
(1949) 08 AHC CK 0041
In the Allahabad High Court
Case No : Civil Revision No. 56 of 1948

Lakshmi Shanker Tewari

APPELLANT

Vs

Rama Kant and Others

RESPONDENT

Date of Decision : 01-08-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 2, 115

Citation : AIR 1950 All 144

Hon'ble Judges : Seth, J

Bench : Single Bench

Advocate : A.P. Pandey, for the Appellant; Bishambhar Dayal and Satish Chandra, for the Respondent

Final Decision : Dismissed

Judgement

Seth, J.—This is an application in revision against an appellate order arising out of a case for redemption u/s 12, U. P. Agriculturists' Relief Act.

2. The plaintiffs in the case are the donees of the property mortgaged from the widow of the mortgagor. The property mortgaged and the property transferred by the deed of gift is occupancy holding. The deed of gift is, therefore, void, and does not confer any title on the donees. They are, therefore, not entitled to maintain the application for redemption of the mortgage. The lower appellate Court has, however, held that they are entitled to maintain the application not because the gift is a valid gift, but because, in the opinion of the learned Judge, the mortgagee has no right to question the gift. In my opinion this view of the learned Judge is not well founded. The gift being void anybody can plead that it has not passed any title to the donees. Thus it is clear that the judgment of the Court below is erroneous, and the application should have been dismissed.

3. The question for consideration, however, is whether the case fulfils the requirements of Section 115, Civil P. C., and whether the order of the lower appellate Court can be interfered with in revision.

4. The argument of the learned counsel for the opposite parties is that it is at worst an erroneous decision of the lower appellate Court on a question of law, and does not bring the case under any one of the three clauses of Section 115, Civil P. C. The learned counsel for the applicant, however, contends that the erroneous decision of law by the Court below does not stop at that, but affects the jurisdiction of the Court. His contention is that an application for redemption can be made only by a mortgagor, or his representative in interest, and a Court acts without jurisdiction if it entertains an application by any other person. The learned counsel has placed reliance on two recent decisions, one of them being a decision of their Lordships of the Judicial Committee in Joy Chand v. Kamlaksha 1949 ACJ 278 : AIR 1949 P. C. 289 and the other being a decision of a Division Bench of this Court in Mohd. Yakub Khan Vs. Sirajul Haq and Others, .

5. In the Privy Council case the jurisdiction of the Subordinate Judge to grant relief under an enactment depended upon the fact whether the loan was a commercial loan or not. The Subordinate Judge took the view that the loan was a commercial loan. The Calcutta High Court, however, took a contrary view in a revision u/s 115, Civil P. C. It was contended before their Lordships of the Judicial Committee that the decision of the Subordinate Judge was only a decision on a question of law and the High Court had no jurisdiction to reverse it in the exercise of its revisional jurisdiction. Their Lordships held that a subordinate Court does not act illegally or with material irregularity because it decides wrongly a matter within its competence, but, if the erroneous decision results in the sub. ordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a cause for revision arises under Sub-section (a) or Sub-section (b) of Section 115, Civil P. C.

6. The decision of the Division Bench of this Court in Mohd. Yakub Khan Vs. Sirajul Haq and Others, has taken the same view about the interpretation of Section 115, Civil P. C., Agarwala J., delivering the judgment of the Bench said:

"The lower appellate Court, by deciding that there was no valid reference to arbitration and that, therefore, the case should not have been referred to arbitration, but that it should have been tried by the trial Court, and in ordering the trial Court to try the case itself, has acted illegally In the exercise of its jurisdiction, and its order is, therefore, revisable."

7. The rule to be deduced from these two decisions, which are binding upon me, is that if the decision of a question of law has no effect upon the jurisdiction of the Court, it cannot be interfered with in a revision u/s 115, Civil P. C. But if the Court assumes jurisdiction, or declines to exercise jurisdiction upon an erroneous view of law, its order can be revised.

8. Mr. Pandey contends that this is what the Court below has done in the present case. He argues that the Court below has assumed jurisdiction where it did not possess any because, the plaintiffs were not entitled to maintain the application. In my opinion this argument is not Sound. The capacity of a party to maintain an

application is quite different from the capacity of the jurisdiction of the Court to entertain such an application. There was no want of capacity on the part of the Court to entertain the application in this case. The plaintiffs not being entitled to maintain the application, it should have been dismissed by the Munsif or, on appeal, by the lower appellate Court. The application was, however, not dismissed because of the erroneous view of law about the right of the plaintiffs to maintain the application. The error of law committed in this case does not relate to the jurisdiction of the Court. The Courts below have only committed an error of law in the exercise of a jurisdiction, which they undoubtedly possessed. The order of the lower appellate Court is, therefore, not revisable,

9. Assuming, however, that the case fulfils the requirements of Section 115, Civil P. C., and that the Court below has committed an error on a question of jurisdiction, I am perfectly satisfied that this is not a fit case for interference in revision. The deed of gift was made in favour of her daughter's sons by the widow of the mortgagor. The zamindar, who was interested most in challenging this deed of gift, has not raised his voice against it. No other relations have objected to the deed of gift. The mortgagee is certainly not entitled to retain possession of the property mortgaged, if his mortgage debt is paid. The objection, in this case, to the redemption is toy the mortgagee and by nobody else. It is obvious therefore, that the mortgagee wants to make a dishonest gain by taking advantage of this legal objection. It is impossible for me to say that the order of the Court below does substantial injustice to any party.

10. This application in revision is, therefore, dismissed, but, inasmuch as I have found that the order of the Courts below is not in accordance with law, I direct the parties to bear their costs of this application.