
(2003) 02 GUJ CK 0021

In the Gujarat High Court

Case No : Civil Revision Application No. 73 of 2003

Harshad Babubhai Amin

APPELLANT

Vs

Pravinaben Chandrakant Patel and Others

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 24

Citation : AIR 2003 Guj 236

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : Nilesh M. Shah, for the Appellant;

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Mr. Mayank Desai for Mr. N.M. Shah, learned counsel of the applicant.

2. By means of instant application u/s 115 of the Code of Civil Procedure, 1908, hereinafter called "the Code", the applicant, who figures as defendant in Civil Suit No. 932 of 1989, instituted in the City Civil Court at Ahmedabad, between Smt. Pravinaben Chandrakant Patel and others and him, seeks to assail the order dated 9th January, 2003 passed by the Additional Principal Judge, City Court, Ahmedabad, whereby the suit has been transferred from the file of Judge, City Civil Court No. 16 to the file of Shri P.B. Desai, Judge, City Civil Court No. 8.

3. The plaintiffs moved an application dated 6th January, 2003, asserting, inter alia, that they were not likely to get justice and there were all chances of injustice. On this premise, they made the following prayer:

"(A) Hon'ble Court be pleased to Stay the hearing of the matter and ordered "Not before me" and send back."

4. In the circumstances, arising out of the application of the plaintiffs, the learned Additional Principal Judge, City Civil Court, Ahmedabad, passed the

following order."

"ORDER:

In view of the order passed by the learned Principal Judge and taking into consideration the submission made by Brother Judge Shri A.C. Rao, the matter requires to be transferred to other Court for the purpose of hearing, as the learned Judge does not want to conduct the matter. Hence the matter may be placed in the Court of Brother Judge Shri P.B. Desai, Judge Court No. 8, for hearing and final disposal of this matter.

Dt. 19-1-2003 Sd/- Ahmedabad (H.B. Antani) Addl. Principal Judge"

5. Upon hearing the learned counsel of the applicant and giving anxious considering to the facts and circumstances of the case, the Court is of the opinion that the impugned order is not amenable to the revisional jurisdiction of this Court u/s 115 of the Code.

6. The provisions of Section 115 of the Code can be invoked only where any case has been decided by the Court subordinate to the 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 power of the High Court u/s 115 of the Code is circumscribed by the proviso which reads thus :

"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 proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

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 another 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 another 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.

10. Tested upon the above touchstone, the order impugned herein neither has the effect of deciding any case nor could have the effect of finally disposing of

the suit or any other proceeding even if it had been made in favour of the applicant herein.

11. In view of what has been said above, instant revision is misconceived, and fails at the threshold. It is rejected accordingly.