
(1989) 08 BOM CK 0050

In the Bombay High Court

Case No : Civil Revision Application No. 1236 of 1983

Mahadeo and Others

APPELLANT

Vs

Raghoba and Others

RESPONDENT

Date of Decision : 21-08-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12(1), Order 20 Rule 6A, 115(1), 115(2)

Citation : (1990) 1 BomCR 787

Hon'ble Judges : M.M. Qazi, J

Bench : Single Bench

Advocate : S.V. Natu, for the Appellant; A.M. Bapat, for opponent/non-applicant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Qazi, J.—Mr. Bapat appearing for the non-applicant No. 2 has raised a preliminary objection about the maintainability of the revision. As per the impugned order the Civil Judge, Junior Division, Yavatmal has determined the mesne profits amounting to Rs. 24,540/- holding that the mesne profits shall be paid jointly and severally by the applicants to the Opponent/non-applicant No. 2. Mr. Bapat contended that against the decree of mesne profits only appeal lies and no revision is tenable. He has invited my attention to section 115 of the code of Civil procedure. The portion which is material for our purpose reads thus :---

"115(1) of CPC. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeals lies thereto, and if such subordinate Court appears,....."

Sub section (2) reads thus :---

"The High Court shall not, under this section vary or reverse/any decree or order against which an appeal lies either to the High court or to any Court sub-ordinate thereto."

In this connection he has also relied on Order XX, Rule 12 which reads as under :--

"12(1) : Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree "

Order XX, Rule 6-A which is relevant reads as under :---

"6-A(1) The last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment.

(2) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced; but where the decree is not drawn up within the time aforesaid, the Court shall if requested so to do by a party desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay, and thereupon

(a) an appeal may be preferred against the decree without filing a copy of decree and in such a case the last paragraph of the judgment shall, for the purposes of Rule 1 of Order XLI, be treated as the decree; and

(b) so long as the decree is not drawn up, the last paragraph of the judgment shall, be deemed to be the decree for the purpose of execution and the party interested shall be entitled to apply for a copy of that paragraph only without being required to apply for a copy of the whole of the judgment; but as soon as a decree is drawn up, the last paragraph of the judgment shall cease to have effect of a decree for the purpose of execution or for any other purpose;

Provided that, where an application is made for obtaining a copy of only the last paragraph of the judgment, such copy shall indicate the name and address of all the parties to the suit."

2. Mr. Natu has conceded that if the impugned order is treated as decree then the revision is not tenable. He, however, contended relying on Order XX, Rule 6-A that as no Court fee is paid and as no decree is drawn up, the impugned order cannot be termed as decree. According to him, it is only an order apportioning the liability. He has heavily relied on sub-rule (2) of Rule 6-A of Order XX which is cited supra. Mr. Natu emphatically contended that in the instant case neither decree was drawn nor request was made to the Court for drawing up the same and consequently there was no reason for the Court to certify as to why the decree was not passed. In view of all this Mr. Natu contended that the impugned order cannot be termed as a decree. Mr. Natu further contended that the present proceedings are not the proceedings of execution and, therefore, the last paragraph of the impugned judgment cannot be deemed to be a decree. He has further contended that since the earlier part of sub-rule (b) refers to execution and to no other proceedings, the appeal could not be deemed to have been included in such proceedings. In my view, sub-rule (b) has to be read as a whole; the earlier part cannot be read in isolation as Mr. Natu is trying to do. If it

is read as a whole then it leaves no doubt that it would also include appeal. Consequently I hold that impugned order is decree.

3. Mr. Natu has submitted that section 115 of the C.P.C. only refers to the appeal which lies to the High Court and the bar created by section 115 would exclude the appeal to the District Court. If sub-section (1) of section 115 is read in isolation then Mr. Natu may be right. But sub-section (2) of section 115 makes the position absolutely clear. It reads thus :-

"The High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto."

In view of this, there can hardly be any doubt that the bar is at the threshold. It is not disputed before me that if the impugned order is treated as decree the appeal lies to the District Court. In view of this there is much substance in the preliminary objection of Mr. Bapat. The revision is dismissed as not tenable.