
(1963) 02 GUJ CK 0010
In the Gujarat High Court

Lallubhat Virchand

APPELLANT

Vs

Ratilal Bhikhabhai and Others

RESPONDENT

Date of Decision : 08-02-1963

Acts Referred:

Bombay Stamp Act, 1958 — Section 58

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 3, Order 13 Rule 3, 115

Citation : (1967) 8 GLR 851

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—The facts out of which this revision application arises can be briefly stated thus: In a suit filed by the petitioner, he produced a document at Item No. 1 in the list Ex. .3.. As provided in Order 13, Rule 3, C. P. Code, this instrument was rejected as inadmissible in evidence by Civil Judge, Junior Division, Navsari, who held that the document was an instrument of partition and not being stamped it was inadmissible in evidence. He therefore rejected the document as inadmissible and ordered that it cannot be exhibited.

2. In revision, it is contended that the learned Judge in passing this order has committed a material irregularity in the exercise of jurisdiction and this order is challenged in revision. The Learned Counsel for the opponents raise an objection and contend that matters relating to the admissibility of evidence cannot be the subject matter of revision.

3. Before the High Court can exercise revisional jurisdiction u/s 115, C.P. Code, there must be a case decided and the subordinate Court appear to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity. The first two clauses are not important in this case. The only important question is whether there is a case decided and whether the subordinate Court has acted in the exercise of its jurisdiction illegally or with material irregularity.

4. An interlocutory order passed in the course of a proceeding in a suit or appeal may be a case decided. As held by me in Civil Revision Application No. 1223 of 1960 and for the reasons given by me at length in that judgment, an interlocutory order may not amount to a case decided or it may amount to a case decided. Whether it may amount to a case decided would depend upon the facts of each case.

5. If an order is passed under Order 6, Rule 17, C. P. Code, it would be a case decided. Similarly, an order passed under Order 13, Rule 3, C. P. Code may amount to a case decided. Order 13, Rule 1, C. P. Code, provides as follows:

(1) The parties or their pleaders shall produce, at the first hearing of, the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

Order 13, Rule 3, C. P. Code, reads as follows:

The Court may, at any stage of the suit reject any document which-it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

When in compliance with the provisions of Order 13, Rule 1, C. P. Code, a party produces documents along with a list, he prays that the documents may be admitted in evidence subject to proof and subject to relevancy under the Evidence Act.

6. Under Order 13, Rule 3, C. P. Code, it is obligatory on the Court to record grounds for rejection of any document which is produced under Order 13, Rule 1, C. P. Code. When therefore a Court passes an order under Order 13, Rule 3, C. P. Code and after recording the grounds of rejection rejects a particular document produced under Order 13, Rule 1, C. P. Code, the Court is deciding a case within the meaning of Section 115, C. P. Code. By doing so, it is not merely deciding a matter under the Indian Evidence Act. If the Court allows or disallows a question or answer as irrelevant under the provisions of the Evidence Act, e. g. as amounting to hearsay that would be only a matter of evidence and can not be the subject matter of a revision u/s 115, C. P. Code. That is what has been held in *Babulal v. Jugalkishor* AIR 1954 Nag 254. There the subordinate Court treated as irrelevant the evidence of certain witnesses on the ground that it was hearsay. The learned Judge held that it was open to the Court to decide whether the particular evidence adduced before it was admissible or not, and even though its decision on the point may be wrong, that is not a question of jurisdiction, and that there fore its finding is not open to challenge in revision. I relied on this decision in Civil-Revision Application No. 100 of 1962 and have observed as follows;

During the course of examination of witnesses, a Court has to give various rulings on the admissibility in evidence of the questions put and answers given. There cannot be a revision against every decision of the Judge allowing the questions to be put or not allowing certain questions to be put. When the Court allows a question to be put or refuses the question to be put, that would not amount to deciding a case. Similarly, when the Court allows a document to be admitted in evidence or the Court refuses to allow it, that does not amount to deciding a case, but it amounts to deciding regarding the admissibility of certain evidence. Therefore, when the Court decides questions under the Evidence Act, it is not deciding a case, and therefore its decision cannot be the subject matter of revision u/s 115, C. P. Code. The same view has been taken by Mudholkar J., as he then was, in *Babulal v. Jugalkishor* AIR 1954 Nag 254.

7. But when a Court passes an order under Order 13, Rule 3, C. P. Code, it is not merely deciding a question of evidence. It is also rejecting a document produced under the provisions of Order 13, Rule 1, C. P. Code. When the Court passes an order, which falls under Order 13, Rule 3, C. P. Code, it is deciding a case, and if in so deciding the case, the Court has acted illegally or with material irregularity, the High Court can interfere in revision. Some matters in which evidence is rejected may fall under Order 13, Rule 3, C. P. Code, and some may not fall under Order 13, Rule 3, C. P. Code, but may fall only under the Evidence Act. When a matter is rejected as irrelevant and inadmissible in evidence and when such an order does not fall under Order 13, Rule 3, C. P. Code, but falls merely under the Evidence Act, that matter cannot be the subject matter of revision. But if a matter falls both under the Evidence Act and under Order 13, Rule 3, C. P. Code, that question can be challenged in revision, provided the subordinate Court has acted illegally or with material irregularity when passing an order under Order 13, Rule 3, C. P. Code.

8. It is next contention that a revision does not lie, but an appeal lies u/s 58 of the Bombay Stamp Act, 1958. This contention is rejected because Section 58 of the Bombay Stamp Act deals with a matter where a Court has made an order admitting an instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty u/s 34. The instant case does not fall u/s 58 of the Bombay Stamp Act.

9. Section 34 of the Bombay Stamp Act, 1958, provides as follows:

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped.

The proviso to Section 34 of the Bombay Stamp Act is not important. Item 46 in Schedule I to the same Act relates to instruments of partition as defined by Section 2(m). In Section 2(m) of the Bombay Stamp Act, 1958, "instrument of partition" is defined as follows:

"Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty and includes:

(i) a final order for effecting a partition passed by any revenue authority or any civil Court,

(ii) an award by any arbitrator directing a partition, and

(iii) when any partition is effected without executing such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners.

The question, therefore, is whether the document, which is produced with Ex. 3 at item No. 1 is an instrument of partition.

10. That document can be divided into 3 parts, relating to immovable property, ornaments and household effects, liabilities, dues and out-standings. It is mentioned in the document that a partition has already been effected, although the details of the terms of the partition are not stated in the document. As regards liabilities, dues and outstandings, it is provided in the document that a partition had been effected on that very day and details are given as to the division of dues, outstandings and liabilities.

11. In the last part, the document refers to immovable property and provides that the immovable property should be divided within one year. Regarding dues and outstandings and liabilities, the documents mention that they had been divided in part on that very day. But in the definition of "instrument of partition" contained in Section 2(m) of the Bombay Stamp Act, "instrument" includes when any partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners. As the document is signed by both the co-owners, this part of the document would be an instrument of partition. But regarding the ornaments and household effects, the division is said to have been done in the past and the terms of such partition are not recorded. Therefore, that part regarding to ornaments would not be an instrument of partition. Similarly, regarding the immovable property it is stated in the document that it would be divided within one year, and this would not amount to an instrument of partition. Therefore only two parts of the document would be admissible in evidence, and the third part which relates to dues, outstanding and liabilities of the firm would be inadmissible in evidence. The subordinate Court was, therefore, wrong in rejecting the entire document as an instrument of partition and rejecting it as inadmissible in evidence.

12. The next question is whether by doing so, the subordinate Court has acted with material irregularity in the exercise of its jurisdiction. In view of the fact that the entire question depended on the terms of document, it would amount to a

material irregularity in treating the entire document as inadmissible in evidence, when only one-third of it was inadmissible in evidence.

13. I, therefore, hold that the subordinate Court has its jurisdiction. I, therefore, set aside the order of the lower Court rejecting the entire document as inadmissible in evidence, and direct the subordinate Court to admit the parts of the document which relate to household effects, ornaments and immovable property. The lower Court should also consider whether the third part of the document can be admitted in evidence on payment of penalty. No order as to costs.