

(1952) 01 MP CK 0003

In the Madhya Pradesh High Court

Case No : Civil Revision No. 156 of 1950

Ramprasad Ramnarayan

APPELLANT

Vs

Harischandra Dwarkadas

RESPONDENT

Date of Decision : 07-01-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1(1), Order 14 Rule 1(2), Order 14 Rule 1(3), Order 14 Rule 5, Order 20 Rule 4
High Court of Judicature Act, 1949 — Section 29
Madhya Bharat High Court Act, 1949 — Section 29

Citation : (1952) 01 MP CK 0003

Hon'ble Judges : Shinde, J;Dixit, J

Bench : Division Bench

Advocate : Bhagwandas Gupta, for the Appellant; Shivdayal, for the Respondent

Judgement

Shinde, J.—This is a reference u/s 29 of the High Court of Judicature Act. The learned Judge who made this reference has not specifically mentioned the points in his order of reference. But a perusal of the order shows that the following points have been referred to us: (1) Whether this Court has jurisdiction to entertain revisions against interlocutory orders? (2) If the High Court has jurisdiction can a revision be entertained touching the question of onus of proof? Although until recently there had been a sharp difference of opinion with regard to the interpretation of the words "case decided", the preponderance of opinion is now in favour of the liberal interpretation of the words "case decided" used in Section 115 of the Code of Civil Procedure. One group of High Courts like Allahabad, Lucknow, Sind and until recently Lahore favoured a more restricted interpretation of the word "case". While the High Courts of Calcutta, Madras, Nagpur, Orissa and Patna have all along favoured a more liberal interpretation of the word "Case" used in Section 115, CPC Allahabad High Court has, except in very few cases, held the view that the word "Case" used in Section 115 is identical with the word "suit". This view is based on the group (sic) that although the word "case" is more comprehensive than the word "suit" no instance can be

quoted of its use in the Code where it would not at least include a suit and that where the case in which the revisional jurisdiction of the High Court is invoked happens to be also a suit then the suit which requires to be decided before the record is called for. The same view has been taken by Oudh High Court and in some of the earlier cases of Bombay High Court. Lahore High Court also took the same view until the decision of the Full Bench case of - "Bibi Gurudevi v. Mohammad Bakhsh" reported in AIR 1943 Lah. 65 (FB). The Full Bench dissented from the view taken by an earlier Full Bench in - "Lal Chand Mangal Sain v. Beharilal Mehar Chand 5 Lah 288. Bhide J. who wrote the principal judgment observed as follows:

If, however, the contention of the learned Counsel for the Respondents is correct, the High Court cannot interfere during the pendency of a suit even if the errors are gross or palpable, and it is perfectly clear that the final decision will have to be set aside eventually in the interests of justice owing to those errors. It will obviously mean enormous waste of time and money, if errors of this type could not be rectified by the High Court at once and thus the wide powers conferred upon the High Courts by Section 115 will be rendered nugatory to a large extent." Expounding the meaning of the word "Case" Bhide J. stated as follows:

The crucial question, therefore, is whether the word "case" when used with reference to a suit must be taken to mean the "whole suit" and nothing else as held in - 5 Lah. 288". The question is primarily that of the meaning to be assigned to the word "case". The word is of a very wide import. Its general meaning in legal phraseology according to the Oxford Dictionary is any "state" of facts juridically considered", as already pointed out. This meaning is wide enough to cover decisions on any set of facts which are the subject of controversy between the parties and would thus include "interlocutory orders". The learned Counsel for the Respondents referred to Section 33, Code of Civil Procedure, in support of his contention that the word "case" when used with reference to a suit must be taken to mean the "whole suit" and nothing else. But a reference to other sections of the Code will show that this contention is not sound. For instance, "judgment" is defined in the Code as a statement given by the Judge of the grounds of a decree or order. "Order" is defined as the formal expression of any decision of a civil court other than a "decree". According to Order 20, Rule 4 a judgment of any court other than a court of small causes shall contain a "concise statement of the case, the points for determination, the decision thereon and the reasons for decision". When the judgment related to an "order" (e.g. one of the orders which are appealable under Order 43 and which do not come within the definition of a "decree"), this will presumably mean the statement of "case" so far as it relates to the "order" in question. In other words, in this context, the word "case" must be taken to mean the particular branch of the case to which the order relates.

This exposition of the word "case" clearly indicates that the word "case" used in Section 115 is not identical with the word "suit" but is used in a wider sense so

as to cover even interlocutory order. In - AIR 1948 258 (Nagpur) the Full Bench of the High Court assigned the same wide meaning to the word "case decided". Pandhye J. in the course of his judgment in that case made the following observations:

The divergence of view can now be said to have been resolved in favour of the liberal interpretation" of the word according to which the word "case" includes interlocutory orders.

In -"Jagdish Saran v. Bhagwat Saran ILR (1940) All. 564, their Lordships of the Allaha- 52 Madhya Bharat Ramprasad Ramnarayan v. bad High Court held that an order refusing an amendment of plaint in the matter of correct description and array of addition of parties amounts to a case decided within the meaning of Section 115 of the CPC and revision lies therefrom. In - Atmaram v. Beni Prasad 57 All. 678 (PC) Allahabad High Court held that where an application to join party to a suit was disposed of without proper consideration and on a misapprehension of its nature, a revision lies against that order u/s 115, CPC These two decisions of the Allahabad High Court show that there is a distinct tendency to depart from the old view. However, in - Prakash Chand and Others Vs. Mahendra Kumar and Others, Malik C.J. observed:

The order passed by the court below is an interlocutory order and in our view no revision lies against that order.

Oudh High Court has also been following the old view taken by the Allahabad High Court. In - AIR 1942 431 (Oudh) Thomas C.J. and Gulam Hassan J. held that where the trial court has framed issue casting burden of proof upon the plaintiff and refused to accept the Plaintiff's application to recast the issue so as to remove burden of proof imposed upon him, no revision against the order of the trial court is entertain able at the instance of the Plaintiff on the ground that no case can be said to have been decided by the trial court.

2. The High Court of Bombay also accepted the narrow interpretation of the word "case" in some of its earlier cases on the ground that "case" does not include a branch of a case. Vide Senaji Kapurchand Vs. Pannaji Devichand, and - "Isa Adam v. Bai Mariam" AIR 1927 Bom. 664. But in a recent case it has favoured liberal interpretation of the word "case" Vide - "Municipal Borough of Ahmedabad v. Aryodaya Ginning and Manufacturing Co. Ltd. AIR 1941 Bom. 361 and - Jamnadas Vrijlal Vs. Chandulal Jamnadas, . As already stated the High Courts of Calcutta, Madras, Orissa and Patna have all along held the view that the High Court has jurisdiction to entertain revisions against interlocutory orders. Vide - Surpat Singh and Others Vs. Ratan Chand Sreemal, ; - "Lakshmiddevamma v. Nagayya AIR 1949 Mad 369 - AIR 1949 77 (Orissa) and- Shiba Prasad Singh Vs. Nilabji Bali,

3. From the discussion of the case law above I am clearly of the opinion that the word "case" used in Section 115, CPC is wide enough to include even interlocutory orders. The expression "judgment" is defined in Section 2(9) of the

CPC It states that judgment means the statement given by Judge of the grounds of the decree or order. Order 20, Rule 4, Sub-rule (2) lays down that judgments of courts other than Small Causes shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decisions. It follows, therefore, that even a judgment of an order must contain a concise statement of the case. In this view of the matter it is clear that the word "case" is not necessarily identical with the word "suit". There is nothing in the language of Section 115 itself to suggest that, the word "case" is used in a narrow sense. Besides except Allahabad High Court, all the High Courts in India favour liberal interpretation of the word "case". In these circumstances I see no reason to take a different View from that taken by the majority of the High Courts in India. I, therefore, hold that this Court has jurisdiction to entertain revisions against interlocutory orders.

4. Turning now to the question as to whether revision, touching the question of the onus of proof, can be entertained or not, we have to examine whether the language of Section 115 allows scope for such interference or not. In this case there is not so much a question of exercising jurisdiction riot vested or failure to exercise jurisdiction vested. The question mainly is whether the lower court has acted in the exercise of its jurisdiction illegally or with material irregularity. It has been held that where the law has prescribed the manner in which a court shall, exercise its jurisdiction and the court acts in disregard of those provisions, it acts illegally or irregularly in the exercise of jurisdiction. But where the court exercises its jurisdiction in the mariner prescribed but arrives at a conclusion or decision which is erroneous in law or fact it does not act illegally or with material irregularity. Vide - Lakshmi Shanker Tewari Vs. Rama Kant and Others, ; - Abdul Majid and Others Vs. L. Daleep Singh and Others, ; - Dominion of India Vs. Hazari Lal and Another, . In - AIR 1949 156 (Privy Council) , their Lordships of the Privy Council observed as follows:

Section 115 applies only to cases in which no appeal lies, and where the legislature has provided no right of appeal, the manifest intention is that the order of the trial court, right or wrong shall be final. The section empowers the High Court to satisfy itself upon three matters, (a) that the order of the subordinate court is within its jurisdiction, (b) that the case is one in which the court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied upon those matters, it has no powers to interfere because it differs, however, profoundly, from the conclusions of the subordinate courts upon questions of fact or law.

It is clear from this authority that under Clause (c) of Section 115 the High Court can interfere only when it is satisfied that the lower court in exercising the jurisdiction has acted illegally that is, in breach of some provision of law or with

material irregularity, that is, by committing some error of procedure. Unless these conditions are satisfied the High Court cannot interfere in Revision under Clause (c) of Section 115. Although there is a question of burden of proof involved in this case, in fact it is a question relating to the framing of an issue. Plaintiff's grievance is that issue No. 2 should be so framed as to place the burden of proof on the Defendant. Hence the real grievance of the Plaintiff is that issue No. 2 be reframed. Order 14, Rule 1(1) lays down that issues arise when a material proposition of fact or law is affirmed by one party and, denied by the other. Order 14, Rule 1(3) states that each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. If, therefore, the procedure laid down in Order 14 is not followed by the lower court, it may be said that the court acted illegally or with material irregularity in the exercise of its jurisdiction.

In the Full Bench case the Nagpur High Court expressed its opinion on this question as follows:

The subject of settlement of issues is dealt with in Order 14, CPC and Rule 1(3) of the Order provided that each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. The material propositions as defined by Rule 1(2) of Order 14 are those propositions of law or fact which a Plaintiff must allege in order to show a right to sue or a Defendant must allege in order to constitute his defence. If a court refused to frame an issue on a material proposition affirmed by one party and denied by the other, it would be guilty of not exercising jurisdiction vested in it by law requiring it at the first hearing of the suit to record issues on which the right decision of the case depends. If on the other hand it framed issues which do not arise out of the material propositions of law or fact affirmed by one party and denied by the other, it would be acting either in excess of its jurisdiction or with material irregularity, and in either case the order of the subordinate court may be open to revision. In fact, by refusing to frame an issue which actually does arise in the case, the court shuts out a trial of a part of his case. In such a case it would be necessary for the High Court to interfere in revision and to set the matter right so as to avoid waste of time and costs.

Vide - AIR 1948 258 (Nagpur) .

In - Bir Babu Vs. Raghubar Babu and Others, their Lordships of the Patna High Court held that the correct placing of the onus of proof is the vital point of procedure and incorrect placing of onus may, therefore, amount to material irregularity. In - Shiba Prasad Singh Vs. Nilabji Bali, , Ray, J. held that the provisions of Order 14, Rule 5 make it obligatory upon the Judge to frame such issues as are necessary for the purpose of determining the controversy between the parties and if he refuses to frame such issues as are really necessary for determining the controversy he fails to exercise jurisdiction which is vested in him and hence in such a case revision lies against the order refusing to frame issues. Vide Shiba Prasad Singh Vs. Nilabji Bali,

5. For these reasons I am also of the opinion that revision can be entertained touching the question relating to the onus of proof.

6. My answer to the questions referred, therefore, is (1) that the High Court has jurisdiction to entertain revisions against interlocutory orders and that (2) In this case a revision can be entertained touching the question relating to the onus of proof as it depends upon the correct framing of an issue.

Dixit, J.

7. This is a reference u/s 29(b) of the Madhya Bharat High Court Act. It arises out of a petition to revise an order of the trial court placing the onus of proof of one of the issues framed in the suit on the Plaintiff-applicant. When the petition came up for hearing before a single Judge of this Court, a preliminary objection was raised on behalf of the Defendant non-applicant that the revision petition was incompetent as the order of the trial court regarding the burden of proof was not a "case decided" within the meaning of Section 115 of the CPC and was not, therefore, revisable by this Court. In the order of reference, the learned Single Judge, after referring to the decision of various High Courts regarding the meaning of the expression "Case decided" and also to the decisions in which the question whether the High Court can revise an order of the trial court framing an issue or refusing to frame an issue has been considered, has expressed the view:

That a revision petition is competent if a proper case is made out u/s 115, Code of Civil Procedure, as by refusing to frame an issue which does arise in the case, the court shuts out a trial of a part of the case.

8. The precise question on which this Bench is required to express its opinion has not been formulated in the order of reference, and I must confess that I am unable to gather it from the order of reference. I, however, take it that in the context of the facts of the revision petition, the question which we have to answer is whether an order of the trial court wrongly placing the burden of proof is subject to revision by this Court u/s 115, Code of Civil Procedure. It is clear from the wording of Section 115, CPC that if the order of the trial court regarding the burden of proof of an issue is a case decided within the meaning of that section, then the High Court can clearly interfere in revision, if the trial court has in placing the burden of proof acted illegally, that is, in breach of some provisions of law, or with material irregularity. On the question whether an interlocutory order is covered by the expression "case decided" there is no doubt a conflict of opinion in the various High Courts. But the majority view, which appears to me, to be the correct view, is that the word "case" as used in Section 115 of the Code is wide enough to include an interlocutory order, and the words "record of any case" include so much of the proceedings as relate to an interlocutory order.

This is the view taken by the Calcutta, Patna, Madras and the former Lahore High Court. In - "Bibi Gurudevi v. Mohammad Bakhsh AIR 1943 Lah. 65 (FB), the entire case law on the meaning and scope of the expression "case decided" has been reviewed and it has been held that the word "case" is wide enough to

include an interlocutory order passed in a suit. I do not think I can usefully add anything to the view expressed in - AIR 1943 Lah 65 (FB)", with which I am in respectful agreement. As to the question in what cases the High Court should interfere in revision with an order of the trial court wrongly placing the onus of proof, it is clearly difficult to formulate any rigid rule. An order of the trial court regarding the burden of proof is an order of the subordinate court in the exercise of its jurisdiction and as pointed out very recently by the Privy Council in - AIR 1949 156 (Privy Council) an order of the subordinate court made within its jurisdiction can be interfered in revision only if the Court, has acted illegally, that is, in breach of some provisions of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that that it affects the ultimate decision. The question, therefore, whether in placing the burden of proof about an issue, the court has acted illegally, or with material irregularity, obviously depends on the facts and circumstances of the case.

If, for example, when a statute specifically puts the burden of proof upon a certain party and the Court puts the burden of proof the other way, the court clearly acts illegally. So also if on the facts and circumstances of the case, the correct placing of the onus of proof is a vital point of procedure, then, incorrect placing of onus may amount to material irregularity. The view that the High Court can, in such circumstances, interfere in revision with an order of the subordinate Court regarding the placing of the onus of proof, is supported by the decisions in - S.S.S. Varisai Muhammad Rowther Vs. Marungapuri Estate in charge of the Court of Wards and Another, and - Bir Babu Vs. Raghubar Babu and Others, . In my opinion, decisions bearing on the question whether the High Court can interfere with an order of the subordinate Court framing an issue or refusing to frame an issue are not relevant to the question before us.

9. I would, therefore, answer the reference by saying that the order of the subordinate Court placing the onus of proof can be interfered in revision if the court in placing the burden of proof has acted illegally, or with material irregularity.