
(1950) 08 GAU CK 0005
In the Gauhati High Court
Case No : Civil Revision No. 47 of 1950

Narayan Kalita

APPELLANT

Vs

Mt. Bhabitri Deby and others

RESPONDENT

Date of Decision : 30-08-1950

Acts Referred:

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

Citation : AIR 1952 Guw 46

Hon'ble Judges : T.V. Thadani, C.J; Ram Labhaya, J

Bench : Division Bench

Advocate : J.C. Chaudhuri, for the Appellant; R.C. Barua for Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Ram Labhaya, J.—This is a petition of revision from the order of the learned Additional Sub-Judge, U. A. D., dated 11-3-1950 by which the order of the trial Court dismissing plaintiff's suit was reversed and the case remanded to the trial Court for a de novo trial.

2. The main question in the case was whether the property originally belonged to a joint family and was allotted to the plaintiff on partition. Other questions arising in the case formed the subject matters of issues 3 to 6.

3. The learned Additional Sub-Judge was of the view that the suit had been disposed of on insufficient evidence. He found from the evidence on the record that a document evidencing the alleged partition existed. This document had not been produced or called for by any of the parties including the plaintiff. In this view the plaintiff was a helpless widow with no one to advice her. He seemed to think that the circumstances of the case were such that the Court should have called for the document. He, therefore, remanded the case for a fresh trial presumably exercising his discretionary powers under S. 151, Civil P.C. In his order he did not refer to any provision of the Code when directing remand of the

suit for retrial.

4. The Learned Counsel for the petitioner has contended that the plaintiff had the fullest opportunity for producing evidence. If she had failed to produce any relevant evidence, there was no occasion for ordering a retrial, and the Court in ordering a remand had exercised its jurisdiction with material irregularity.

5. All the High Courts with the exception of Allahabad High Court are now agreed that an Appellate Court has an inherent power *ex debito justitiae* to remand a case for retrial. We are in respectful agreement with this view. The Court, therefore, had the jurisdiction to remand the case under S. 151, Civil P.C., in the exercise of its inherent powers. The order reverses the decision of the trial Court by which the suit was dismissed and it directs a retrial of the suit. This order is not covered either by O. 41, R. 23 or R. 25. It can appropriately be placed only under S. 151, Civil P.C. This is not disputed. All that is urged is that even in the exercise of its inherent powers the Court should not have set aside the decision of the Court below when plaintiff on account of her negligence or default failed to produce some evidence which may possibly have been relevant. Viewed from a purely technical stand point, the argument is not without force. The question is whether the exercise of discretion by the Lower Appellate Court, in the circumstances of this case should be interfered with.

6. There is considerable divergence of judicial opinion on the point whether an order of remand which could be placed only under S. 151, Civil P.C. is at all revisable. It has been held in some cases that such an order of remand is not a case decided within the meaning of S. 115. Another view taken is that no revision lies in such cases as another remedy by way of appeal against the decree after remand is open to the aggrieved party. There are cases in support of the contrary view also. We need not resolve this conflict for purposes of this case, as we are not inclined to interfere with the order of the Lower Appellate Court in the exercise of our revisional jurisdiction which is entirely discretionary. The High Court is not bound to interfere on an extremely technical view in every case where an order has been made irregularly unless grave injustice or hardship could result from a failure to do so. The order in question is calculated to advance substantial justice and though not strictly regular, may not be interfered with in revision.

7. We, therefore, dismiss the petition but make no order as to costs.

Thadani, C.J.

8. I agree.