

(1953) 03 KL CK 0019

In the High Court Of Kerala

Case No : C.R.P. No's. 94 and 95 of 1953

Gomathi Ammal and Another

APPELLANT

Vs

H.H. Srimoolam Thirunal Sethu Parvathi Bhai

RESPONDENT

Date of Decision : 30-03-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, 115

Citation : (1953) 03 KL CK 0019

Hon'ble Judges : Koshi, C.J;M.S. Menon, J

Bench : Division Bench

Advocate : T.K. Narayana Pillai, for the Appellant; H. Ramakrishina Iyer, V. Krishna Menon and P. Sivarama Iyer, for the Respondent

Judgement

M.S. Menon, J.—C.R.P. No. 94 of 1953 and C.R.P. No. 95 of 1953 are against the orders of the learned Additional District Judge of Trivandrum in C.M.P. No. 7044 dated 22-11-1952 in O.S. No. 275 of 1951 and C.M.P. No. 6961 dated 22-11-1952 in O.S. No. 278 of 1951 respectively, granting the prayer of the Defendant for striking out certain portions of the complaints and replications in those suits under Order 6, Rule 16, CPC 1908.

2. Order 6, Rule 16 which is a re-production of the English Order 19, Rule 27 provides that:

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

3. There is no doubt that nothing can be scandalous which is relevant per Cotton, L.J., Fisher v. Owen (1878) 8 Chapter D 645 (A) and that the jurisdiction which is given to the Court under Order 6, Rule 16 is one which ought to be exercised with great care and caution- Anderson Kirkwood Tennent Vs. Walter Mitchel, and - All India Reporter Ltd., Bombay v. D.D. Datar AIR 1951 Nag 412 (C).

4. There can also be no doubt that the Court has a duty to discharge towards the

public and the suitors, in taking care that its records are kept free from irrelevant and scandalous matter (per Selbourne, L.C., - *Christie v. Christie* (1873) LR 8 Chapter 499 (D) and the best statement of the principle underlying this rule is still in the oft-quoted passages of Bowen, L.J., in - *Knowles v. Roberts* (1888) 38 Chapter D 263 (E):

It seems to me that the rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which had been laid down by the law and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right.

and of Section 270 of Story's Equity Pleadings (10th Edn.):

Scandal is calculated to do great and permanent injury to all persons whom it affects, by making the records of the Court the means of perpetuating libelous and malignant slanders, and the Court, in aid of the public morals, is bound to interfere to suppress such indecencies which may stain the reputation and wound the feelings of the parties and their relations and friends.

5. O.S. No. 275 is to set aside a sale deed, document No. 2260, dated 12-4-1122 and O.S. No. 278 is to set aside Anr. sale deed, document No. 4696, dated 30-9-1122 in favour of the Defendant. The first Plaintiff in both the suits is the wife of the second Plaintiff and the ground on which the declaration is sought is that the documents are not supported by consideration and that they were the result of coercion, fraud and undue influence. The second Plaintiff was the kariakar of the Vadakke Kottaram from 1109 to 1122 and the contention of the Defendant is that the sale deeds were voluntarily executed in part payment of a large sum of money found due from the second Plaintiff in his official capacity.

6. The passages complained about occur in paras 4, 25 and 27 of the plaint and paras 3, 8, 21 and 27 of the replication in O.S. No. 275 of 1951 and paras 4 and 32 of the plaint and paras 2, 8, 10 and 12 of the replication in O.S. No. 278 of 1951. We have scrutinised the pleadings carefully and have come to the definite conclusion that the passages specified in C.M.P. Nos. 6961 and 7044 should be eliminated. There can be no doubt that those passages attributing a de facto position to the Defendant in the administration of Travancore and alleging an exploitation of that position by her are not only unnecessary for a proper adjudication but scandalous in the extreme, and inserted apparently with the sole and deliberate intention of prejudicing, embarrassing and delaying the fair trial of the suits.

7. We must also point out that even if the orders of the lower Court are incorrect, which they certainly are not there is no infirmity attaching to those orders which will entitle the Plaintiffs to invoke the revisional jurisdiction of this Court u/s 115, Code of Civil Procedure, 1908. A timely reminder of the true ambit of the

revisional jurisdiction under the Code has recently been given by the Supreme Court in - Keshardeo Chamria Vs. Radha Kissen Chamria and Others, and lest it be missed or forgotten in this State we extract it "in extenso":

The revisional jurisdiction of the High Court is set out in Section 115, CPC in these terms:

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.

A large number of cases have been collected in Edn. 4 of Chitaley and Rao's CPC (Vol. I) which only serve to show that the High Courts have not always appreciated the limit of the jurisdiction conferred by this section. In - Mohunt Bhagwan Ramanuj Das v. Khetter Moni Dassi 1 Cal WN 617 (G), the High Court of Calcutta expressed the opinion that Sub-clause (c) of Section 115, CPC was intended to authorise the High Courts to interfere and correct gross and palpable errors of subordinate Courts, so as to prevent grave injustice in non-appealable cases. This decision was, however, dissented from by the same High Court in - Enaet Mondul v. Balaram Dey 3 Cal WN 581 (H), but was cited with approval by Lord-Williams J. in - Gulab Chand Bangur Vs. Kabiruddin Ahmad, In these circumstances, it is worth-while recalling again to mind the decisions of the Privy Council on this subject and the limits stated therein for the exercise of jurisdiction conferred by this section on the High Court.

As long as 1894, in *Rajah Amir Hassen Khan v. Sheo Baksh Singh* 11 Ind App 237 (PC) (J), the Privy Council made the following observations in Section 622 of the former Code of Civil Procedure, which was replaced by Section 115 of the Code of 1908:

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 case, and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.

In 1917 again in - *Balakrishna Udayar v. Vasudeva Aiyar* AIR 1917 PC 71 (K), the Board observed:

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

In 1949, in - AIR 1949 156 (Privy Council) the Privy Council again examined the scope of Section 115 and observed that they could see no justification for the view that the section was intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate Courts so as to prevent grave injustice in non-appealable cases and that it would be difficult to formulate any standard by which the degree of error of subordinate Courts could be measured. It was said:

Section 115 applies only to cases in which no appeal lies, and, where the Legislature had provided no right of appeal, the manifest intention is that the order of the trial Court, right or wrong, shall be final. The section empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate Court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on those three matters, it has no power to interfere because it differs, however, profoundly, from the conclusions of the subordinate Court on questions of fact or law.

Later in the same year in - AIR 1949 239 (Privy Council) their Lordships had again adverted to this-matter and reiterated what they had said in their earlier decision. They pointed out:

There have been a very large number of decisions of Indian High Courts on Section 115 to many of which their Lordships have been referred. Some of such decisions prompt the observation that High Courts have not always appreciated that although error in a decision of a subordinate Court does not by itself involve that the subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under Sub-section (c), nevertheless, if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-section (a) or Sub-section (b) and Sub-section (c) can be ignored.

Reference may also be made to the observations of Bose J. in his order of reference in - AIR 1948 258 (Nagpur) wherein it was said 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.

8. For the reasons stated above, we dismiss with costs C.R.P. Nos. 94 and 95 of 1953.