
(1953) 02 PAT CK 0006
In the Patna High Court
Case No : Civil Revision No. 367 of 1950

Ram Kirtarath

APPELLANT

Vs

Raghunath Missir and Others

RESPONDENT

Date of Decision : 16-02-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1954 Patna 193 : (1953) 1 BLJR 316

Hon'ble Judges : Ramaswami, J;Jamuar, J

Bench : Division Bench

Advocate : Kailash Ray, A.N. Banerji, Rasbihari Singh and S. Mustafi, for the Appellant; Mahabir Prasad and J.P. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This rule is directed against the order of the District Judge of Santal Parganas refusing to allow the petitioner to appeal in forma pauperis.

2. The opposite party had instituted a suit in the court of the Subordinate Judge of Dumka making for a declaration that they were the nearest reversioners of one Ramsunder Misser. It was alleged that after Ramsunder Misser's death his widow came into possession of the properties. The widow died sometime in the year 1948 after which the plaintiffs obtained the properties. It was stated that an adverse order was passed in a proceeding u/s 144, Criminal P. C., as a result of which the opposite party were dispossessed of the land. The opposite party, therefore, asked for recovery of possession of the land. The suit was contested by the petitioner who asserted that he was adopted in "Dattak" form by the widow of Mostt. Sumaro in 1943, that he was in possession of the land, that he had been recognised as a tenant by the landlord who granted him rent receipts. Upon a consideration of the evidence the Subordinate Judge held in the first place that there was no truth in the case of adoption set up by the petitioner, that the genealogy given by the opposite party was correct, that the opposite party were the nearest reversioners to the estate of Ramsunder Misser and the

suit was not barred by limitation. Upon these findings the Subordinate Judge granted a decree to the opposite party for all the reliefs claimed by them in the plaint.

3. Against this decree the petitioner filed an application under Order 44, Rule 1 before the District Judge of Santal Parganas asking for permission to prefer an appeal in forma pauperis. The main contention of the petitioner was that u/s 25 of Regulation II of 1886 the petitioner could not be ejected except under an order of the Deputy Commissioner of Santal Parganas. The argument was rejected by the District Judge on the ground that Section 25 referred to a raiyat and since the petitioner was not a raiyat within the meaning of that section, the suit was rightly decreed by the learned Subordinate Judge. It was further held by the District Judge that Act 14 of 1949 had repealed Section 25 Regulation II of 1886 and the new Act had retrospective effect. The District Judge, therefore, held that the findings of the Subordinate Judge were not vitiated by any gross error of fact or any misconception of law and accordingly rejected the application filed by the petitioner for leave to appeal in forma pauperis.

4. In support of this rule Mr. Kailash Ray addressed the argument that the District Judge has committed a serious error of law in holding that Section 25 of Regulation II of 1886 had no application to this case and the petitioner was not protected from eviction of the land involved in the suit. Learned counsel stressed the point that Act 14 of 1949 had no retrospective effect since the question of eviction was not a matter of mere procedural right. Assuming but without affirming that the argument of the learned counsel is right and that the learned District Judge has committed an error of law, the question to be determined in the present case is whether the High Court has jurisdiction to revise the order of the District Judge dismissing the application filed by the petitioner in forma pauperis. Mr. Kailash Ray took the point that the District Judge has "acted illegally or with material irregularity" within the meaning of Section 115(1)(c), Civil P. C. in finding that Section 25 of Regulation II of 1886 was not a bar to the eviction of the petitioner. I am unable to accept this argument. It is well settled in a "catena" of authorities that Section 115 only applies to a case where there is irregular exercise of jurisdiction or illegal assumption of jurisdiction and that the section cannot be invoked against a decision of law or fact in which the question of jurisdiction is not involved. In the present case, the learned District Judge may or may not have made a legal mistake in holding that Section 25 of Regulation II of 1886 was not a bar to the eviction of the petitioner; but can it be said that this mistake of law constitutes "acting in exercise of jurisdiction illegally or with material irregularity" within the meaning of Section 115(1)(c), Civil P C." In my opinion the present case does not fall within the ambit of Section 115(1)(c) for that sub-section only applies to a case where there is a material error of procedure, such as may affect the jurisdiction of the Court. The important words of Section 115(1)(c) are " "acted" in exercise of its jurisdiction illegally or with material irregularity". This clause has been construed by the Judicial Committee to mean that it applies only to a case where there is material irregularity (in?)

procedure in the course of the trial which would affect the ultimate decision of a case, see -- AIR 1949 156 (Privy Council) . This view as to the construction of Section 115(1)(c) has been approved by the Supreme Court in -- Keshardeo Chamria Vs. Radha Kissen Chamria and Others, in which Mahajan, J. after reviewing the relevant authorities stated that the errors contemplated by Section 115(1)(c) are errors relating to material defects of procedure and not to errors either of law or fact after the formalities which the law prescribes have been complied with. Applying the principle to the present case, it is obvious that Section 115(1)(c) has no application and it is impossible to hold that there has been any material defect of procedure committed by the District Judge. Mr. Kailash Ray referred to another Privy Council case -- AIR 1949 239 (Privy Council) . But that was a case falling u/s 115 Sub-section (b) and not a case u/s 115(1)(c). It was held by the Judicial Committee in that case that the subordinate court had by an erroneous construction of the Bengal Money Lenders Act invested itself with the jurisdiction which in law it did not possess, and the High Court was competent to interfere in revision to prevent such a result.

The argument of Mr. Kailash Ray u/s 115(1)(a) or Section 115(1)(b) stands on much weaker ground than the argument addressed u/s 115(1)(c). There might be some justification on the part of the learned counsel to argue that the case would fall u/s 115(1)(c) but there is no foundation at all for the argument that there is an improper assumption of jurisdiction or an improper failure to exercise jurisdiction u/s 115(1)(a) or Section 115(1)(b). Learned counsel suggested in the course of argument that by wrongly deciding that the application to appeal in forma pauperis was not competent the learned District Judge was in fact shutting out the appeal preferred on behalf of the petitioner against the decree of the Subordinate Judge. There is a fallacy in this argument for the present application is directed against the order of the District Judge dismissing the application for permission to appeal in forma pauperis. If the petitioner does not pay proper court-fee after the application had been dismissed the result might be that the appeal itself would stand dismissed. But dismissal of the appeal is not automatic result which would follow the dismissal of the application of the petitioner for leave to appeal in forma pauperis. In my opinion the argument of Mr. Kailash Ray must fail on the point and it is impossible to hold that the case falls under any of the subsections of Section 115, Civil P.C., even on the assumption that the District Judge had wrongly decided in law that Section 25 of Regulation II of 1886 was not a bar to the eviction of the petitioner by process of civil Court.

5. Mr. Kailash Ray pointed out that the learned District Judge has decided while disposing of the application under Order 44, Rule 1 that Section 25 of Regulation II of 1888 was not a bar for the eviction of the petitioner and that Act 14 of 1949 was retrospective in effect. Learned counsel also referred to the fact that the District Judge has decided that the appeal has been preferred on behalf of the minor petitioner through natural guardian and not by the guardian-ad-litem, for whose removal an application was not filed in proper time. On these grounds the District Judge "held that the appeal preferred by the minor petitioner was not

properly presented and therefore not competent. I agree with the learned counsel for the petitioner that the decision of the learned District Judge on these points should not be conclusive of the matter. In my opinion these points should be left open and if the petitioner pays proper court-fee and the appeal is heard in due course it will be open to the petitioner to reagitate these questions and to ask for a decision thereon from the appellate court.

6. Subject to these remarks I think that this application should be dismissed and the rule should be discharged. Hearing fee two gold mohars.

Jamuar, J.

7. I agree.