
(1949) 03 AHC CK 0017
In the Allahabad High Court
Case No : First Appeal No. 132 of 1948

Sm. Ahmadi Begum	Vs	APPELLANT
Sm. Kulsumun Nisa and Others		RESPONDENT

Date of Decision : 31-03-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1952 All 644

Hon'ble Judges : Raghubar Dayal, J; Agarwala, J

Bench : Division Bench

Advocate : Z.H. Lari, for the Appellant; J. Swarup, Jr. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is an application in revision against an order of the learned Civil Judge of Pilibhit ordering the pltf. to pay the court-fee determined by the Munsarim in accordance with the directions of the Court.

2. The pltf.-applicant brought a suit for partition of certain properties. One of the properties was a certain Habib market at Agra. He valued it at one lac The debts. challenged the valuation & urged that the amount of court-fee paid was insufficient. The Court decided to determine the issues of valuation & court-fee first.

3. An amin was appointed who reported that the price of the market was Rs. 4,36,760. The Court, however, came to the conclusion that the proper valuation was Rs. 7,85,657 & ordered the pltf. to pay court-fee on his share of the property according to this valuation. Against this order the pltf. at first filed a First Appeal from order in this Court. On the last date of hearing learned counsel for the appellant desired that the appeal be converted into a revision. This prayer was granted. The revision, therefore, is now before us.

4. A preliminary objection is raised by learned counsel appearing for the opposite

parties. It is urged that no revision lies in view of the Full Bench decision of this Court reported in *Gupta & Co. v. Kripa Ram Brothers* 1934 ALJ 381 & in view of the provisions of Section 115 Civil P. C.

5. Learned counsel for the applicant argues that a revision lies because a decision of the nature under revision is now held to be of sufficient importance to be considered as a case decided & he refers to a later Full Bench decision of this Court reported in *Birbhan v. Emperor* 1948 AIJ 63. He also invites our attention to *Mohammad Ishaq v. Chief Inspector of Stamps* 1947 A. L. J. 99.

6. In the Full Bench decision reported in 1934 A. L. J. 381 it was clearly laid down that no revision lay u/s 115 Civil P. C. against a decision ordering the pltf. to pay additional court-fee. The basis of the decision was that such an order was not a case decided as it was merely an interlocutory order, the case in the lower Court being still pending. It is true that the ratio decidendi of this Full Bench decision is, to some extent, shaken by the altered position under the amended Court-fees Act. The Court-fees Act was amended for the United Provinces in 1938 by the introduction of Section 6-A, & 6-B in the Court-fees Act. u/s 6-A, a person, who is ordered to pay additional court-fee, has been given a right of appeal against the order. u/s 6 B, the Chief Inspector of Stamps has been given a right of revision against that order. In view of these considerations, the order demanding court-fee may be said to be a case decided.

7. Assuming, however, that the order of the Court below is a case decided, revision lies only when no appeal lies to this Court. u/s 6-A an appeal is provided for the pltf. It follows, therefore, that no revision is maintainable in this Court at his instance.

8. Learned counsel has argued that the order of the Court below is capable of being considered as consisting of two orders : First, a decision as to valuation & second, a decision demanding additional court-fee on the plaint. According to him Section 6-A provides for an appeal from the order demanding court-fee. It does not provide for an appeal from an order fixing a certain valuation of the property in suit.

9. If the revision is directed not against the order demanding court-fee from the pltf., but against the finding (which learned counsel urges to be treated as an order) fixing certain valuation of the property in suit, we think that it would not be a case decided so far as that finding is concerned. That finding obviously, even if treated as an order, is merely a reason for the final order demanding court-fee, & can, in no case, be treated as a case decided by itself. If, however, the order demanding court-fee were to be treated as the subject matter of the revision, the pltf.-applicant was faced with the dilemma that an appeal lay to this Court & he had already abandoned his right of appeal.

10. In this connection, the applicant, can get no help from the cases relied upon by him. In 1947 A. L. J. 99 the Chief Inspector of Stamps had filed a revision to the Dist. J. against the order of the trial Court in the matter of court fees. That

the Chief Inspector of Stamps was entitled to do having regard to Section 6-B. That was, therefore, a case decided. Against the order of the Dist. J. there was a revision to this Court. It was held that the revision was maintainable because the order of the learned Dist. J. in appeal was a case decided. We have no doubt that the order of the learned Dist. J. in appeal was a case decided. The facts of that case were entirely different from the facts of the present case & we do not think that case is applicable to the present case at all.

11. In 1948 A. L. J. 63 it was held by a Pull Bench that the order allowing an application for leave to sue as a pauper was a case decided. In the course of the judgment certain observations were made on which learned counsel has placed great reliance. We have considered those observations & we do not think that those observations can be taken to apply to a decision of a Court as to the valuation of a certain property as apart from the order of the Court demanding court-fee.

12. In our view no revision lies & accordingly we dismiss this revision with costs.