
(2007) 03 PAT CK 0149

In the Patna High Court

Case No : Civil Revision No. 1780 of 2005

Sarv Mangal Devi Trust and Others

APPELLANT

Vs

Bihar State Board of Religious Trust and Others

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2007) 2 PLJR 469

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : B.N. Saxena and Sujata Ojha, for the Appellant; Shashi Shekhar Dwivedi, Ajiteshwar Prasad Jittu, Pramod Kumar and Ranjan Kumar ., for the Respondent

Judgement

Chandramauli Kr. Prasad, J.—This Civil Revision application has been filed for setting aside the order dated 29.6.2005 passed by the District Judge, Patna in Miscellaneous Case No. 211 of 1999 dismissing the said Miscellaneous case. The Stamp Reporter has objected to the maintainability of the revision application. It has been pointed out that in view of Section 55 of the Bihar Hindu Religious Trust Act an appeal shall lie.

2. Petitioners contested the report and by order dated 15.9.2005 the question of maintainability was directed to be considered at the time of admission.

3. It is common ground that the District Judge has passed the impugned order in exercise of its power u/s 32(3) of the Bihar Hindu Religious Trust Act, hereinafter referred to as the Act.

4. Mr. Saxena, appearing on behalf of the petitioners submits that an order passed by the District Judge u/s 32 of the Act is final and in view of aforesaid, petitioners rightly resorted to the remedy of revision. Hence, the objection of the Stamp Reporter is fit to be overruled.

5. Mr. A.P. Jittu, appearing on behalf of Opposite Party Nos. 1 and 2 and Mr.

Shashi Shekhar Dwivedi, Senior Advocate, appearing on behalf of Opposite Party Nos. 3 to 5 and 7, however contend that u/s 55 of the Act every order passed by the District Judge is appealable unless otherwise provided in the Act. They submit that no other remedy is provided under the Act against an order passed by the District Judge u/s 32(3) of the Act. and. as such, petitioners have remedy of appeal. They point out that once the petitioners have remedy of appeal, revision would not lie.

6. The submission advanced necessitates examination of the scheme of the Act. Section 32(3) of the Act, inter alia. confers power to the District Judge for varying, modifying or setting aside the scheme submitted to it and subject to the result of such application, the order of the Board under sub-sections 1 and 2 shall be final. Section 32(4) of the Act provides that any order passed by the District Judge on any application made under sub- section 3 shall be final. Section 55 of the Act which is relevant for the purpose reads as follows:--

"55. Orders of District Judge to be appealable to the High Court.--(1) Unless otherwise provided in this Act, an appeal shall lie to the High Court against every order passed by the District Judge under this Act.

(2) No appeal shall lie from any order passed in appeal under this Section."

7. Mr. Saxena, points out that the order of the District Judge becomes final by virtue of Section 32(4) of the Act, hence, remedy of appeal shall not be available. In support of his submission he has placed reliance on a Division Bench Judgment of this Court in the case of Kailash Rai and Another vs. Ramjee Singh and Others (AIR 1975 Patna 144) and my attention has been drawn to paragraph 7 of the judgment which reads as follows:--

"7. For the reasons stated above, we allow this civil revision application with costs payable by Opposite Party No.1 and set aside the impugned order of the learned District Judge, hearing fee is assessed at Rs. 64/- only."

8. He points out that had the Civil Revision application not maintainable the Court ought not to have entertained that.

9. Reliance has also been placed on another Division Bench Judgment of this Court in the case of Ram Gopal Das and Another vs. State of Bihar and Others (AIR 1992 Patna 70) and my attention has been drawn to the following passage from paragraph 8 of the judgment which reads as follows:--

"8. The order passed under this sub-section is final which can be challenged in this Court by an application u/s 115 of the Code of Civil Procedure."

10. Having considered the rival submission, I do not find any substance in the submission of Mr. Saxena and the authority relied on are clearly distinguishable. True it is that an order passed by the District Judge u/s 32(3) of the Act is final by virtue of Section 32(4) of the Act but that itself not make the order revisable.

11. In my opinion, if the appeal would not lie because the order is final, for the

same reason revision would also not lie.

12. From a plain reading of the aforesaid provision, it is evident that against every order passed by the District Judge, which would obviously include an order passed by him u/s 32(3) of the Act, an appeal shall lie unless otherwise provided in the Act. The use of the expression "unless otherwise provided" in the context would mean that beside the remedy u/s 55 any other remedy is provided under the scheme of the Act. Nothing has been pointed out to show that any other remedy is provided under the Act. against the order of the District Judge. In the face of it, I am of the opinion that an appeal would lie against the order passed by the District Judge.

13. Now I revert to the authority of this Court in the case of Kailash Rai (supra). In the said case although a revision was entertained but the question of maintainability of revision was neither raised nor answered. In the case of Ram Gopal Das (supra) though this Court has observed that the order can be challenged in a revision u/s 115 of the CPC but in this case also this question was neither raised nor adjudicated and a passing reference made that such an order can be challenged in an application u/s 115 of the Code of Civil Procedure.

14. It is well settled that what is binding is the ratio decidendi. The only thing in a Judge's decision binding as an authority is the principle upon which the case was decided. Precedent on a question neither raised nor adjudicated is of no consequence. A case is an authority for what it decides. In none of the cases it has been held on adjudication that revision would lie. Hence decisions of this Court in the cases of Kailash Rai (supra) and Ram Gopal Das (supra) cannot be said to have laid down as on principle that revision would be maintainable against the order of the District Judge passed u/s 32(3) of the Act.

15. Section 115 of the Code of Civil Procedure, inter alia, provides that a revision would lie to this Court in which no appeal lies. Having found that the petitioner has remedy of appeal, the revision application is not maintainable.

16. Accordingly, I sustain the objection raised by the Stamp Reporter.

17. After I dictated the order, Mr. Saxena. prays to convert this application " into a Miscellaneous Appeal. Let him do so within two weeks.