
(1954) 11 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Revision No. 54 of 1953

Hemsingh

APPELLANT

Vs

Motisingh and another

RESPONDENT

Date of Decision : 30-11-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151

Citation : AIR 1955 Raj 127 : (1955) RLW 482

Hon'ble Judges : Wanchoo, C.J

Bench : Single Bench

Advocate : Hastimal, for the Appellant; Chandmal, for the Respondent

Judgement

Wanchoo, C.J.—This is a revision by Hemsingh defendant, and has arisen in the following circumstances.

2. A suit was brought by Motisingh and others opposite parties against the defendant-applicant for a declaration that they were Juna Jagirdars, and their Jagir should not be taken into consideration in the decree for partition obtained by Hemsingh.

The suit related to village Sela. The land in this village is divided into three shares. One-fourth belongs to the State and is Khalsa; one-fourth belonged to Bhawani Singh and one-half to Hemsingh. The khalsa share was separated long ago, while the two Jagirdars held their Shares jointly. A suit was brought by Sheonathsingh, grand-father of Hemsingh for partition of his half-share, and this was decreed. When the partition began to be effected, the plaintiffs, who claimed to be Juna Jagirdars, objected that their lands should not be taken into account in effecting the partition. This prayer was rejected, and thereupon the present suit was filed by the plaintiffs for a declaration that they were juna Jagirdars, and their lands were not covered by the decree of partition passed by the revenue Court.

3. The trial Court framed four issues. I am now concerned with only the first

issue which was as follows:

Whether the land comprising of fields, wells and Beras mentioned in paras 1 and 2 of the plaint are of Juna Jagir, and the plaintiffs are in possession of the same in their capacity of Juna Jagirdars.

The trial Court decided this issue against the plaintiffs, and dismissed the suit. Obviously if the plaintiffs were not Juna Jagirdars, they could not claim that their lands should not be taken into consideration in making the partition, for the defendant's case was that the plaintiffs were Chhutbhias of the other Jagirdar Bhawanisingh, and their lands were included in the one-fourth share of Bhawanisingh.

4. There was an appeal against this judgment, and the learned District Judge ordered a remand under S. 151, C.P.C., after framing the following issue:

Whether the plaintiffs as Chhutbhias of Bhawanisingh are also entitled to retain their holdings free from the subject-matter of partition.

The present revision is directed against this order of remand.

5. A preliminary objection has been raised that no revision lies. It is urged, in the first place, that no case has been decided, and, in the second place, that even if a case has been decided, the order of remand being under S. 151, C.P.C. is not revisable under S. 115, C.P.C.

6. I am of opinion that there is no force in these preliminary objections. So far as the objection that this is not a case decided is concerned, reference may be made to - Pyarchand and Others Vs. Dungar Singh, In view of that decision it is obvious that the order of the Additional District Judge remanding the suit amounts to case decided.

7. As to the contention that an order under S. 151 is not revisable, it is enough to say that S. 115 does not exclude orders under S. 151 from being questioned in the High Court. The section, as it stands, gives power to the High Court to call for the record of any case, which has been decided by any Court subordinate to the High Court, and in which no appeal lies thereto, and if the conditions mentioned in cls. (a), (b) or (c) are satisfied, the High Court may make such order in the case as it thinks fit.

The words of S. 115 are very general and orders under S. 151 are not excepted in those words. The High Court, therefore, in my View has the power to interfere in revision with an order passed under S. 151. Whether it will do so or not is a different matter.

It appears that it has been held in some Courts that an order passed under S. 151 is not open to revision. For example the Madras High Court has held that no revision lies against an order passed on remand under inherent powers as there is no question of jurisdiction, vide - Balla Mallayya Vs. Peddi Veerayya and Others, . With all respect to the learned Judges, I am of opinion that though cls.

(a) and (b) of S. 115 will not apply to an order passed under S. 151, cl. (c) will apply provided its terms are satisfied. The decision in the "Madras Case (B)", seems to have been based on the view that cl. (a) does not apply.

The Oudh Chief Court and the Bombay High Court have also held that an order of remand is not revisable, vide - AIR 1942 370 (Oudh) and - Thakoredas Tribhovandas Vs. Lallubhai Tribhovandas, . But the basis of these decisions has been that there is no case decided. Other Courts, have held that a revision lies, and in a later case the Madras High Court has also held that a revision lies on the ground of material irregularity, vide - Vaithilingam Pillai Vs. Kandaswami Pillai, . In - Purshottam Dattatraya Shetye Vs. Yeshvadabai Jayadeo Shetye, , the Bombay High Court has held that a Court has inherent power to remand, but where it acts with material irregularity, the High Court has power to interfere in revision. In - "Gobardhan Mahton v. Sita Ram Singh", AIR 1936 Pat 491 (G), the Patna High Court has interfered with an improper order of remand made u/s 151 under its powers u/s 115. In - AIR 1940 349 (Nagpur) , it was held that where an order of remand was passed under S. 151, it was revisable. In view, therefore, of the general words of S. 115, which make no exception in favour of orders under S. 151, and the authorities mentioned above, I am of opinion that a revision lies.

8. Coming to the merits of the order, I have to see whether the lower appellate Court committed a material irregularity in making the remand. The lower appellate Court did not decide the issue framed by the trial Court, namely whether the plaintiffs were Juna Jagirdars. It held that further enquiry into the case was necessary and framed a new issue and remanded the case for decision of that issue. This issue was as follows:

Whether the plaintiffs as Chhutbhias of Bhawanisingh are also entitled to retain their holdings free from the subject-matter of partition.

The plaintiffs had never claimed that as Chhutbhias of Bhawanisingh, they were entitled to have their lands separate from Bhawanisingh's one-fourth share; nor could they in law make any such claim. If they were Chhutbhias of Bhawanisingh, their share must come out of Bhawanisingh's one-fourth share, and cannot be an independent share. The, lower appellate Court, therefore, in framing this issue on a point which was not even raised by the plaintiffs in their suit was making out a new case altogether, and therefore acted with material irregularity in the exercise of its jurisdiction. In these circumstances, the order of remand was improper and must be set aside.

9. I, therefore, allow the revision, set aside the order of remand passed by the lower appellate Court, and order that the appeal be decided on the merits. Hemsingh applicant will get his costs of this revision from the plaintiffs opposite parties.