

(1996) 04 GAU CK 0008
In the Gauhati High Court
Case No : Civil Revision No. 38 of 1988

State of Tripura and Others	Vs	APPELLANT
Kalidas Bhattacharjee and Others		RESPONDENT

Date of Decision : 02-04-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58(4), Order 9 Rule 13, 115, 151
Limitation Act, 1963 — Section 5

Citation : (1997) 1 GLR 182

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : U.B. Sana, G.A, for the Appellant; A.M. Lodh, H.M. Lodh and H.K. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

N.G. Das, J.—This is a revision u/s 115 of CPC at the instance of Defendants, namely, the State of Tripura and others in Civil Suit No. T.S. 3/1984 in the court of learned Subordinate Judge, North Tripura, Kailashahar.

2. The facts leading to the present revision as stated are these:

The Plaintiffs in the aforesaid suit No, T.S. 3 of 1984 filed the suit against the present Petitioners seeking the reliefs, namely, (1) a decree of declaration that suit land forms part of khas jote No. 75; (2) a decree declaring the right, title and interest of the Plaintiff over the suit land; and (3) also for a decree of recovery of khas possession of the suit land.

3. The present Petitioners resisted the suit by filing a written statement; contending, inter alia, that the suit land was Government khas land and it never formed part of khas jote No. 75. It was also averred that the Plaintiff was in unauthorised occupation of the suit land.

4. Learned trial court framed necessary issues and after recording the evidence of both the parties decreed the suit declaring that the Plaintiff has right, title and

interest over the suit land and he also entitled to recovery of khas possession thereof.

5. Aggrieved by the judgment and decree of the trial court, the present Petitioners preferred an appeal on 14.8.86 along with an application for condonation of delay before the learned District Judge, North Tripura, Kailashahar. The appeal was numbered as T.A. 20/1986 and by the order dated 20.12.1986 the condonation prayer was also allowed. But the learned District Judge dismissed the appeal with no costs. Hence, this revision.

6. The first contention of Mr. U.B. Saha, the learned Government Advocate appearing on behalf of the Petitioners is that the judgment of the learned first appellate court must be set aside on the simple ground that it disposed of the appeal without disposing of the application which was filed on behalf of the Petitioners for condonation of the delay in preferring the appeal. Mr. Saha not only argued for a considerable length of time, but in his written argument also he took this ground for setting aside the judgment and decree of the appellate court and in support of his this contention he referred to a number of decisions.

7. Mr. A.M. Lodh, the learned senior counsel appearing on behalf of the Respondents has repelled the contention of Mr. Saha by drawing my attention to the order dated 20.12.1986 which was passed by the learned first appellate court in T.A. No. 20/1986. It is submitted by Mr. Lodh that this order will clearly indicate that the prayer for condonation was granted by the learned District Judge. The order dated 20.12.1986 may, I here fore, be quoted as under:

20.12.86 Heard Sri J.K. Gupta, Advocate on the side of Appellant and Sri S.B. Debroy and A. Deb, Advocate on the side of Respondent.

The appeal was filed on 4.8.86 with copy of decree but without any copy of judgment. The appeal has been preferred after 6 days of limitation. The learned Advocate Mr. J.K. Gupta submits the record and file was sent to Dharmanagar S.D.O. Office from Kailashahar D.M. Office and the officials at Dharmanagar took time to see if any appeal is to be preferred or not, and so the time lapsed. I have seen the office files as produced by Sri J.K. Gupta.

There is sufficient reasonable ground to condone the delay of 6 days in presenting the appeal. The delay is condoned u/s 5 of limitation Act.

To 2.1.87 for hearing of the appeal.

Sd/- District Judge North Tripura: Kailashahar.

The above quoted order is, in my opinion, a complete answer to the first contention that was raised by Mr. U.B. Saha, the learned Government Advocate.

8. Although the learned Government Advocate mainly argued on this point lie lidded some submissions after hearing the arguments of Mr. A.M. Lodh and his submission was that in ease it is found that a revision is not maintainable then this revision petition may be converted into an appeal.

9. In support of his contention the first decision which was referred to by Mr. Saha is a decision of the Calcutta High Court in the case of Mayarani Dutta Vs. Bhupal Banerjee, In that case a revision application was allowed to be converted into a memorandum of appeal. It is, therefore, necessary to look into the facts and circumstances under which the petition for revision was allowed to be converted into a memorandum of appeal. In that case, the Petitioner filed a suit and asked for temporary injunction. The prayer was refused. Against that order a Misc. appeal was filed in the court of District Judge, Burdwan. Along with that Misc. appeal another application for temporary injunction was also filed. But no ad-interim order was granted. Against that order the revision petition was filed before the Calcutta High Court which under the facts and circumstances held that each order disposing of such an application for temporary injunction is a final one and consequently an appeal lies. Therefore, the learned Judge allowed the revision application to be converted into a memorandum of appeal if the requisite court-fees were filed.

10. The next decision referred to by Mr. Saha is a decision of the Allahabad High Court rendered in the case of Bahori Vs. Vidya Ram, What happened in that case was that learned District Judge Budaun dismissed a revision as not maintainable on the ground that an appeal lay. The District Judge further held that the order for conversion of the revision into an appeal could not be granted as the prayer was made after the period of filing the appeal had expired. In dial case a revision petition was filed as the trial court while setting aside the ex-parte decree, under Order 9 Rule 13 of CPC imposed certain conditions. One of the conditions was the deposit of the entire decretal amount in the court and the other was the payment of Rs. 40/- as costs within 30 days failing which the application was to stand rejected. In the revision petition filed before the District Judge it was also stated that the condition for deposit of the entire decretal amount was penal and harsh. Learned District Judge was also of the view that such a condition was harsh, but he declined to allow the revision on the same ground that the revision was not maintainable.

11. Under these facts and circumstances the learned Judge held that since there is no specific provision in the CPC for conversion of an appeal into a revision or vice versa, the exercise of power has to be only under the provisions of Section 151 of the Code. The learned Judge also held that this power is undoubtedly discretionary and has to be exercised in a proper case. Accordingly, in the interest of justice learned Judge allowed the revision petition to be converted into an appeal and sent the case to the court of learned District Judge with a direction that the revision petition be converted to an appeal and hear the appeal on merits.

12. The third decision referred to by Mr. Saha is a decision of this High Court tendered in the case of Himangshu Kumar Nath decree holder-Petitioner v. on the death of Monmohan Nath his heirs Mihir Kanti Nath and Ors. opposite parties (1991) 2 GLR 46. In this case a revision petition was filed against the order

dated 3.6.81 of the Assistant District Judge No. 1 Cachar affirming the judgment and order of the Munsiff, Hailakandi releasing the land which has been attached in Money Execution Case No. 53/1978 in favour of the Petitioner. In that case, the Petitioner who obtained a money decree against the judgment-debtor filed the execution case and a plot of land belonging to the judgment-debtor was attached in execution of the said decree. The predecessor of the opposite party No. 1(a) to 1(g) filed an objection to the attachment on the ground that he was in possession of the land by virtue of an agreement to sell in his favour by the judgment-debtor. The trial court held that the continued possession of the objector was proved and on the basis of that finding he released the property from attachment. This decision of the trial court was affirmed by the Asstt. District Judge and against that order a revision petition was filed before the High Court. But in view of the provisions contained in Sub-rule (4) of Rule 58 of Order 21 of CPC any order passed thereunder is appealable. Under the acts and circumstances, the learned Single Judge held that a contract for sale does not of itself create any interest in or charge on immovable property. Such property can therefore, be attached and sold by the court in execution of a decree. Having regard to the facts and circumstances and the amended law as mentioned above the learned Single Judge allowed the revision into an appeal and after hearing the learned Counsel for the panics set aside the orders of the courts-below and directed that attachment shall continue subject to the obligation arising out of the agreement itself.

13. As discussed above, it will be quite apparent that the facts of the aforesaid three decisions are quite distinguishable from the present one. The decision of the Calcutta High Court related to an order of temporary injunction. The decision of the Allahabad High Court as discussed above related to an order setting aside an ex parte decree under Order 9 Rule 13 CPC and that of the decision of this Court related to an order releasing the attached property in connection with some execution case.

14. In the case in hand it will appear from the grounds setforth in the revision petition that the main ground of attack was that learned District Judge disposed of the appeal without disposing of the application for condonation. But that is not the fact. The learned District Judge by his order dated 20.12.86 granted the condonation petition and thereafter listed the appeal for hearing.

15. Mr. A.M. Lodh, the learned senior counsel has therefore, argued quite fervently that if the revision application is to be converted into an appeal it will mean that it has to be converted into a Second Appeal which requires substantial question of law. According to him unless some substantial question of law is found such an application cannot be converted into an appeal as the Petitioners have come before this Court against a judgment which was passed in first appeal. That apart, required court fees were not deposited and there was no such application for conversion of this revision petition into Second Appeal. On going through the impugned judgment I find that learned Addl. District Judge

mainly dwelt on the question of limitation, but simultaneously he also took the ground Nos. 7, 8, 10 and 11 of the memo of appeal into view and on consideration of those grounds he was of the view that the appeal had no merit. Ground No. 7 was whether the suit land was covered by jote No. 75. Obviously, this is a question of fact. The ground No. 8 was that the findings arrived at by the trial court in respect of issue No. 3 was erroneous. Issue No. 3 was whether suit land fell within the boundary of original khas jote No. 75 of Mouja Dewanpassa. This ground is substantially a question of fact and alike ground No. 7. The ground No. 10 related to the question of misjoinder of panics and that of 11 was that the suit was under valued. These questions are question of facts.

16. On going through the memorandum of appeal filed before the first appellate court and the revision petition filed before this Court I do not find that the Petitioners herein could agitate any substantial question of law.

17. The learned Counsel for the Respondents has therefore placed reliance upon a decision of the Supreme Court rendered in the case of Nain Singh Vs. Koonwarjee and Others, The facts in that case were that the Appellant was the Jagirdar of the suit properties. One Bhagirath was his tenant. The said Bhagirath died in the year 1947 leaving behind no male issue. His wife predeceased him. He had two daughters who were living at the time of his death. After his death Defendant Nos. 1 to 5 who are his distant relations took possession of the suit properties and got the revenue records changed in their names. Thereafter the Appellant brought the suit under appeal seeking reliefs; (1) to declare that he is the owner of the suit properties; (2) to quash the order of the Tehsildar; (3) to grain possession of those properties to him and (4) other usual incidental reliefs. The suit was contested. The trial court dismissed the suit holding that the civil court had no jurisdiction, and that in view of the abolition of the Jagirs, the Plaintiff can claim no relief. The appellate court set aside the decree and remanded the suit to the trial court. After remand the trial court decreed the suit. In appeal that decree was confirmed. In the second appeal the High Court of Madhya Pradesh while agreeing with the findings given in all issues did not agree with the finding relating to the fact of abolition of the Jagirs on the suit, On that issue it came to the conclusion that in view of the abolition of Jagirs under the Jagirs Abolition Act the Plaintiff lost his title to the suit properties. It rejected the contention of the Plaintiffs that the issue is concluded by the decision of the appellate court made before remand as the same had not been appealed against. It opined that the court had inherent power to consider the correctness of that order. It accordingly allowed the appeal and dismissed the suit.

18. The Supreme Court held that inherent jurisdiction of the court must be exercised subject to the Rule that if the Code does contain specific provision which would meet the necessities of the case, such provision should be followed and inherent jurisdiction should not be invoked. It was further held that in other words, the court cannot make use of the special provisions of Section 151 of the Code where a party had his remedy provided elsewhere in the Code and he

neglected to avail himself of the same. Further the power u/s 151 of the Code cannot be exercised as an appellate power.

19. Placing reliance upon this decision Mr. Lodh has argued further that the Appellants were quite unaware of the fact that the condonation prayer was allowed by the first appellate court by its order dated 20.12.86 and this very fact would clearly indicate that the Appellants were not at all diligent in conducting the case and since they could at ease file a second appeal they having not done so this Court cannot exercise its inherent jurisdiction to convert the revision petition into a memorandum of appeal as the revision petition also does not disclose any substantial question of law.

20. In view of the facts and principle of law enunciated by the Supreme Court, I am of the view that this revision petition merits no consideration and accordingly it is dismissed with costs.