
(2014) 09 AHC CK 0063
In the Allahabad High Court
Case No : Civil Revision No. 362 of 2008

Safat Hussain

APPELLANT

Vs

Sarva Hit Karini Sahkari Avas Samiti Ltd.

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1, Order 11 Rule 4, 115, 115(1)

Citation : (2014) 11 ADJ 235

Hon'ble Judges : Shashi Kant Gupta, J

Bench : Single Bench

Advocate : Anupam Kulshreshtha, Advocates for the Appellant; A.K. Singh, Akhilesh Kumar Singh, Ram Ji Yadav and Sunil Srivastava, Advocates for the Respondent

Judgement

Shashi Kant Gupta, J.—Heard the learned counsel for the parties and perused the record. This revision under Section 115 C.P.C. is directed against the judgments and orders dated 17.8.2007 and 30.4.2008 passed by the Civil Judge (Sr. Div.), Allahabad in Case No. 450 of 2001 whereby the application (Paper No. 66Ga) filed by the plaintiff under Order XI Rules 1 and 4 C.P.C. was allowed and the review application of the defendant revisionist was rejected.

2. The facts giving rise to the present revision are that a suit for specific performance of an agreement to sell dated 19.2.1992 was filed by the plaintiff respondent against the defendant revisionist in respect of the land in dispute claiming himself to be the owner of the disputed land. The defendant revisionist filed a written statement denying the allegations made in the plaint. During the pendency of the suit, an application under Order XI Rule 1 C.P.C. was filed by the plaintiff respondent for leave to deliver interrogatories with a prayer to call upon the defendant revisionist to answer the interrogatories. The said application was allowed by the Court below by its order dated 17.8.2007. Against the said order, the defendant filed a review application which too was dismissed by the Court vide order dated 30.4.2008. Hence, the present revision.

3. At the very outset, a preliminary objection was raised by the learned counsel for the plaintiff respondent with regard to maintainability of the present revision under Section 115 C.P.C. before this Court stating that the present revision has been filed against an interlocutory order whereby the Court below had merely allowed the application of the plaintiff filed under Order XI Rules 1 and 4 C.P.C. for leave to deliver interrogatories. He further submits that the judgment and order allowing the application under Order XI Rule 1 C.P.C. does not decide any right and liabilities of the parties and as such does not come within the purview of a "case decided" as contemplated under Section 115 C.P.C.

4. To this, learned counsel for the defendant revisionists submitted that the present revision is fully maintainable and trial Court has acted in the exercise its jurisdiction illegally and with material irregularity and if the impugned order is allowed to stand, it would occasion a failure of justice and cause irreparable injury to the defendants.

5. I do not find any substance in the arguments so advanced by the learned counsel for the revisionist for the following reasons:

An interlocutory order rejecting an application under Order XI Rules 1 and 4 C.P.C. for leave to deliver interrogatories does not amount to "case decided" within the meaning of Section 115 C.P.C. Such orders do not decide any rights and liabilities of the parties relevant for the purpose of suit. Even if it is presumed that the impugned order comes within the expression "case decided", revision against it will not be maintainable as the order would not fall under clauses (a) and (b) of the proviso to Section 115 C.P.C. Until and unless an interlocutory order determines some rights or obligations of the parties for the purpose of the suit, the impugned order will not come under the expression "case decided." If every interlocutory order is held to be revisable, it would frustrate the provision of Section 115 C.P.C.

6. Any one of the following two criteria laid down under the proviso to Section 115(1) C.P.C. have also to be satisfied in every case before the High Court can interfere with the order:

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the revision, suit or other proceeding; or

(b) if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

7. This Court in the case of Maheshwari Oil Mill Vs. Girjanath Durga Saran, , held that an order refusing to grant leave to a party to deliver interrogatories does not amount to a "case decided" within the meaning of Section 115, C.P.C. Since, when the Court exercises its judicial discretion in granting or refusing to grant leave to deliver interrogatories, it cannot be said to be an adjudication of some rights or obligations of the parties in controversy. It was further held that it is analogous to overruling or sustaining an objection to a question put to a witness

and it is purely interlocutory order which is not revisable.

8. In view of the principles laid down in Maheshwari Oil Mill (supra) it cannot be said that the trial Court committed an error of jurisdiction in allowing the plaintiff to deliver interrogatories to the defendant-revisionist. In view of what has been discussed herein above, the revision fails and is accordingly dismissed on the ground of maintainability.