sri R.V. Jayaprakash. Learned Counsel contended that the order in question does not amount to a case decided. It may only amount to an order passed in process of progress of the case. He further submitted that in view of Section 105 even if there is any error in the order of the Munsiff, it was always open to him to take that plea in appeal.

3. These contentions of the learned Counsel for the respondents have been controverted by contending that this Court has taken a view that such order is revisable u/s 115 by the learned Single Judge. Learned Counsel referred to a case of Raghunath Bhandary v Seetharama Punja.

4. So the first question to be considered is whether revision lies from this order or not. If revision lies, then no doubt this Court may have to consider whether the Court below committed a jurisdiction error in passing the order impugned. Section 115 of the CPC reads as under:--

"Section 115. Revision.-

(1) 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:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where-

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation.--In this section the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding".

A reading of the section per se reveals that to invite the Court to exercise its jurisdiction u/s 115, the following conditions have to be established and shown:--

(1) That the order passed by the Court below amounts to a case decided and thereafter, no doubt, it has to be established and shown that order is not appealable to this Court i.e., no appeal lies therefrom to this Court and the subordinate Court appears to have committed a jurisdictional error coming within either of three clauses (a), (b) or (c) of the section. It has further to be

established that the order if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceeding or if the order is allowed to stand, it would cause irreparable injury or loss to the party against whom it was made.

So first condition for initiation of jurisdiction that is to be established is whether the order amounts to a case decided. Explanation defining the expression "any case which has been decided" means and includes any order, or any order deciding an issue in the course of a suit or other proceeding. A document whether it is admissible in evidence can be said in the progress of the case. When I so opine, I find support for this view from the decision of this Court in the case of M.C. Madhura v Bharatiya Vidya Bhavan and Others, as well as from the decision in the case of B.B. Gurudevi v Choudkri Md. Bhaksh and Others. Learned Counsel for the petitioner made a reference to the decision of this Court as mentioned earlier on Raghunath Bkandary's case, supra. But the principal question whether the order amounts to a case decided, did not come for the consideration of the Court. So the decision given in Raghunath Bhandary's case, supra, is not material and binding. This decision has been considered by Hon'ble Mr. Justice G.N. Sabhahit in the case of M.C. Madhura, supra. The Supreme Court's decision which had been referred to in Raghunath Bhandary's case, supra, does not lay down the proposition when the question of admissibility of a document had been raised and was not decided by the Court of first instance. The said point of objection cannot be raised and adjudicated later on when an appeal is filed from the decree in the suit. What has been laid down in Javer Chand and Others Vs. Pukhraj Surana, , is that if the objection to the admissibility of the document on the ground of its being insufficiently stamped is not raised before its being admitted and if the document had been admitted without objection being raised, then it is not open to the party to raise that objection either before the Trial Court itself or in the Court of appeal in view of Section 36 of the Stamp Act. Section 36 is analogous to Section 35 of the Karnataka Stamp Act. Section 35 of the Stamp Act reads as under:

"Section 35. Admission of instrument where not to be questioned.--Where an instrument has been admitted in evidence such admission shall not, except as provided in Section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped".

Section 58 of the Karnataka Stamp Act which is analogous to Section 61 of the Indian Stamp Act provides,--

"Section 58. Revision of certain decisions of Courts regarding the sufficiency of stamps.-

(1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under (Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898) makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty

and a penalty u/s 34, the Court to which appeals lie from, or references are made by, such first mentioned Court may, of its own motion or on the application of the (Deputy Commissioner), take such order into consideration".

It means it retains the power of the Appellate Court to consider this question. That the Court of appeal is entitled to consider the question whether the document is properly stamped or it has been admitted in evidence on erroneous ground that it is properly stamped. The Appellate Court can examine those questions. So in the same suit that may not be reconsidered by the Trial Court. But u/s 58 power is conferred on the Appellate Court to consider those questions if they are wrongly decided by the Trial Court. But if a party has never raised an objection to the admissibility of the document as its being not sufficiently stamped and document had been admitted, then his right ceases and stand waived. The observations of their Lordships of the Supreme Court in M..C. Madhura's case, supra, that the order passed by the Court during hearing of the suit holding certain document not admissible would not amount to be a case decided. In view of Section 105 of the CPC also such questions may be urged and raised in the memo of appeal from the final decree before Appellate Court. Thus considered as orders impugned do not amount to be a case decided and no injustice or irreparable injury can be said to have been caused to revision petitioner, there is no good ground to exercise revisional jurisdiction u/s 115 of the CPC.

In my opinion, the present revision petition is not maintainable as order does not amount to be a case decided. Revision has to be and is hereby dismissed. No costs.