

Murigappa Vs. Channappa

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Court : Karnataka

Decided On : Nov-11-1976

Reported in : AIR1977Kant111; ILR1977KAR147; 1977(1)KarLJ4

Judge : G.K. Govinda Bhat, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115

Appellant : Murigappa

Respondent : Channappa

Advocate for Def. : Chandrashekharaiyah, Adv.

Advocate for Pet/Ap. : B.V. Krishnaswamy Rao, Adv.

Judgement :

ORDER

1. this is a revision petition by the plaintiffs in O. S. No. 224 of 1969 on the file of the Court of the Munsiff, Chitradurga.

2. When the plaintiffs' counsel examined P. W. 3, he put certain questions, which were objected by the counsel for the defendant. The Court upheld the objections. Against the order of the Court upholding the objections of the counsel for the defendant, this revision petition has been preferred.

3. In my opinion, this revision petition filed under S. 115 of C. P. C. is not maintainable. If the trial court has upheld the objections on an erroneous view of law, the appellate court can correct it and additional evidence can be adduced. Secondly, every order made by the trial court in the course of trial is not open to revision under S. 115 of the C. P. C. Section 115 of the C. P. C. reads as follows:

'115. Revision- The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no. Appeal lies thereto, and if such subordinate Courts appears

(a) To have exercised a jurisdiction not vested in it by law, or

(b) To have failed to exercise a jurisdiction so vested, or

(c) To have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.'

4. It is not shown how this is a case 'decided' by a Court subordinate to the High Court in order to enable this court to invoke its Jurisdiction under S. 115 of the C. P, C. In *Baldevadas Shivlal v. Filmistan Distributors (India) Private Limited*, : [1970]1SCR435 the Supreme Court has laid down that the 'every order of the court in the course of a suit does not amount to a case decided within the meaning of S. 115, C P. C By overruling an objection to a question put to witness and allowing the question to be put, no case is 'decided'. The instant case is a converse one where an objection is upheld. When the trial Judge allows an objection and disallows a question put to the witness or when he overrule- an objection and allows the question to the witness, it cannot be said that the case is 'decided' within the meaning of S. 115, of the C. P. C. Therefore, the revision petition under S 115, C. P. C. is not maintainable. Accordingly this revision petition is dismissed but without costs.

5. Revision dismissed.