

Yad Ram Vs. Sunder Singh

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Court : Allahabad

Decided On : Feb-19-1923

Reported in : AIR1923All392; 74Ind.Cas.778

Judge : P.C. Banerji,; Piggott and; Walsh, JJ.

Appellant : Yad Ram

Respondent : Sunder Singh

Judgement :

1. A preliminary objection has been taken to the hearing of this application for revision, on the ground that a revision does not lie under the provisions of Section 115 of the Code of Civil Procedure. The circumstances out of which the case arose are these. There was a decree for sale against one Yad Ram, and in execution of that decree the mortgage property was sold by auction. Subsequently to the auction sale, Yad Ram sold his interests in the property already sold by auction, and after this sale he presented an application to the Court under Order XXI, Rule 89 of the Code of Civil Procedure, depositing the amount of the decree and the 5 per cent, penalty mentioned in the section and prayed that the sale might be set aside. The Court of first instance set aside the sale. An appeal was preferred from the judgment of that Court to the lower Appellate Court under Order XLIII, Rule 1, Clause (j). The Appellate Court set aside the order of the Court of first instance, being of opinion that the judgment-debtor, Yad Ram, was not entitled to make the application for setting aside the sale. In so holding the lower

Appellate Court followed the ruling of this Court in Ishar Das v. Asaf Ali Khan 13 Ind. Cas. 134 : 34 A. 186 : 9 A.L.J. 19. From this decision of the lower Appellate Court the present application for revision has been presented.

2. In my judgment, in the view of the provisions of Section 115 of the Code of Civil Procedure, as interpreted by their Lordships of the Privy Council and as interpreted by this Court in several rulings, the application is not maintainable. It has been held by their Lordships of the Privy Council in Balakrishna Udayar v. Vasudeva Aiyar 40 Ind. Cas. 650 : 40 M. 793 : 15 A.L.J. 645 : 2 P.L.W. 101 : 33 M.L.J. 69 : 26 C.L.J. 143 : 19 Bom. L.R. 715 : (1917) M.W.N. 628 : 6 L.W. 501 : 22 C.W.N. 501 : 11 Bur. L.T. 48 : 44 I.A. 261(P.C.), that the only question which can be entertained under Section 115 is the question of jurisdiction, and that if the Court has refused to exercise jurisdiction or has exercised jurisdiction, which is not vested in it by law, or if in the matter of Jurisdiction the Court has acted with illegality or with material irregularity an application for revision is maintainable. This ruling of their Lordships of the Privy Council was considered in the case of Jhunku Lal v. Bisheshar Das 46 Ind. Cas. 711 : 16 A.L.J. 495 : 40 A. 612, and it was held that unless the Court had acted illegally or with material irregularity in relation to the question of jurisdiction, an application for revision could not be maintained. In the present case the Court was competent to determine whether Yad Ram was entitled to make an application under Order XXI, Rule 89, and it had jurisdiction to decide that question and it decided it adversely to Yad Ram. The Court may have been wrong in its decision but it cannot be said that in exercise of its jurisdiction it acted illegally or with material irregularity in the sense in which those words have been interpreted by their Lordships of the Privy Council in the case to which I have referred and in earlier cases decided by their Lordships. As was pointed out in the case of Chandu Lal v. Kokamal 61 Ind. Cas. 36 : 43 A. 334 : 19 A.L.J. 110, the course of rulings in this Court has since 1886 been that an application for revision in similar circumstances does not lie. I see no reason to alter the view which I have expressed in earlier cases and with great respect I am not prepared to accept the contrary view held in the case of Sundaram v. Mamsa Mavuthar 63 Ind. Cas. 937 : 44 M. 554 : 40 M.L.J. 497 : 13 L.W. 498 : 29 M.L.T. 269 : (1921) M.W.N. 272, and Dhanwanti Kuer v. Sheo Shankar Lal 51 Ind. Cas. 873 : 4 P.L.J. 340 : (1921) Pat. 364, would therefore, allow the preliminary objection and dismiss this application.

Piggott, J.

3. I am free to admit that, when faced with the contrary view expressed by two other High Courts in the cases just referred to above, and more particularly with the carefully reasoned judgment of the learned Judges of the Patna High Court in a case which is absolutely undistinguishable from the present on the facts, I felt some difficulty in arriving at a conclusion. What impresses me most, however, is that in the case now before us, the learned Subordinate Judge was following a decision of a Bench of this High Court, to be found in the authorised Law Reports. He had to determine the question whether on a certain date one Yad Ram, who had presented a certain application before the Court of the Munsiff of Aligarh, was or was not a person either owning certain property or holding an interest therein, by virtue of a title acquired before a certain date. Certain facts required to be examined; but they were admitted facts. So that the Court below was not called upon to come to any judicial finding concerning them. On the admitted facts Yad Ram was not the owner of the property, or the holder of any interest therein on the date with which the Court below was concerned, if the case of *Ishar Das v. Asaf Ali Khan* 13 Ind. Cas. 134 : 34 A. 186 : 9 A.L.J. 19, was rightly decided. The Court below was faced with a contrary decision by the learned Judges of the Bombay High Court, and our attention has since been drawn to the fact that decisions in the same sense as that of the Bombay High Court, and in a contrary sense to that of this Court, have been pronounced by the High Courts at Madras and at Patna. The learned Subordinate Judge, however, was under an obligation to follow the reported decision of this Court, vide the remarks of their Lordships of the Privy Council in *Puttu Lal v. Parbati Kunwar* 29 Ind. Cas. 617 : 13 A.L.J. 721 : 19 C.W.N. 841 : 19 Bom. L.R. 549 : 18 M.L.T. 61 : 29 M.L.J. 63 : 22 C.L.J. 190 : 37 A. 359 : 2 L.W. 883 : 42 I.A. 155 : (1915) M.W.N. 514(P.C.). I cannot reconcile it with my judicated conscience to hold that, in this fulfilling an obligation incumbent upon him as a judicial officer, the learned Subordinate Judge was acting illegally, or with arterial irregularity, or going outside the jurisdiction conferred upon him by Section 104, read with Order XLIII, of the Civil Procedure Code. I appreciate the fact that the practical result of taking this view seems to be that this Court will not be able upon an Application in revision to re-consider the correctness of any previous

pronouncement of a Bench of this Court upon a question of law. I do not know that any practical inconvenience need necessarily follow upon the adoption and enforcement of this view. In the case now before us it would have been undoubtedly open to the learned Subordinate Judge to have referred the somewhat difficult question of law to this Court under Order XLVI, Rule 1 of the Code of Civil Procedure; and I mention this matter because the suggestion may be of value to subordinate Courts before whom this judgment may be produced for reference. For the reasons stated I concur in the proposed order dismissing this application.

Walsh, J.

4. I respectfully dissent. I see no answer to the judgment of Mr. Justice Mullick in the case of *Dhanwanti Kuer v. Sheo Shankar Lal* 51 Ind. Cas. 873 : 4 P.L.J. 340 : (1921) Pat. 364. It would appear that if that view is correct, there has been a miscarriage of justice in this case. But I agree with my brother Justice Piggott that the learned Judge might, if he felt any doubt at the back of his mind about *Ishar Das v. Asaf Ali Khan* 13 Ind. Cas. 134 : 34 A. 186 : 9 A.L.J. 19, have sought refuge in a reference under Order XLVI, Rule 1. In order, however, to avail himself of that provision it must be recognised to his credit that it required him to screw up his courage to state in writing that he entertained reasonable doubts as to the correctness of the decision of the High Court. Subordinate Judges must not be too timorous (in this case it has been stated that serious difficulty exists in the lower Courts in applying what is understood to be the construction of Order XXI, Rule 89) in stating their doubts in order to have them either removed or confirmed by final decisions of the High Court.

5. The order of the Court is that the application is dismissed with costs.

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