

(2003) 11 KAR CK 0024
In the Karnataka High Court
Case No : C.R.P. No. 861 of 2001

M.D. Uthaiah (since deceased by L.Rs.) and Others	APPELLANT
Vs	
Mandepanda Aiyanna and Others	RESPONDENT

Date of Decision : 07-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151

Citation : (2004) ILR (Kar) 1165 : (2003) 4 KCCR 402 SN : (2004) 2 RCR(Civil) 382

Hon'ble Judges : R.V. Raveendran, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : M. Ravindranath Kamath, for the Appellant; M. Devaiah, for R2 and R3, M. Ram Bhat Advocate for R7 and R8, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J

1. Petitioner and the respondents herein are the plaintiffs and defendants respectively in OS No. 212 of 1989, on the file of Civil Judge (Jr Dn) Virajpet. Petitioners filed IA-XXIII u/s 151 CPC to club the said suit [OS No. 212 of 1989] with OS Nos. 240 of 1989, 242 of 1990, 151 of 1995 and 161 of 1996. The said application was dismissed by order dated 18-1-2002. Feeling aggrieved, petitioners have filed this petition u/s 115 of CPC, on 14.2.2002.

2. Section 115 of CPC was amended by Section 12 of CPC (Amendment) Act, 1999 (for short, "Amendment Act") by substituting the proviso to Sub-section (1). The said amendment to Section 115 came into effect from 1-7-2002. The proviso to Sub-section (1) of Section 115 CPC as substituted provides that the High Court shall not under that Section, vary or reverse any order made in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding. Section 32 of the Amendment Act, relates to repeals

and saving. The relevant portion of Section 32(2) of the Amendment Act dealing with the amendment to Section 115 is extracted below:

"Notwithstanding that the provisions of this Act have come into force or repeal under Sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1987 (10 of 1987):

xxxxxx xxxxxx xxxxxx

(i) the provisions of Section 115 of the principal Act, as amended by Section 12 of this Act, shall not apply to or affect any proceedings for revision which had been finally disposed off."

3. In view of the said amendment to Section 115, the Respondents contended that the Revision Petition is liable to be dismissed as not maintainable. The respondents relied on the decision of a learned Single Judge of this Court in K.R. Subbaraju Vs. Vasavi Trading Company, Bangalore and Others, holding that the amended Section 115 will apply even to pending revision proceedings on the following reasoning:

"It has been argued by the learned Counsel appearing for the petitioner that since Revision Petition was filed prior to enforcement of 1999 Amendment to the CPC, the amended provisions cannot have any application to the Revision Petitions like the present one. This submission also cannot be accepted for the simple reason that Clause (i) of Sub-section (2) of Section 32 of the Amendment Act is very specific in its intendment, according to which, the amended provisions will not apply only to revisions petitions which have already been disposed of. This by necessary implication, mean that the amended provisions touching upon the jurisdiction of this Court will have its full application to all such Revisions Petitions which are pending before this Court irrespective of its stage."

4. The petitioner, on the other hand, contended that as the revision petition was filed on 14.2.2002, prior to the amendment to Section 115 came into effect, the jurisdiction of this Court to decide the revision petition will have to be determined with reference to un-amended Section 115. It is submitted that as per the provisions of Sections 115 as it stood at the time when the revision petition was filed, the revision petition is maintainable. It is contended that a revision petition which was maintainable when filed, cannot be held to be not maintainable with reference to any subsequent amendment to Section 115.

5. The learned Single Judge who heard this revision petition considered the question whether the revision petition has to be decided with reference to the provisions of the amended Section 115, or in accordance with Section 115 as it stood prior to the amendment. He was of the view that the decision in SUBBARAJU was not correctly decided for the following two reasons:

(i) Clause(i) of Sub-section 2 of Section 32 is an express provision which is provided for saving such order or proceedings which had come into existence prior to the amending Act has been given effect to. It should be given meaning

and effect. Obviously, something is sought to be saved under this clause. What can be saved if at all, is the pending proceeding or a proceeding for revision which had already come into existence by then and nothing more. If the pending proceedings are not saved, then there is no other purpose that is sought to be achieved by Clause (i) of Sub-section 2 of Section 32, which is a section provided for repealing and saving. If the interpretation, as has been given by the learned Single Judge (in the case of SUBBASRAJU) is to be followed, it amounts that the provisions of Clause(i) of Sub-section 2 of Section 32 is rendered otiose or ineffective. Such an intention cannot be attributed to legislation, particularly, to a saving clause.

(ii) The language of Clause (i) of Sub-section (2) of Section 32 is very clear and it says that the provisions of Section 115 of the principal act as amended by Section 12 of this Act, shall not apply to or affect any proceedings for revisions which had been finally disposed of. If that is to be understood as applying to Civil Revision Petitions which have already been disposed of, then there will not be any other proceedings which is sought to be saved by this clause. A plain reading of this Clause indicates that there is something which is sought to be saved even after the amendment to the provision of Section 115 and it is the applicability of these provisions to any proceeding for revision which had been finally disposed of. That means, that order or proceedings that is made the subject matter of revision which had come into existence prior to revision which had come into existence prior to 1-7-2002. In effect, I am of the view that even if a revision petition is filed subsequent to 1-7-2002, if the subject matter of the revision petition is an order or proceedings which had come into existence prior to 1-7-2002, even the said proceeding is also saved from the applicability of the amended provisions of Section 115."

The Learned Single Judge, therefore by order dated 23-8-2002 has referred the matter to the Division Bench.

6. The cardinal principle of statutory construction is that every statute relating to substantive rights is prospective in operation unless it is made retrospective expressly or by necessary implication; and every statute relating to procedure is retrospective in operation, unless its retrospectivity is negated by a special provision. In ANANT GOPAL SHEOREY v. STATE OF BOMBAY AIR 1958 SC 1206 the Supreme Court quoted with approval, the following principle stated in MAXWELL on Interpretation of Statutes:

"No person has a vested right in any course of procedure, He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode."

In union of india (UOI) Vs. Sukumar Pyne, the Supreme Court held that an amending Act prescribing a new procedure would be retrospective in operation;

and in statutes relating to procedure, it is not necessary that there should be a special provision to indicate that the new procedural law is retrospective.

7. There is no special provision in the Amendment Act, which curtails the applicability of the amended Section 115 to pending Revisions. On the other hand Section 32(2)(i) of the Amendment Act states that the amended Section 115 will not apply to or affect any revision proceedings which had been finally disposed of, thereby implying that the amended Section 115 will apply to all pending revision proceeding. By way of contrast, we may refer to Section 32(2) (f) of the Amendment Act which provides that the provisions of Section 96 of the Principal Act, as amended by Section 9 of the Amendment Act, shall not apply to or affect any appeal from original decree, which had been admitted before the commencement of Section 9 and every admitted appeal shall be dealt with as if Section 9 had not come into force. It follows therefore that the decision in SUBBARAJU is correctly decided.

8. The Supreme Court considered this question recently in SHIV SHAKTI CO-OPERATIVE HOUSING SOCIETY v. SWARAJ DEVELOPERS AIR 2003 SCW 2445 and held that even revision petition admitted before the amendment have to be decided in accordance with the amended provision. It held that no person has a vested right in a course of procedure, but has only the right of proceeding in the manner prescribed; and if by a statutory change, the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation. The Supreme Court further held:

"The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be subject matter of revision u/s 115. There is marked distinction in language of Section 97(3) of the Old Amendment Act (that is, CPC [Amendment] Act, 1976) and Section 32(2)(i) of the Amendment Act (that is, Amendment Act 46 of 1999).

While in the former there was clear legislative intent to save application admitted or pending before the amendment came into force, such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures.....

Section 6 of the General Clauses Act has no application because there is no substantive vested right available to a party seeking revision u/s 115 of the Code. In Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, , it was observed that if a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, there is no scope for granting it afterwards. There is modification of this position by application of Section 6 of the General Clauses Act or by making special provisions... Operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in the statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving

clause in favour of pending proceedings, then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall (not) continue but a fresh proceeding for the same purpose may be initiated under the new provision."

9. In view of the foregoing, the amended Section 115 which came into effect on 1-7-2002 would apply to all pending revision petition also. Therefore, the maintainability of this revision will have to be decided with reference to the amended Section 115. It is not in dispute in this case that if the application had been decided in favour of the petitioners, it would not have finally disposed of the suit. As a consequence, the revision petition is liable to be dismissed as not maintainable. Accordingly the revision petition is dismissed.