

Ramnath Singh and ors. Vs. Ram Bahadur Singh and anr.

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Court : Allahabad

Decided On : Dec-15-1972

Reported in : AIR1973All290

Judge : O.P. Trivedi, J.

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

Appeal No. : Civil Revn. No. 196 of 1970

Appellant : Ramnath Singh and ors.

Respondent : Ram Bahadur Singh and anr.

Advocate for Def. : C.P. Srivastava, Adv.

Advocate for Pet/Ap. : G.P. Bhargava and ;A.N. Bhargava, Adv.

Disposition : Revision allowed

Judgement :

ORDER

O.P. Trivedi, J.

1. This defendants' revision has been filed by Ram Nath Singh and others under Section 115 of the Code of Civil Procedure.

2. The respondents had filed a suit against the petitioners on the allegation that the parties belonged to the same family and that the plot Nos. 423, 424 and 425 in dispute formed their joint tenancy in which the-plaintiffs-respondents asserted half share. These plots were acquired under the Land Acquisition Act and a compensation of Rs. 37.60 P. was awarded to and received by the defendants. According to the respondents-plaintiffs they were entitled to half of this compensation from the defendants-petitioners and a decree for the same. It is not necessary for the present purpose to mention the point raised in defence. It is sufficient merely to say that the respondents' suit was decreed with cost. The defendants-petitioners' appeal was dismissed by the Additional District Judge Allahabad by an order dated 21-8-69 upholding the trial court's finding that the disputed plots were joint tenancy of the parties and that the plaintiffs-respondents were co-sharers in the land with the defendants-petitioners to the extent of half share. It is against this decision of the lower appellate Court that this revision is directed. One of the points raised by learned counsel for the petitioners Sri G.P. Bhargava, was that the lower appellate Court in coming to the conclusion that the disputed land was joint tenancy of the parties had taken into account inadmissible evidence viz. an award which was not registered although it was compulsorily registrable and was, therefore, inadmissible evidence even for collateral purposes. The lower appellate Court looked into the contents of this award for the collateral purpose of finding out the nature of the defendants-petitioners' possession over the disputed land. It is submitted that this was illegal in view of the Supreme Court's decision in the case of Mst. Kripal Kaur v. Bachan Singh : [1958]1SCR950 to the effect that:--

'The agreement between the parties cannot be admitted in evidence to show the nature of possession of one of the parties subsequent to its date. The party being in possession before the date of the document to admit it in evidence to show the nature of her possession subsequent to it would be to treat it as operating to destroy the nature of the previous possession and to convert what had started as adverse possession into a permissive possession, and therefore, to give effect to the agreement contained in it which admittedly cannot be done for want of registration. To admit it in evidence for the purpose sought would really amount to getting round the statutory bar imposed by Section 49 of the Registration Act.'

The Supreme Court in this case held in effect that a document which is compulsorily registrable under the Registration Act and is inadmissible in evidence for want of registration cannot be read in evidence even for collateral purpose. In this view of the Supreme Court it is clear that the lower appellate Court read a document which was inadmissible in law and in doing so it committed an error of procedure. This affected the decision on the question whether the land in dispute was joint tenancy of the parties. Under Section 115 of the Code of Civil Procedure the High Court may interfere in revision where under Clause (c) the subordinate Court appears to have acted illegally or with material irregularity in the revision of its jurisdiction. It is plain that the reading of inadmissible evidence for collateral purpose amounted to an error of procedure within the meaning of Clause (c) of Section 115 of the Code of Civil Procedure, in the leading case of *N.S. Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras*, the Privy Council observed:

'Section 115 applies only to cases in which no appeal lies, and where the legislature has provided no right of appeal, the manifest intention is that the order of the trial Court, right or wrong, shall be final. The section empowers the High Court to satisfy itself upon three matters: (a) That the order of the subordinate Court is within its jurisdiction; (b) That the case is one in which the court ought to exercise jurisdiction, and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the courts of the trial which is material in that it may have affected the ultimate decision.'

There is a catena of authorities of the Supreme Court in which this view has been followed on the interpretation of Clause (c) of Section 115 of the Code of Civil Procedure, coming down to *D. L. F. Housing and Construction Co. (P.) Ltd. v. Sarup Singh* : [1970]2SCR368 . In Paragraph 8 of the report of the case the Court made the following observations:

'The position thus seems to be firmly established that while exercising the jurisdiction under Section 115 it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have

relation to the jurisdiction of the court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case.....
..... Clause (c) also does not seem to apply to the case in hand. The words 'illegally' and 'with material irregularity' as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause, may in our view relate either to breach of some provisions of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law after the prescribed formalities have been complied with.'

The law prescribed a certain procedure for the exercise of jurisdiction by subordinate courts. According to that procedure evidence admissible under law only should be considered and made the foundation for arriving at a judicial conclusion. Therefore, if evidence which is not admissible under law is considered and the conclusion is rested on such evidence that would be manifest error of procedure in the exercise of jurisdiction within the meaning of Clause (c) of Section 115 of the Code of Civil Procedure and the order could be revisable. In the present case the award was compulsorily registrable under Section 17 of the Registration Act and was inadmissible in evidence under Section 49 of the same Act for want of registration. In view of the Supreme Court decision in the case of : [1958]1SCR950 (supra) the award being unregistered was inadmissible in evidence even for collateral purpose. This being the law, it follows that in reading the award for collateral purpose, the lower appellate Court received evidence which was inadmissible in law and in doing so committed material error of procedure which evidently affected its finding on the question whether the parties were co-sharers in the disputed land and whether it was held by them jointly. That being so the judgment of the lower appellate Court discloses material irregularity in the exercise of jurisdiction within the meaning of Clause (c) of Section 115 of the Code of Civil Procedure and it is not merely as submitted by the learned counsel for the petitioner, a case of illegality in exercise of jurisdiction for the error pointed above is neither an error of fact nor an error of law but rather an error of procedure that is to say an error in the manner of exercise of jurisdiction and this error clearly falls within the purview of Clause (c) of Section 115 of the Code of Civil Procedure. Learned counsel for the opposite party referred in argument to the case of Babulal

v. Jugalkishore, AIR 1954 Nag 254. In that case it was observed that:--

'It is open to the Court to decide whether the particular evidence adduced before it is admissible or not. Even though its decision on the point may be wrong that is not a question of jurisdiction and therefore its finding is not open to challenge in revision.'

With profound respect I disagree with this view for in my opinion, if a court takes wrong decision on the question of admissibility of particular evidence the decision has relationship with procedure and if the error amounts to material irregularity in the exercise of jurisdiction as in most cases happens, then it will attract Clause (c) of Section 115 of the Code of Civil Procedure.

3. Having come to the conclusion that the lower appellate Court committed material irregularity in exercise of jurisdiction by reading inadmissible evidence namely the award for deciding the issue whether the land in dispute was joint tenancy of the parties, this revision is entitled to succeed. I need not therefore enter into the other points urged in revision by the learned counsel for the petitioner.

4. The revision is allowed and the order of the lower appellate Court dated 21-8-69 is set aside and the case is remanded to the lower appellate Court for decision of the appeal according to law after giving fresh hearing to the parties.

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