

(1970) 06 GAU CK 0010

In the Gauhati High Court

Case No : Civil Revision Case No. 42 of 1968

Khetrimayum Achou Singh

APPELLANT

Vs

Khumbongmayum Ningol Ningthemcha Ongbi Parnimashi
Devi and others

RESPONDENT

Date of Decision : 04-06-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Section 14, 5

Citation : (1970) 06 GAU CK 0010

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Advocate : W. Kulabidhu Singh, for the Appellant; Party in person Respondent No. 1, for the Respondent

Judgement

R.S. Bindra, J.C.

1. An application made by Kh. Achou Singh, the decree-holder, for police assistance respecting execution of decree for possession of a piece of land by demolition of the superstructure was turned down by the executing Court on 31st of May, 1968, on the finding that the land from which the eviction of the judgment-debtor was sought did not find mention in the decree sheet. The Court suggested to the decree-holder that he better get the decree amended. The decree-holder having felt aggrieved with the order filed a revision petition in this Court u/s 115 of the Civil Procedure Code. My predecessor rejected that revision petition in limine on 30th August, 1968 with the observation that the executing Court having held in the impugned order that the decree was unexecutable, that order tantamounted to a decree and so was appealable and that in consequence the revision petition was not maintainable. It is thereafter that the decree-holder filed an appeal in the Court of the District Judge. However, since by then the period of limitation had run out the decree-holder moved an application u/s 5 of the Limitation Act for condonation of the delay. The District Judge rejected that application by his order dated 7th November, 1968. It is against that order that

the instant revision petition has been filed by the decree-holder.

2. After hearing Shri Kulabidhu Singh, representing the decree-holder, I have reached the conclusion that the revision petition is incompetent. It is the contention of Shri Kulabidhu Singh that the revision petition is maintainable in terms of clause (c) of Section 115 of the Code. That clause applies if the subordinate Court appears "to have acted in the exercise of its jurisdiction illegally or with material irregularity." The learned Counsel for the decree-holder is unable to point out what illegality or material irregularity had been committed by the District Judge in disposing of the application u/s 5 of the Limitation Act. All that he asserts is that the District Judge should have applied the principle of sub-sections (1) and (2) of Section 14 of the Limitation Act, 1963 to the appeal filed in his Court and condoned the delay. Without deciding the question whether or not the principle on which those two sub-sections are founded applies to an appeal. I feel convinced that a wrong decision on a point of law by itself would not bring the case within the ambit of clause (c) of Section 115. The true interpretation of clause (c) appears to be that illegality or material irregularity should have been committed by the subordinate Court in the exercise of its jurisdiction and that a mere wrong decision whether on a point of fact or law would not bring the case within the phraseology of the clause. This conclusion, in my opinion finds support from the observations made by their Lordships of the Privy Council in the case of *Amir Hassan Khan v. Sheo Baksh Singh*, ILR (1885) 11 Cal 6. The relevant observations run as under:

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 question which was before them, and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly they did not exercise their jurisdiction illegally or with material irregularity.

3. The finding of the District Judge that no case had been made out for condonation of the delay in filing the appeal having been given after hearing the counsel for the parties, it cannot be said to suffer from the vice of any illegality or material irregularity in exercise of the jurisdiction admittedly vesting in him. I would, therefore, hold that the present revision petition is not maintainable in law and so I reject the same. However, I leave the parties to bear their own costs.