

(1968) 07 KL CK 0028

In the High Court Of Kerala

Case No : Civil Miscellaneous Petition No. 74 of 1968

Thadikulangara Pylee"s son Pathrose

APPELLANT

Vs

Ayyazhiveettil Lakshmi Amma"s son Kuttan and Others

RESPONDENT

Date of Decision : 05-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Income Tax Act, 1922 — Section 35

Citation : AIR 1969 Ker 186

Hon'ble Judges : P.T. Raman Nayar, J

Bench : Single Bench

Advocate : V.R. Venkitakrishnan and T.C. Mohandas, for the Appellant; P.C. Balakrishna Menon and M. Velayudhan Nair, for the Respondent

Final Decision : Allowed

Judgement

P.T. Raman Nayar, J.—Despite apparent authority to the contrary in AIR 1944 198 (Oudh) and Natesa Naicker Vs. Sambanda Chettiar, I am inclined to the view that a subsequent binding authority (I emphasise the word, "binding") taking a different view of the law (in this case the subsequent decision of a Division Bench of this Court in Kochukutty v. Abraham Tharakan. 1968 KLT 23 taking a different view of the law from what I took in the decision sought to be reviewed) is a good ground for review. For it seems to me that it would be the discovery of a new and important matter, and, in any case, an error apparent on the face of the record, within the meaning of Rule 1 of Order XLVI1 of the Code, To adopt the language of the Supreme Court in Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, at p. 1377 this would be a case Where, without any elaborate argument, one could point to an error regarding which there could reasonably be no two opinions entertained. Therefore, a clear case of error apparent on the face of the record would be made out. That the phrase, "error apparent on the face of record" is not limited to errors of fact but extends to errors of law as wel) Is well settled and 1 think, finds statutory recognition in Section 15 of the Court-fees Act. 1870. On the synonymous language of Section

35 of the Indian Income Tax Act. 1922, "mistake apparent from the record" the Supreme Court said in *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, : "If a mistake of fact apparent from the record of the assessment order can be rectified u/s 35, we see no reason why a mistake of law which is glaring and obvious cannot be similarly rectified". In the light of the subsequent decision of the Division Bench it does not require any elaborate argument to point to the error made by me and there could reasonably be no two opinions entertained as to whether it was an error or not. There can be no doubt that I made a mistake of law that is both glaring and obvious. The view expressed in some decisions that it is difficult to see how an error can be said to exist on the face of the record when you have to travel outside the record to see if the judgment sought to be reviewed is correct or not, goes, I am afraid, too far, for that would apply equally to a case where the error consists in going against a binding authority as in going against the provisions of a statute. In either case you have to travel outside the record, in the one case, to the binding authority, in the other, to the statute concerned, to discover the error. As I have already remarked, the phrase, "mistake apparent from the record" occurring in Section 35 of the Indian Income Tax Act is synonymous with the phrase, "mistake or error apparent on the face of the record". -- you cannot get more from a record than what appears on its face. And as we have seen, the Supreme Court has held that a mistake of law which is glaring and obvious is a "mistake apparent from the record."

2. It seems to me to make no difference whether the binding authority demonstrating the error was a decision rendered before, or one rendered after the decision in which the error occurred, for a judicial decision only declares the law and does not make or change it. That, whether it be a fiction or not, is at any rate, the theory on which the Courts set and where, as in this case, it is a question of construing a statute that is indisputably the truth. For, surely, the law is made by the statute and not by the judicial decision construing it, and the statute does not change with the changing judicial construction. There might be a change in the view taken by the Courts of what the law is or was, but no change in the law itself, and, when decisions taking a different view are overruled or dissented from, all that is done is to declare that these decisions wrongly declared the law. Therefore, such a binding judicial authority is analogous to a statute which changes the law with retrospective effect which was the case considered in *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, . And, with due respect to what has been said in *Mohammad Azamat Azim Khan Vs. Raja Shatranji and Others*, a subsequent decision authoritatively declaring the law differently seems to me to stand on a stronger footing than a subsequent legislation retrospectively amending the law. For in the case of such subsequent retrospective legislation it could at least be argued (though not, I should think, so as to carry conviction, after *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, ; that there was no error when the decision sought to be reviewed was rendered. Such an argument

is not possible in the case of a subsequent authoritative judicial decision. For we must take it that, even when the decision sought to be reviewed was rendered, the law was (and was not subsequently made to be) what was declared in the subsequent decision.

3. The weighty reasons given in *Mudlapur Murari Rao and Others Vs. Balavanth Dikshit and Another*, in favour of a review apply equally whether the binding decision demonstrating the error was rendered before or after the erroneous decision, and, if as the Supreme Court has held, a subsequent legislation rendering a decision erroneous is a good ground for review, I fail to see why a subsequent binding decision declaring a decision to be erroneous should not be a good ground.

4. If it is borne in mind that a judicial decision only declares and does not make or change the law, although it might correct previous erroneous views of the law a review on the basis of a subsequent binding authority would not be a review of a decree which, when it was made, was rightly made, on the ground of the happening of a subsequent event so as to bring it within the rule laid down by the Privy Council in *Kotagiri Venkata Subbamma Rao v. Vellanki Venkatarama Rao*. (1901) ILR Mad 1 (PC) and accepted by the Supreme Court in *A.C. Estates Vs. Serajuddin and Co. and Another*, .

5. It is needless to point out that if (as I think I have) I have succeeded in showing that I did make an error falling within the phrase, "error apparent on the face of the record" there would be nothing in *Chhajju Ram v. Neki* AIR 1922 PC 112 or AIR 1934 213 (Privy Council) to preclude a review.

6. I allow this application for review. C. R. P. No. 675 of 1967 in which I rendered the erroneous decision will be reheard.

7. There will be no order as to costs.