

(1954) 11 MP CK 0007
In the Madhya Pradesh High Court
Case No : Civil Miscellaneous No. 77 of 1954

Vishwanath

APPELLANT

Vs

Sir Siremal Bapna

RESPONDENT

Date of Decision : 16-11-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 115
Constitution of India, 1950 — Article 133, 133(1)

Citation : AIR 1955 MP 66

Hon'ble Judges : Samvatsar, J;Nevaskar, J

Bench : Division Bench

Advocate : Pande, for the Appellant; Khabya, for the Respondent

Final Decision : Dismissed

Judgement

Samvatsar, J.—This is a petition for a certificate that the case is a fit one for appeal to the Supreme Court.

2. The facts giving rise to the petition may briefly be stated as follows:

Respondents 1 to 7 filed a suit in the Court of the District Judge Indore against the petitioners for recovering a sum of Rs. 17,577-14-0 due under a registered mortgage deed. The case was fixed for 9-10-53 on which date the defendants were to file their written statement. On this date the suit was dismissed for default because when the case was called neither the respondents nor their pleader was present in Court. On the same day the plaintiffs counsel who was busy in another Court when the case was taken up appeared later on and applied for restoration of the suit. The application was opposed by the petitioners but in spite of it, it was allowed and the suit was restored to its original number by the trial Court.

3. The petitioners preferred a revision application to the High Court which was dismissed by Chaturvedi J. on 15-5-1951. The defendants preferred an appeal to the Division Bench against the order of the Single Judge dismissing the revision

application but the appeal was dismissed also as we were of the opinion that no appeal lay against an order passed by a Single Judge under S. 115, Civil P. C.

4. The petitioners have now applied for a certificate that this is a fit case for appeal to the Supreme Court under Art. 133(1) of the Constitution.

5. The question raised in this appeal is whether on the wordings of S. 23 of the High Court of Judicature Act of Madhya Bharat an appeal will lie to a Division Bench against a decision given by a Single Judge in exercise of his revisional powers. The matter was considered in -- "Manoharlal v. Seth Hiralal Lt. Col.", Civil Misc Cass No. 46 of 1953 (A), and the Division Bench held that such an appeal did not lie.

6. Mr. Pande, the learned counsel for the petitioners contended that this was a fit case for appeal because:

(i) the order involved directly or indirectly a claim or question respecting property worth not less than Rs. 20,000. The learned counsel proceeded to contend that the property which is mortgaged for Rs. 15,000 was worth much more and an appeal to the Supreme Court was competent.

(ii) that the point of law raised was a substantial question of law within the meaning of Cl. (c) of Art. 133 (1) of the Constitution.

7. The case is obviously not covered by Cl. (b) of Art. 133 of the Constitution as the subject matter of dispute in the Court of the first instance and still in appeal is worth Rs. 17,577-14-0. The mortgage which is sought to be enforced was only a mortgage for Rs. 15,000 and the amount had swelled to Rs. 17,577-14-0 by the addition of interest up to the date of the suit. The learned counsel wanted to contend that for the purposes of Cl. (b) of Art. 133(1) the value of the property was the market value of the property mortgaged as distinguished from the mortgage itself. The learned counsel tried to support his arguments by referring to the decision of the Calcutta High Court in -- "Md. Nural Absar v. Haripada Biswas", 50 Cal WN 255 (B), and in -- Prabirendra Mohan Vs. Berhampore Bank Ltd. and Others, . In my opinion these cases have no application to the facts of this case.

8. The distinction between the value of the claim for the purpose of the suit and the market value of the property is not borne out by these two aforesaid decisions " 50 Cal WN 255 (B), was a case where the plaintiff had brought a suit challenging a certain arrangement for common management of certain property. The plaintiff claimed 7th share in that property and had valued the claim at Rs. 2,999. When he applied for permission to file an appeal to the Privy Council under S. 109. C. P. C., the application was opposed on the ground that the value of the claim was only Rs. 2,999. The learned Judge held that the judgment of decree involved directly or indirectly a claim or a question respecting property worth Rs. 10,000 or more and it was a fit case for giving a certificate as prayed for. In that case as will be apparent from the judgment itself the value of the

whole property for the purposes of common management was taken to be four times the value mentioned in the plaint and the basis for this valuation was the right to common management as mentioned in the plaint itself. It was not held in that case that the value for the purposes of the common management would be the market value of the property and at any rate the certificate was not granted on the latter ground. The other Calcutta case has also no application to the facts of this case.

In my opinion, the mortgage itself is an immovable property or an interest in immovable property and in a suit to enforce it, the loan advanced is the subject matter of dispute. It is this property which is involved in the suit and in appeal and this property is admittedly not worth more than the amount claimed in the suit. This view finds support from the decision of the Patna High Court in -- Sati Bala Dasi Vs. Chota Nagpur Banking Association Ltd. and Another, . That was also a case where the mortgagee had brought a suit to recover the loan due under the mortgage. The amount claimed with interest on the date of the suit was less than Rs. 10,000 and a decree was passed in that suit in plaintiff's favour. After the decree of the High Court the mortgagor applied for leave to appeal to the Privy Council under 8. 1.09. C. P. C. A two-fold argument, was advanced in support of the prayer for leave: (1) that the property involved was the property mortgaged and this was worth more than Rs. 10,000 and (2) that the amount found due on the date of the decision was more than Rs. 10,000 as further interest from the date of the suit was awarded by the Court. Both these contentions were overruled and the leave application was rejected. It was observed that.

In a mortgage suit the property which is given, as security for the loan is not the property in dispute in the suit, nor is a decision that the mortgagee is entitled to recover the money which he advanced one involving either a claim to or question respecting the security. The only property in dispute in a mortgage suit is the loan advanced by the mortgagee to the mortgagor. The mere fact that if this loan is not repaid in the time fixed by the decree, the mortgaged property will be sold does not, in my opinion, raise any question affecting the security. It was next contended that, as the decretal dues exceed Rs. 10,000, this should be taken as the value of the property in dispute for the purpose of the second paragraph of S. 110. If this were the proper construction of the section, the fixed requirement of para. 1 would be rendered nugatory.

9. In my opinion, it cannot be said that the decree involves directly or indirectly a claim or question respecting property worth Rs. 20,000 or more and the prayer for a certificate that the case is a fit one for appeal to the Supreme Court cannot be granted on this ground.

10. It was next contended by Mr. Pande that the question of law raised in his case viz., whether on the language of S. 23, High Court of Judicature Act an appeal can lie to a Division Bench against the order passed by a Single Judge in revision was a substantial question of law as it was likely to affect several cases.

The learned counsel supported his arguments by reference to the Full Bench decision of this High Court in -- "Gulabchand Gambhirmal v. Kudilal Govindram", AIR 1952 MP 149 (E), where it was held that a question in respect of which there may be room for difference of opinion is a substantial question of law. In that case, the question involved was whether the decision of a Division Bench of the High Court was final and conclusive or whether a further appeal lay against such decision to a Full Bench under S. 25. Madhya Bharat High Court Ordinance of 1948. The learned Judge of the Full Bench were of the opinion that the question and purpose of S. 2 (b) of the Act and construction of its language was reasonably debatable. The subject matter of dispute in that case was admittedly more than Rs. 20,000 and the case was certified to be a fit one for appeal to the Supreme Court. In this case the question of law raised does not appear to be so debatable. The view expressed by the Division Bench of this High Court in "Civil Misc. Case No. 46 of 1953 (MB) (A)", is clear and is binding on us.

11. In my opinion, the question of law raised is not a substantial question of law and that this case is not a fit one for granting the certificate prayed for.

12. The application is rejected with costs.

Nevaskar, J.

13. I agree.