

(1952) 12 AP CK 0004

In the Andhra Pradesh High Court

Case No : Revision Appln No. 737/B5/2 of 1952-53

Mohd. Akbar Khan

APPELLANT

Vs

Jaswant Rao and Others

RESPONDENT

Date of Decision : 02-12-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1953 AP 194

Hon'ble Judges : Misra, C.J

Bench : Single Bench

Advocate : Jalil Ahmed, for the Appellant;

Final Decision : Dismissed

Judgement

1. This is an application in revision u/s 115, CPC The suit is still pending decision in the Court of the learned Munsiff of Parbhani. The complain is about the nature of the issues framed by him. It is said that the learned Munsiff has cast the issues wrongly inasmuch as he placed the burden of proof On the applicant without justification.

2. The first point which has to be considered in this case is whether in wrongly casting the burden of proof on the applicant, the learned Munsiff can be said to have committed an error of jurisdiction within the meaning of Section 115, CPC The Section , it is well known, is the definitive of the scope within which the revision power of a High Court can be exercised. As observed by their Lordships of the Privy Council in - Balakrishna Udayar v. Vasudeva Aiyar AIR 1917 PC 71 (A), the Section applies to jurisdiction alone. It is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. Once it is conceded that Court had the requisite jurisdiction to decide the matter, it is wholly immaterial for the purpose of the Section whether the decision is right or wrong on merits. Reference in this connection may be made to the well-known passage in the pronouncement of Lord Hobhouse in - Malkarjun v. Narhari 27 Ind App 216 (PC) (B):

In so doing the Court was exercising its jurisdiction. It made a sad mistake it is true but a Court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken the decision, however wrong, cannot be disturbed.

The earliest case in which the matter was considered is - Amir Hassan Khan v. Sheo Baksh Singh 11 Ind App 237 (PC) (C). Their Lordships there remarked:

The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity." It follows that when the Court has exercised its jurisdiction in the proscribed way but its conclusions on merits are challenged recourse cannot be had to Section 115, Civil P. C, for redress of the wrong since the Court cannot be said to have acted illegally or with material irregularity in the exercise of its jurisdiction. It only decides wrongly; but does not necessarily exercise its jurisdiction wrongly.

3. There have been, it is true, occasional departures from this rule in view of some hard cases and I am aware of decisions where it has been said that where issues are framed wrongly or their burden has been misplaced, it may be deemed to constitute irregular exercise of jurisdiction inasmuch as the error is basic and it cannot be rectified except after great delay if the aggrieved party is forced to wait till after the decision of the suit. I regret I am not able to reconcile myself to that view. It may, of course, at times, happen that a perverse decision is given or a conscious departure from the true principles of law is made. Such cases are of very rare occurrence and have to be determined on different principles. Cases where there is a bona fide error in deciding questions of law or fact do not fall under it. and if there is no question of jurisdiction arising in them, they do not fall u/s 115, Code of Civil Procedure.

4. In the present case, I can find no justification for holding that there is any irregularity in the exercise of jurisdiction. I regret therefore, I am unable to admit this application

5. The application is rejected summarily.