

(1977) 02 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Revision Application No. 212 of 1976

Mehboob Alam and Another

APPELLANT

Vs

Smt. Nasira Begum and Others

RESPONDENT

Date of Decision : 28-02-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Registration Act, 1908 — Section 17, 49

Citation : AIR 1977 Raj 189 : (1977) RLW 324 : (1977) WLN 94

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Advocate : A.K. Bhandari, for the Appellant; V.K. Bandhu, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—This revision petition has been filed by the defendants against the order passed by the Civil Judge, Jaipur City, dated April 27, 1976 by which he held that the document dated December 25, 1961 produced by the defendants was compulsorily registrable under the provisions of Section 17 of the Indian Registration Act and was inadmissible in evidence on account of the provisions of Section 49 thereof. An objection has been taken by the learned counsel for the opposite party that the revision application is not maintainable u/s 115, C. P. C. in view of the decision of a Full Bench of this Court in Harakchand v. State of Rajasthan RLW 1970 320 . In Harakchand's case the question of admissibility of a document in evidence on the ground of non-registration thereof was raised before the trial court who rejected the objection and held that the document was admissible in evidence, holding that the same was not compulsorily registrable. The Full Bench of this Court made the following observations :--

"In this case it has been argued before us that by wrongly construing a document, the trial court held that it was admissible in evidence, while on a proper construction of document, it was inadmissible in evidence because of the provisions of the Registration Act and that the trial court thus proceeded to

incorporate on record inadmissible evidence which would eventually be taken in consideration while finally deciding the case. Whether a particular evidence was admissible according to law or not is a question of law which the trial court was entitled to decide and if any error has been committed in deciding that question, it cannot be said that such error was in any way an error in the manner of exercise of jurisdiction,"

2. The aforesaid observations are fully applicable to the facts of the present case. The order of the trial court in the present case holding that the document in question was compulsorily registrable and that he same could not be received in evidence for want of registration, even if it may be erroneous, does not relate to the jurisdiction of that court, and, therefore, the provisions of Section 115, C. P. C. are not attracted to such an order. The question of construction of a document is a part of the proceedings of the court and in case a mistake is committed by it in construing the document, the order passed by the trial court in such matters may at best suffer from an error of law but the same has no concern with the jurisdiction of that Court. The trial court had jurisdiction to entertain the suit and to decide all questions raised therein. There is no error or irregularity in the exercise of jurisdiction nor there is a question of failure to exercise jurisdiction in the present case. Whether a document was compulsorily registrable or not u/s 17 of the Registration Act is a matter which fell entirely within the jurisdiction of the trial Court and the trial court had jurisdiction to decide that question of law, rightly or even wrongly. If any error has crept in the decision of the trial court on the aforesaid question, the same can be corrected in the appeal that may be filed against the decree, which will ultimately be passed in the suit. Thus the decision in Harakchand's case RLW 1970 320 completely governs the present matter and I am firmly of the opinion that a revision application u/s 115, C. P. C. is not maintainable in this case.

3. Learned counsel for the applicant has submitted an application that in case the revision application is not held to be maintainable u/s 115, C. P. C., then the application filed by the petitioner may be considered to be one under Article 227 of the Constitution. Reliance has been placed upon a decision of this Court in *Firm Poonam Nahta v. Amar Chand* 1972 WLN 1124. In the first place, that decision is distinguishable on the ground that it was given in the case of an objection petition under Order 21, Rule 58, C. P. C. and even the ultimate decision on that application could not be the subject-matter of an appeal, while in the present case the question of admissibility of the document in question on the ground of non-registration thereof has arisen in a suit and the petitioner would have a remedy by way of appeal, as already observed above, against the ultimate decree that would be passed in the suit. In the second place, the learned single Judge entertain the application under Article 227 of the Constitution in the aforesaid case as he was of the opinion that the petitioner in that case would be put in such a position that he would not be able to get his claim established without payment of heavy amount of Rs. 11,000/- by way of stamp duty and penalty, which he was required to pay. In view of the peculiar

facts of that case the learned Judge thought it proper to entertain the application under Article 227 of the Constitution to avoid the alleged perpetration of injustice. No such circumstance has been found to exist in the present case. Every decision, if found to be erroneous, is bound to cause some difficulty or hardship to a party in the conduct of his case, but that would hardly be a relevant consideration for entertaining a petition under Article 227 of the Constitution, while another remedy is open to the petitioner. The supervisory jurisdiction of this Court under Article 227 is to be sparingly used in appropriate cases, where the court is convinced that gross injustice would otherwise be perpetrated, in case this court does not interfere in the exercise of its extraordinary powers under Article 227 of the Constitution. In the circumstances of the present case, I am not at all convinced that any extraordinary situation, calling for the interference of this court under Article 227 of the Constitution, has arisen.

4. Learned counsel for the petitioner submits that the document could at least be used for collateral purposes. Even if the document is unregistered and is inadmissible in evidence, on that ground, it can be put to legitimate use in accordance with law.

5. With these observations, the revision application is hereby dismissed.