
(1967) 03 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 163 of 1966

Krishan Lal

APPELLANT

Vs

S. Pal Singh and another

RESPONDENT

Date of Decision : 20-03-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Transfer of Property Act, 1882 — Section 111, 111(a)

Citation : (1967) 03 J&K CK 0002

Hon'ble Judges : Janki Nath Bhat, J

Bench : Single Bench

Advocate : D.D. Thakur, for the Appellant; Amar Chand, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhat, J.—This is a revision petition directed against the order of the Munsiff Jammu dated 21-11-1966 whereby he has held the

transfer of a decree dated 5-11-63 in favour of the petitioner by S. Mohinder Singh the decree-holder as inadmissible in evidence.

2. The facts that are relevant for the disposal of this revision petition are that S. Mohinder Singh obtained a compromise decree for ejectment from

a house against the respondent by means of a compromise decree on 19-4-63. It appears that Mohinder Singh sold the property in dispute by

means of a sale deed dated 4-11-63 to Krishan Lal, the present petitioner and by means of an agreement dated 5-11-63 transferred the decree

obtained against the respondent to the present petitioner. On the basis of the sale deed as well as the agreement he sought to eject the respondent

from the suit property. He presented the agreement of 5-11-63 also with the execution application. An objection was taken that this transfer or

assignment of decree being unregistered was not admissible in evidence. After hearing arguments on this point, the learned trial judge came to the

conclusion that the agreement being unregistered was not admissible in evidence. This revision is preferred against that very order holding the

transfer of the decree dated 11-5-62 to be inadmissible in evidence.

3. A preliminary objection has been taken that this order is not revisable. The learned counsel for the respondents has referred me to the following

authorities: Bhachibai alias Kunverbai Vs. Sha Virji Devji, ; Balram Das Agarwal Vs. Kedar Nath, ; Nand Singh Vs. Sewa Singh and Others, and

AIR 1927 Bom 664.

4. The Gujarat authority is a very short one and does not give in detail the facts of that case. The factual portion is limited to the observation that a

particular document was admitted in evidence by the trial court, and the contention in revision was that the trial court was wrong in admitting the

document in evidence. Then comes the finding. It is no doubt true, as observed in this authority, that the court has given various reasons on the

admissibility in evidence of the questions put and the answers given. In fact it will not be conducive to proper justice to entertain revision petitions

against all such interlocutory orders and decisions on the admissibility or otherwise of a particular piece of evidence, but the present case can be

distinguished as I shall presently state.

5. AIR 1954 Nag 254 which is referred to in this authority is a decision on another point namely that a revision lies only when a question of

jurisdiction is involved.

6. The Allahabad authority (supra) relates to the interpretation of a document and it was held that where two interpretations could be given to a

document and one had been adopted by the trial court, no revision lay against such an interpretation.

7. In the Punjab authority Grover J. held that where in admitting evidence the court did not act in excess of or in the absence of jurisdiction nor did

it act with material irregularity, the High Court will not interfere in revision even though the decision is erroneous.

8. In the Bombay authority (supra) it is laid down that an interlocutory order rejecting certain evidence as inadmissible during the pendency of the

suit is not revisable. There were two learned Judges in that case and both of

them gave separate judgments. Marten C.J. based his decision on a Privy Council authority. AIR 1917 PC 71 which said that the section namely S. 115 of the Civil P. C applied to jurisdiction alone and the irregular exercise or non-exercise or the illegal assumption of it. The section was not directed against conclusions of law or fact in which the question of jurisdiction was not involved.

9. Against these authorities, the learned counsel for the petitioner referred me to two reported decisions of this court namely, AIR 1968 J & K 27 and AIR 1859 J and K 50 (FB).

10. In the former authority it was held that on the refusal to allow a party to lead further evidence, this court had power to interfere in revision. In the other authority in which the point of the competence of a revision was not specifically discussed, a revision was nonetheless entertained and allowed on the point of want of registration of a certain document.

11. Now this preliminary objection of the learned counsel for the respondents can in my opinion be split up into two parts. One is that a revision against an order of a court which decides a point of fact or law wrongly is not revisable because any such order does not ordinarily affect the jurisdiction of the court.

12. The second part of this argument is that an order holding a document to be inadmissible in evidence is not per se revisable. So far as the first part of this objection is concerned, I have more than once held in different cases that the provisions of S. 115 of the State Civil P. C. are much wider than in the rest of India. There is a specific clause (d) to S. 115 of the State Civil P. C. which permits revisions to be preferred where there has been failure of justice. If any order of a subordinate court results in failure of justice, which expression is a very wide term, I think a revision can safely be entertained by the High Court and decided on its own merits. I need not reiterate what I have said on the point in more than one judgment and in some of them rather exhaustively I am also fortified by other reported authorities of this court on this point which have already been cited above.

13. About the second part of this contention namely that a revision should not be entertained against an order refusing to admit some evidence, or

for that matter a document, in evidence, ordinarily permitting revisions to be preferred against all controversial matters relating to the admissibility

or otherwise of evidence would lead to an endless process and would give rise to unnecessary multiplication of work both in this court and in the

subordinate courts. As a general rule I would agree with the authorities cited by the learned counsel for the respondents that revisions should not

ordinarily be entertained against such orders, but when such an order goes to the very root of a matter or affects the basic matters in controversy in

a certain litigation a revision should be permitted to be preferred against such an order. In my opinion the present case is a glaring instance where a

revision should be permitted to be preferred.

14. In this case the decree-holder based the execution application on this agreement if not wholly at least mainly. If this agreement or assignment of

a decree whatever name we give it, is held to be not admissible or is admissible in evidence, it would affect the rights of the parties very

substantially. For instance, if it is held to be admissible, the respondents may be liable to abetment subject to their other objections. If it is held to

be inadmissible, the whole execution may be thrown out subject of course to the other allegations in the petition that there is a sale deed of the

property in favour of the petitioner. In my opinion as indicated, the admissibility or otherwise of this document vitally affects the interests of the

parties to this litigation and therefore I would hold that this revision petition is maintainable and should be heard and disposed of on merits.

15. Now coming to the merits of the case. According to the learned counsel for the petitioner the tenancy had determined under S. 111 of the T.

P. Act. Therefore the possession of the respondents on the property after the lease had been determined would be that of trespassers. They would

be tenants at suffrage and had no right to continue on the property. Therefore the document of 5-11-63 did not require any registration.

16. On the other hand, the learned counsel for the respondents has drawn my attention to the provisions of S. 17(1)(h) of the State Registration

Act - I use the word State Registration Act, because this clause is not present in the Registration Act prevalent in the rest of India. This clause

reads as under:

Non-testamentary instruments transferring or assigning any decree or order of a

court or any award when such decree or order or award purports

or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to

or in immovable property.

17. The learned counsel for the respondents has referred me to ILR (1881) All 422 (423), Vythinatha Padayachi Vs. Ammalu Ammal and

Another, , Indraloke Studio Ltd. Vs. Sm. Santi Debi and Others, and Ramchandra Annappa Vs. Subraya Timmaya, .

18. In ILR (1881) All 422 (supra) it has been held that the interest of a tenant in his holding was right or interest of a tenant in the immovable

property and consequently a bond which affirmed as a security of right ought to have been registered.

19. In the Madras authority (supra) it was held that a transfer of a mortgage decree could be effected only by a registered instrument.

20. In the Calcutta authority (supra) a lease was held to be immovable property.

(20-A) The same is the ratio decidendi in Ramchandra Annappa Vs. Subraya Timmaya, .

21. The argument of Mr. Thakur that the lease had got determined under the provisions of S. 111 is no doubt ingenious but it has no application to

the facts of this case.

Under S. 111 of the Transfer of Property Act a lease is determined in the following ways among others:

(1) By efflux of time.

(2) On the expiration of a notice to determine the lease or to quit or intention to quit the property leased duly given by one party to the other.

22. According to Mr. Thakur before the institution of this suit the landlord Mohindra Singh must have served a notice of ejectment on the

respondent. Therefore after the expiration of the notice the lease stood determined or if the lease was for a specified period it had got determined

by efflux of time under S. 111 (a). According to Mr. Thakur the possession of the respondent in this property after that date whether covered by

Clause (a) or (h) of S. 111 of the T. P. Act would be the possession of a trespasser who had no right, title or interest in the property. This

argument does not arise because we are not at this time examining whether a decree for ejectment should be passed against the respondent and

what is the nature of the possession of the respondent before the decree. We have an accomplished fact in the shape of a decree for ejection against the respondent before us. That a decree was passed on 19-4-63 and the respondent had to remain in possession of the property for three years of the decree, i.e., from 19-4-63 to 19-4-66. What the petitioner wants to enforce against the respondent is to require him to surrender his possession of the property and deliver it to the petitioner on the basis of the transfer of assignment of the decree which is embodied in the agreement of 5-11-63. As I pointed out in the Allahabad authority ILR (1881) All 422 (423) the interest of a tenant in his holding was a right or interest of or in the immovable property therefore the right of the respondent under the original lease was a right or interest in the immovable property. But as I said that aspect of the case is not strictly relevant for the disposal of this revision petition. At the present moment the respondent is in possession of the property and is sought to be deprived of the same by means of the impugned document. If the decree is there under the present circumstances, the respondent can continue in enjoyment and be in possession of the house in dispute. The right of enjoyment and user is in itself a right and an interest in the immovable property According to Webster's International Dictionary 'interest' amongst other things means participation in advantage, profit, something in which one has a share of ownership or control, or a title or legal share in something". This right of enjoyment, possession and user is sought to be cut short on the basis of the document in question. Apart from the other words used in S. 17(1)(h), the respondent has an Interest in this property from which he is being sought to be ejected. To say the least it affects his interest in the property. Therefore in my opinion this document is covered by S. 17(1) (h), quoted in extenso earlier. The document is as such inadmissible in evidence and has been rightly held to be so by the trial court.

23. There is no force in this revision petition which is dismissed.