

(2012) 07 AHC CK 0286
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 33579 and 33576 of 2012

Smt. Heera Bai and Others	Vs	APPELLANT
Parmendra Kumar Kansoriya and Others		RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1(C), Order 9 Rule 13, 115

Citation : (2012) 11 ADJ 109

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Arvind Srivastava and Pushkar Srivastava, for the Appellant; M.K. Gupta, for the Respondent

Judgement

Hon''ble Pankaj Mithal, J.—In both the above writ petitions parties are common and both petitions are directed against the identical orders dated 26.4.2012 passed by the Additional District Judge, Jhansi dismissing the two similar revisions of the petitioners. Petitioners instituted a suit for cancellation of the sale deed. In the suit defendant respondents appeared and filed written statement but ultimately the suit was decreed ex parte. The defendant respondents then filed two separate applications both under Order 9 Rule 13 CPC for setting aside the ex parte decree. The said applications were allowed by the trial Court. The two revisions against the above order preferred by the petitioners have been dismissed by the impugned orders as not main tamable. Thus, these writ petitions.

2. I have heard Sri Arvind Srivastava and Sri M.K. Gupta, learned counsel for the parties. They have agreed for final disposal of both the revisions at the outset as the point involved is purely legal in nature as to the maintainability of the revisions and no factual dispute is involved.

The argument of learned counsel for the petitioners is that the revisions were maintainable in law and therefore the Revisional Court manifestly erred in dismissing the same as not maintainable.

The revisions were directed against the order of the trial Court allowing the application under Order 9 Rule 13 CPC and for setting aside of the ex parte decree.

The order allowing an application under Order 9 Rule 13 CPC is not appealable. It is only rejection of such application that appeal has been provided under Order 43 Rule 1(C) CPC.

3. Full Bench of this Court in Ram Sarup Vs. Gaya Prasad held that an order setting aside ex parte decree not being appealable is revisable, if the conditions laid down u/s 115 CPC are satisfied. It further says that proceedings under Order 9 Rule 13 CPC were a "case" within the meaning of Section 115 CPC and any decision thereon amounts to deciding the "case" and is not a mere interlocutory order.

4. Thus against the order directing for setting aside ex parte decree a revision lies u/s 115 CPC.

Section 115 CPC as applicable to the State of U.P. vide U.P. Act No. 14 of 2003 w.e.f. 1.7.2002 reads as under :

115. Revision.--(i) A superior Court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate Court where no appeal lies against the order and where the sub-ordinate Court has-

(a) exercised a jurisdiction and vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A revision application under sub-section (1), when filed in the High Court, shall contain a certificate on the first page of such application, below the title of the case, to the effect that no revision in the case lies to the district Court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the district Court.

(3) The superior Court shall not, under this Section, vary or reverse any order made except where-

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

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

(4) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the superior Court.

Explanation I.--In this Section,--

(i) the expression "superior Court" means-

- (a) the district Court, where the valuation of a case decided by a Court subordinate to it does not exceed five lakh rupees;
- (b) the High Court, where the order sought to be revised was passed in a case decided by a Court subordinate to the district Court exceeds five lakh rupees;
- (iii) the expression "order" includes an order deciding an issue in any original suit or other proceedings.

Explanation II.--The provisions of this Section shall also be applicable to orders passed, before or after the commencement of this Section, in original suits or other proceedings instituted before such commencement.

The aforesaid provision authorizes the superior Court to revise an order passed in a case decided in an original suit or other proceedings passed by a subordinate Court, if no appeal lies against it provided the sub-ordinate Court had exercised jurisdiction not vested in it by law; or has failed to exercise jurisdiction so vested in it; or has acted in exercise of its jurisdiction illegally or with material irregularity subject to certain limitations specified.

5. The above-referred order passed by the trial Court setting aside the ex parte decree is an order passed by the subordinate Court to the District Judge/ Additional District Judge in an original suit having the effect of finally deciding a stage of the proceedings i.e. proceedings under Order 9 Rule 13 CPC or the suit. Thus, the order is revisable provided there is jurisdictional error as enumerated above.

6. Therefore, when the District Judge/ Additional District Judge was having jurisdiction to revise the order, the refusal to exercise said power amounts to failure to exercise jurisdiction so vested in the Court. I am of the opinion that the order passed by the trial Court was certainly revisable u/s 115 CPC and the Revisional Court below failed in exercising its jurisdiction. The Court below dismissed the revisions as not maintainable relying upon a decision of the learned Single Judge of this Court in Ambika Chaudhary and Others Vs. District Judge and Others, wherein relying upon Section 115 CPC as it existed prior to the aforesaid amendment of 003, the Court upheld the contention that an order allowing application under Order 9 Rule 13 CPC does not decide the suit finally.

The aforesaid decision was based upon the provision of Section 115 CPC as it stood at that time which was quite different. Therefore, the said authority has no application in the present context when Section 115 CPC has been amended w.e.f. 1.7.2002.

In view of the aforesaid facts and circumstances, I hold that the revisions against the order directing for setting aside the ex parte decree are maintainable u/s 115 CPC.

Accordingly, both the impugned orders of the Revisional Court dated 26.4.2012 are set aside and the matter is remanded to it for decision afresh on merits in

accordance with law as expeditiously as possible preferably within a period of four months from the date of production of the certified copy of this order.