

(1950) 12 MP CK 0010
In the Madhya Pradesh High Court
Case No : Civil Revision No. 45 of 1950

Kedarmal Ramlal

APPELLANT

Vs

Gopaldas Raosaheb

RESPONDENT

Date of Decision : 05-12-1950

Acts Referred:

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

Citation : (1950) 12 MP CK 0010

Hon'ble Judges : Shinde, J

Bench : Single Bench

Advocate : R.N. Kale and Gokhale, for the Appellant; Karkare and Kedarnath, for the Respondent

Final Decision : Dismissed

Judgement

Shinde, J.—This petn. is for revision against the order of the Dist J., Ujjain dated 17-12-1948. The opposite party who is the pltf in the case filed a suit against the petnr. for the return of certain property which his father entrusted to the deft, for safe custody. One of the issues in the suit was whether Appibai is a necessary party in the suit. That issue was decided by the lower Ct. against the deft. Against that decision the deft has filed this petn.

2. A preliminary objection has been raised by the opposite party that this petn. cannot be entertained. The learned counsel for the opposite party argues that the decision of the question whether Appibai is a necessary party in the suit or not does not affect the jurisdiction of the Ct, & hence under cl. (c) of S. 115, C.P.C. this petn. cannot be entertained. In support of this contention reliance has been placed on Lakshmi Shanker Tewari Vs. Rama Kant and Others, & Brijmanohar v. Rama Nand, AIR 1939 Oudh 102 : (14 Luck. 447) & (Piuns) Kantimohan and Others Vs. Ramballabh Das, & Kunja Behari Das and Others Vs. Chintamoni Das and Others, The learned counsel for the petnr. on the contrary relies on Gopi Hath v. Mamtaz Ali AIR 1929 Oudh 148 : (116 I.C. 58) & argues that the question as to whether a party is a necessary party or not is revisable

under s. 115, C.P.C. The case cited by the learned counsel for the petnr. has no bearing on the point raised. In that case it was held that the proceeding under which a person is ordered to be added as a deft amounts to a case within the meaning of S. 115, C.P.C. & therefore the order was liable to revision. That is not the point at issue. The point raised by the learned counsel for the opposite party is that the decision of the question whether Appibai is a necessary party or not has no effect on the jurisdiction of the Ct. & hence even if the decision be wrong the order is not revisable under S. 115, C.P.C. In *Lakshmi Shanker Tewari Vs. Rama Kant and Others*, , relying upon AIR 1949 239 (Privy Council) & *Mohd. Yakub Khan Vs. Sirajul Haq and Others*, the learned Judge came to the conclusion that if the decision of a question of law has no effect upon the jurisdiction of the Ct. it cannot be interfered with in a revision under S. 115, C.P.C. In *Mohd. Yakub Khan Vs. Sirajul Haq and Others*, the learned Judges observed as follows:

When a Ct. upon a wrong view of the law adopts a wrong procedure in the exercise of its jurisdiction it acts illegally within the meaning of s. 115 (c), C.P.C.

Chitaley in his commentary on C.P.C. has expressed the following opinion on this point

Where the law has prescribed the manner in which a Ct. shall exercise its jurisdiction & the Ct. acts in disregard to those provisions It acts illegally or irregularly In the exercise of jurisdiction but where the Ct. exercises its jurisdiction in the manner prescribed but arrives at a conclusion or decision which is erroneous in law or fact it does not act illegally or with material irregularity but decides erroneously in the proper exercise of jurisdiction.

In AIR 1949 156 (Privy Council) their Lordships of the P.C. ruled as follows :

The section empowers the H.C. to satisfy itself Upon three matters: (a) that the order of the subordinate Ct. is within its jurisdiction (b) that the case is one in which the Ct. ought to exercise jurisdiction & (c) that in exercising jurisdiction the Ct 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 H.C. is satisfied upon those three matters it has no power to interfere because it differs however, profoundly from conclusions of the subordinate Ct. upon question of fact or law.

This decision makes it abundantly clear that under cl. (c) of S. 115, C.P.C. the H.C. cannot interfere unless a subordinate Ct, has acted in breach of some provision of law or has committed some error of procedure which is material.

3. This being the position of law, we have to determine whether the lower Ct. has committed any breach of law or some material error of procedure. The Ct. had full jurisdiction to decide Whether Mt. Appibai was a necessary party or not. It has not committed a breach of any provision of law nor has it committed any

error of procedure, This Ct., therefore, has no power to interfere with the decision of the lower Ct. under cl. (c) of S. 115, C.P.C. The preliminary objection therefore, must be upheld.

4. Accordingly I dismiss the petn. With costs.