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Jayanthi Vs. Dayananda

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Court : Karnataka

Decided On : Apr-16-1991

Reported in : ILR1991KAR3826; 1991(4)KarLJ713

Judge : Shyamasundar, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 115(2)

Appeal No. : C.R.P. No. 1216 of 1991

Appellant : Jayanthi

Respondent : Dayananda

Advocate for Def. : Surya Prabha, Adv. for ;Padubidri Raghavendra Rao, Adv.

Advocate for Pet/Ap. : H.G. Hande, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Shyamasundar, J.

1. There is an interesting controversy in this case touching the interpretation of the powers of this Court to entertain a revision petition from an interlocutory order made by the Court below in respect of which an appeal lies not to this Court but to

the Court of the Civil Judge under Order 43 Rule 1(r) of the Code of Civil Procedure. Now the Civil Procedure has been amended in the year 1976 and the amendment brings into force Clause (2) of Section 115 which reads as follows:

'115(1).....

(2) The High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation.....'

There is also an Explanation appended thereto. But that is not of relevance. What the amendment appears to have done is to add Clause (2) to the existing Section which prior to its amendment read:-

'115(1) 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 Court appears -

(a) to (c).....

Rest of the provisions are not germane for our purpose. Objection to the maintainability of this revision petition is taken on behalf of the respondent contending this revision petition to be not maintainable at all since jurisdiction under Section 115 can be exercised only in cases where no appeal is provided. It is pointed out in this particular case against the impugned order an appeal lies to the Civil Judge under Order 43 Rule 1(r) and therefore, it is urged the revision petition filed before this Court is rendered otiose by the ban under Section 115(1) referred to supra. One Mr. Hande appearing for the petitioner invites my attention to the Decision of the Supreme Court in VIDYA VATI v. DEVI DAS, : [1977]2SCR182 in which Their Lordships while interpreting the expression 'in which no appeal lies thereto' as occurring in Section 115 CPC laid down that the prohibition apropos the maintaining of a revision petition adumberated in Clause (1) of Section 115 CPC was only with reference to such orders of the Court below from which an appeal did not lie directly to the High Court but if an appeal did lie to

some other Court the ban under Section 115 touching the exercise of jurisdiction by the High Court was not attracted and the High Court was still free to exercise its powers under Section 115 CPC, The dictum of the Court is found in head note 'A' which reads:

'Under Section 115 a revision application can lie before the High Court from an order made by a subordinate Court only if no appeal lies from that order to the High Court. The words of limitation used in Section 115 are 'in which no appeal lies thereto' and these words clearly mean that no appeal must lie to the High Court from the order sought to be revised. Where an order allowing a review application in a suit for possession is made by sub-Judge and an appeal against such an order lies to the District Court and not to the High Court, a Revision application filed against the said order before the High Court is maintainable and it cannot be rejected as incompetent.'

2. In this case notice having been issued on admission, the respondents join the issue and Counsel for the respondents points out that the ratio of the Decision referred to supra was of no avail in this case, because we have now on hand an issue touching exercise of jurisdiction under Section 115 CPC after it was amended and Sub-clause

(2) referred to supra had been added on. Counsel says the amendment makes all the difference. Mr. Hande, learned Counsel for the petitioner points out notwithstanding the addition of Clause (2), Clause

(1) which is material having remained as it was and having been interpreted by the Supreme Court in the Decision mentioned above, bound as I am by the dictum of the Supreme Court, I must also hold the revision petition to be maintainable and not to discard it on any in limine ground. Probably if Clause

(2) had not been added on, the submission of Mr. Hande as aforesaid would have been clearly evinciable. But the addition of Clause

(2) makes all the difference. True as pointed out by Mr. Hande it may not be open to say that the revision petition was not maintainable at all and therefore liable to

be rejected at the threshold itself. The expression in Clause

(1) of Section 115 (in which no appeal lies thereto) is carried even after the amendment, and that therefore remain the same for interpretation as held by the Supreme Court in Vidya Vati v. Devi Das referred in supra. But that will not help the petitioner. A certificate by me that the revision petition is maintainable will not take him anywhere because the moment Clause

(2) operates it ties down my hands and precludes me from granting any relief to the petitioner. Clause

(2) is very clear and very plain. All that it says is a revision petition arising out of an order from which an appeal lies either to the High Court or to any Court subordinate thereto precludes the High Court from varying or reversing such a decree or order. In this case there is no dispute that the impugned order being one of refusing an injunction, the petitioner who was plaintiff in the Court below had a right of appeal to the next highest Court namely, Civil Judge, Udupi, as provided for under Order 43 Rule 1(r). If that is so, it is clear that the petitioner had a right of appeal to a Court subordinate to the High Court, a situation enjoined by Clause

(2) of Section 115 totally restraining the High Court from granting any relief to the petitioner in that I cannot vary or reverse the impugned order in which event it would be futile for the petitioner to have made this revision petition itself.

3. In the result, while I hold the revision petition to be maintainable, I decline to interfere on the ground that under Section; 115(2) of the Civil Procedure Code, it is not open to this Court to interfere with the impugned order since an appeal lies therefrom to the subordinate Court of the Civil Judge, Udupi. For the reasons mentioned above, the revision petition fails and is dismissed. No costs.

4. Mr. Hande seeks permission to take back the certified copy of the impugned order produced in this case. He is permitted to take it back, after keeping a xerox copy of the order for the purpose of records. If the petitioner files an appeal and moves for an interim order, the learned Civil Judge will take it up and dispose it off even during the vacation if need be. Status quo to continue for a week.

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