

(1948) 02 AHC CK 0005
In the Allahabad High Court

Prakash Chand and Others	Vs	APPELLANT
Mahendra Kumar and Others		RESPONDENT

Date of Decision : 18-02-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1948 All 288 : (1948) 18 AWR 112

Hon'ble Judges : Malik, C.J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Malik, C.J.—The learned Counsel for the opposite party has raised a preliminary objection that no revision lies.

2. The plaintiffs filed a suit for partition of certain properties on the allegation that the properties belonged to their grandfather Bimal Prasad and they and the defendants are entitled to a half share each in the said property.

3. The defence was that the plaintiffs' father, Jamboo Prasad, had been adopted by his maternal grandfather Din Dayal, and Jamboo Prasad was therefore not entitled to any share in the property left by his natural father, Bimal Prasad. It was mentioned that Jamboo Prasad by reason of this adoption had inherited the entire property belonging to his maternal grandfather which has been called shamli property. A plea was taken in the written statement that the suit, being for partial partition, was not maintainable and it should be dismissed. The plaintiffs denied that Jamboo Prasad was adopted by Din Dayal and alleged that Jamboo Prasad had got the property under a will.

4. Two issues (issues Nos. 6 and 13) were framed by the learned trial Judge. At the time of the hearing of the suit he, however, decided that these two issues were not material and directed that they should be struck off. Under Order 14, Rule 5, Sub-rule (2), Civil P.C. the Court had the right before passing a decree to strike out any issues that appear to it to be wrongly framed or introduced.

5. Learned Counsel has strenuously urged that the learned Judge was wrong in his view that these issues had been wrongly introduced. This would be a matter for decision by the Bench hearing the appeal from the decree. The order passed by the Court below is an interlocutory order and, in our view, no revision lies against that order.

6. Learned Counsel has cited a single Judge decision of the Patna High Court, Shiba Prasad Singh Vs. Nilabji Bali, where the learned single Judge held that if a Court refuses to frame an issue on the ground that in its view no such issue arises that order is revisable u/s 115, Civil P.C. The reason given by the learned Judge is as follows:

If the Subordinate Judge has decided wrongly that a particular issue is not necessary for determining the controversy while it is in fact necessary, it is this wrong decision of his which leads him to the position of failing to exercise his jurisdiction of framing necessary issues which he had.

With great respect to the learned Judge we do not agree with his view. He has not considered the question whether the decision of the learned Judge that a particular issue was not necessary was a "case decided". Further, we do not agree that if a Court comes to a wrong decision on a point of fact or on a point of law it necessarily becomes a question of jurisdiction if the decision is erroneous.

7. We are of the opinion that as far as possible when a Judge is seized of a case as a Court of first instance his discretion in the matter of day to day progress of the suit should be unhampered by interference by a Court sitting in revision, especially when the errors or mistakes made by the learned Judge are such that they can be corrected by the Court of appeal, if it is of a different opinion. If this Court, when hearing an appeal from the decree passed by the lower Court, is of the opinion that issues Nos. 6 and 13 were necessary, it can always call for findings on those issues. We, therefore, dismiss this revision with costs.