

(2012) 09 MAD CK 0194
In the Madras High Court
Case No : C.R.P. PD No. 1776 of 2012

Saraswathi Bai and 3 Others

APPELLANT

Vs

B.S. Ramachandran @ Chandra Sah and 2 Others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Constitution of India, 1950 — Article 226, 227
Partition Act, 1893 — Section 2, 3(1)

Citation : (2012) 6 CTC 144

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : P. Valliappan, for the Appellant; V. Raghavachari, for the Respondent

Judgement

R.S. Ramanathan, J.—The Revision is filed by Defendants 2 to 5 in O.S. No. 437 of 2002 on the file of the Additional District & Sessions Judge (Fast Track Court V), Chennai against the order passed under Sections 2 & 3(1) of the Partition Act, 1893. A preliminary objection was raised by the learned Counsel for the First Respondent/Plaintiff that the Revision filed against the order passed in I.A. No. 304 of 2011 is not maintainable and the order passed by the Court shall be deemed to be a decree and against that only an Appeal lies.

2. Having recognized the mistake in filing Revision against the impugned order, the learned Counsel for the Revision Petitioners filed a Memo seeking permission of the Court to convert the Revision as regular Appeal u/s 96 of the CPC and the learned Counsel for the First Respondent raised one question whether a Revision can be converted into an Appeal on the basis of a Memo.

3. The learned Counsel for the Revision Petitioners relied upon the decision in Nawab Shaqafath Ali Khan and Others Vs. Nawab Imdad Jah Bahadur and Others, and submitted that the Court has got jurisdiction to convert a Revision into an Appeal provided the other conditions are fulfilled and therefore, submitted that the Revision was filed within 90 days from the date of the order

and therefore, there is no question of limitation for entertaining the Revision and the Court-fee paid on the Revision is also on the higher side and hence, the Court has got jurisdiction to convert the Revision into an Appeal.

4. In the above judgment, the Honourable Supreme Court has held in para 48 as follow:

If the High Court had the jurisdiction to entertain either an Appeal or a Revision Application or a Writ Petition under Articles 226 & 227 of the Constitution of India, in a given case, it, subject to fulfillment of other conditions, could even convert a Revision Application or a Writ Petition into an Appeal or vice versa in exercise of its inherent power. Indisputably, however, for the said purpose, an appropriate case for exercise of such jurisdiction must be made out.

Further, this Revision was filed within 90 days from the date of the order which is impugned and the Court-fee paid on the Revision is higher than the Court-fee payable on Appeal. Further, the technical objection that the Revision cannot be converted into an Appeal on the basis of a Memo, cannot also be accepted as this Court has got inherent power to convert the Revision into an Appeal. Hence, the office is directed to convert the Revision into an Appeal and post before the Judge concerned.