

(1952) 09 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Revision Petition No. 166 of 2005

Mohan Lal and Another

APPELLANT

Vs

Shri Ram and Others

RESPONDENT

Date of Decision : 29-09-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Article 181

Citation : AIR 1953 P&H 30

Hon'ble Judges : Teja Singh, C.J.;Gurnam Singh, J

Bench : Division Bench

Advocate : Jagan Nath, for the Appellant; Atma Ram, for the Respondent

Judgement

Teja Singh, C.J.—This revision petition which was originally heard by my learned brother was referred by him a Division Bench because he considered that the question of law involved therein was of some importance. The fact briefly stated are as follows:

2. The property in dispute belonged to one Anant Ram who gifted some time the Sabatan Dharma Sabha, Patiala. After some time the Sabha sold the property to 6 persons. The Plaintiffs, who claim to be Anant Ram's collaterals, brought a suit for declaration that the gift made by Pre-emption. Later on, the Plaintiffs gave up their right to sue for declaration and consequently the suit became one for simple preemption. The vendees denied the Plaintiffs' right to pre-empt the sale and also joined issue could be granted a decree. After the proceedings had been going on for some time, the vendes had been going on for some time, the proceedings raised the plea of waiver and in spite of the defendants' (Plaintiff's ?) objection it was put in issue and parties were required to adduce evidence thereon. The trail Court found for the Plaintiffs on the question of their right to pre-empt but dismissed their suit because it formed the opinion that they had waived the right. The Plaintiffs' appeal having been dismissed by the District Judge they came to the High Court on the revisional side. When the revision

petition came up for hearing before my learned brother on 6th March 1952, Mr. Atma Ram, counsel for the respondents, raised the objection that since two out of the six vendees had not been made parties to the petition, it was liable to be dismissed on that ground.

3. It is conceded by Mr. Jagan Nath counsel for the Petitioners that the sale was on favour of six persons and though all of them were parties the suit as well as the appeal preferred by the Plaintiffs? to the District Judge the names of two of them were omitted in the revision petition and consequently they are not parties to these proceedings. He, however urges that this defect is not fatal to his case case and since the petition was admitted by a learned judge of this Court it must be decided on merits.

4. It cannot be denied that the words of Section 115, Civil P. C, which deals with the revisional jurisdiction of the High Court, are very wide and it is not necessary that before the High Court calls for the record of any case decided by a Court subordinate thereto, it should be moved to do so by a party to the case and by means of a regular petition. This means that when a petition is made to the High Court for the exercise of revisional power, it need not be in any particular form nor it need necessarily satisfy all the requirements which are Imperative in case of other petitions such as petitions of appeal. This conclusion is strengthened by the fact that there is no provision made in the Code regarding the form of a revision petition and the parties that have to be impleaded therein. It may also be mentioned that unlike appeals, applications for revision are not dealt with by any specific Article of the Limitation Act and the only Article under which they can possibly fall is the residuary Article 181 which governs all applications not otherwise provided for. The result is that whereas in case of an appeal if a person who is a necessary party thereto is not impleaded within the time allowed by law he can urge that he cannot be impleaded or brought on record after the lapse of that period, because a valuable right has accrued in his favour; no such argument can be advanced by a person who is not made a party to a revision petition. It is true that before the High Court sets aside or modifies the order of a subordinate Court in exercise of its revisional powers, it must give notice to and hear the party who is going to be adversely affected by its decision, but no time is prescribed for giving such notice. One of the cases cited before us by Mr. Jagan Nath is the decision of the Judicial Committee of the Ijlas-i-Khas of the erstwhile Patiala State in-"Ghaus Mohd. v. Dalmir" Civ. App. No. 101 of 2001, and the observations made by Sir Jai Lal in that case support the view that I am taking. That appeal arose out of a revision petition to the High Court Patiala in which certain necessary parties had not been impleaded in the petition in so many words. The High Court held that the petition did not lie because of want of proper parties. While setting aside the decision of the High Court this is what the learned President of the Judicial Committee observed:

It is contended in this appeal that the view of the learned Judge of the High Court is erroneous because there is no law which requires that a written petition

for revision should be filed in every case or even that the High Court should be moved to exercise its revisional jurisdiction by an aggrieved person who must have been a party to the proceedings before the court whose judgment is sought to be revised. It is contended that this jurisdiction can be exercised by the High Court even suo motu....and that when the record has been called by the Court and is before it, it must be deemed to be seized of the case, in spite of any purely technical objections to the manner in which the exercise of its jurisdiction may have been invoked. In support of this contention reference is Made inter alia to - "Kazim Husain v. Pearey Lal" AIR 1939 Oudh 277 and-"Lalta Devi v.Balkishan Chopra" AIR 1933 Lah 327. Both these judgments support the contention of the Appellants.

In a Division Bench case decided by the Sind. Chief Court - "NaoomalTourmal v. Tarachand Sobhraj" AIR 1933 Sind 200, the question was whether the provisions of Ordere 22 relating to abatement of suits and appeals when legal representatives of a deceased party are not brought on the record within the time allowed by law applied to applications for revision. The learned Judge answered the question in the affirmative and made the following remarks:

There is au analogy between a revision application and an appeal but the two are not identical. In a suit or an appeal the points to be decided ordinarily are those on which the parties are at .variance. A revision application stands on different footing. It is a matter between a higher court and a lower Court; in fact revisional powers may in certain cases be exercised without an appeal or an application by any of the parties concerned,

5. For all these reasons, I uphold the contention that unlike an appeal, a revision petition cannot be dismissed merely because every person who was a party to the proceedings in the subordinate Court or in whose favour the said Court gave the decision, has not been in pleaded as a respondent therein. At the same time I am of the opinion that since a relief to be granted on a revision petition is discretionary with the High Court, it is open to it to take into consideration the conduct of the Petitioner and to refuse to look into the record of the subordinate Court and to exercise its revisional jurisdiction because he was guilty of delay or negligence, etc. Mr. Jagan Nath's argument that when the High Court once sends for the record of the subordinate Court, it is bound to examine it and if it comes to the conclusion that the lower Court exercised a jurisdiction not vested in it by law or it failed to exercise a jurisdiction so vested or it acted in exercise of its jurisdiction illegally or with material irregularity, it must grant the relief prayed for by the Petitioner, is not supported by any authority and appears to me to be wholly devoid of force. In the very case - "Ghaus Mohd. v. Dalmir" Civil Appeal No. 101 of 2001 (Pepsu), relied upon by him this is what Sir Jai Lal observed:

Whether in a particular case the Court should decline to exercise its revisional jurisdiction owing to the petition being belated or the Petitioner being guilty of negligence must depend upon the circumstances of each case.

The other case to which reference may be made is - AIR 1948 84 (Oudh) In that case the legal representatives of a deceased party had not been impleaded within the requisite time and it was urged on behalf of the respondents that the petition had abated. The Petitioner's position was that Order 22 did not govern revision petitions and. further that the High Court having once decided to send for the record of the subordinate Court it was bound to examine it and" give its decision on merits. One of the cases relied upon by his counsel was "Kazim Husain v. Peary Lal" 15 Luck 26, in which the following observations were made by Radha Krishna Srivastava J.:

When an application has, been admitted, the effect of the admission is that the High Court has decided to call for the record of the case, and in my opinion when that stage is reached it is the duty of the High Court to examine the record and pass such orders as it thinks fit and in order to be able to do this more effectively it is necessary that the record be examined in the presence of the parties.

The learned Judges who decided - "Khuda Bux's case" agreed with the view taken in - "Kazim Husain's case", that Order 22 did not apply to a revision petition but as regards the above mentioned remarks of Radha Krishna Srivastava J. this is what they said:

If the principle laid down by the learned Judge were pressed to its logical conclusion it would follow that no revision application made u/s 115, Civil P.C. once it is admitted, could be dismissed for default. But we are aware that if the applicant in such a case does not appear on the date of hearing, or does not otherwise prosecute the case his application is liable to be dismissed in default. The effect of the admission of a revision application is to our mind no more than that the High Court has decided that the record shall be sent for and the applicant heard in support of his application unless by his conduct in connection with the proceedings he disentitles himself to such hearing. We are unable to hold that by admitting a revision petition the High Court necessarily undertakes to examine the record of the case.

With all deference, I agree with this view and now proceed to examine whether the present Petitioner has disentitled himself to the hearing of his petition by his conduct in connection with these proceedings.

6. The appeal by the District Judge was decided on 7-5-2006 and the revision petition to this Court was made on 11-8-2006 and it has been pending here for about three years. As I have already mentioned all the vendees were parties to the suit as well as the appeal in the District Judge's Court. Why two out of them were left out in this Court has not been explained. If it was not a case of extreme negligence at least it was a case of carelessness and I see no reason why it should be condoned. It may also be pointed out, that even though the respondents took objection that proper parties were not before the Court when the case came up before my learned brother on 6-3-1952, no effort has been made by the Petitioner to have them impleaded. The only explanation that is

offered for this is that it was within the power of the Court to summon all the parties. There can be no doubt regarding the Court's power but the question is why should that power be exercised for the benefit of a party who has been quite negligent. In view of all this I hold that the Petitioner is not entitled to any indulgence and this is a fit case in which the Court should refuse to inspect the record of the subordinate Court. With this expression of opinion on the question referred to the Division Bench I would direct that the case should go back to the learned single Judge.

Gurnam Singh J.

7. I agree.