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Jagmansingh Vs. Hemsingh and ors.

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Court : Madhya Pradesh

Decided On : Jan-10-1985

Reported in : AIR1986MP112

Judge : K.K. Verma, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 115; Madhya Pradesh Code of Civil Procedure (CPC) (Amendment) Act, 1984

Appeal No. : Civil Revn. No. 1041 of 1984

Appellant : Jagmansingh

Respondent : Hemsingh and ors.

Advocate for Pet/Ap. : R.C. Lahoti and K.B. Chaturvedi, Advs.

Disposition : Revision petition dismissed

Judgement :
ORDER

K.K. Verma, J.

1. This order shall govern the question of maintainability of this Civil Revision {No. 1041 of 1984) as well as Civil Revision Nos. 1043/84,837/84, 28/84,924/84, 895/84, 925/84, 1033/84, 1037/84, 965/84, 1036/84 and 10/85, filed after 14-8-

1984 arising out of orders passed by the Judges of Courts of District Judge in Miscellaneous Civil Appeals preferred from appealable orders passed by the Courts of Civil Judge, Class I and Class II in suits of valuation of less than Rs. 20,000/-. It shall also govern C.R.No. 990/84 in which an appellate decree in which no second appeal lies in view of Sections 96(4) and 102 of the Code of Civil Procedure is sought to be revised.

2. The counsel have been heard on admission of these civil revision petitions in which the point mooted was whether these revision petitions (filed in the High Court after 14-8-1984) are maintainable in the wake of the amendment brought about in Section 115 of the Code of Civil Procedure, 1908, by the Code of Civil Procedure (M.P. Amendment) Act '84 (No. 29 of 84), which came into force on 14-8-84. The relevant portion of amended provision runs as follows : --

The High Court in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above, and the District Judge in any other case may call for the record of any case which has been decided by any Court subordinate to such High Court or Distt. Judge as the case may be and in which no appeal lies thereto, and if such subordinate Court 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 or the Distt. Judge as the case may be make such order in the case as it thinks fit.

Provided that in respect of cases arising out of original suit or other proceedings of any valuation decided by the Distt. Judge the High Court alone shall be competent to make an order under this section.'

3. On a reference made by me, a Division Bench of this Court in C.R.No. 942/84(G) (reported in 1985 Cur Civ LJ 91), Gayaprasad v. Deepchand, held on

14-11-1984 its opinion as follows:

'.....in case of an order passed eitherbefore 14-8-1984 or after 14-8-84 in an original suit or other proceedings of the value of less than Rs. 20,000/- instituted before 14-8-1984, by any of the Courts of subordinate Judges, i.e. other than the Court of the District Judge, a revision petition under Section 115, as amended, of the Code of Civil Procedure, after 14-8-1984 shall He to the District Judge and not to the High Court.'

It is, therefore, now settled law that in respect of the orders of the aforementioned category, the District Judge has exclusive jurisdiction to entertain revisions under Section 115 of the Code of Civil Procedure, 1908' (as amended by the M.P. Act No. 29/84) with effect from 14-8-1984. Thus, the petitioners before me cannot contend that inasmuch as the impugned orders were passed in Civil Appeals filed before 14-8-1984 the High Court has jurisdiction to entertain the revision petitions notwithstanding the amendment brought about by the M.P. Act. No. 29/84 in Section 115 of the Code of Civil Procedure, 1908. The jurisdiction of the High Court to entertain the present revision petition has, therefore, to be determined with reference to Section 115 of the Code of Civil Procedure, 1908 as amended by the M.P. Act No. 29/84.

4. All these revisions are directed against orders passed by the Judges or Additional Judges to the various Courts of District Judgesin Civil Appeals arising out of orders passed by Civil Judges Class I, Class II in Civil suits of less than Rs. 20,000/- in valuation. Hence, the point for determination before me involves a consideration of the question whether the impugned orders passed in Civil Appeals can be regarded as orders passed in 'other proceedings of any valuation' within the meaning of expression in the first proviso to Section 115 of the Code of Civil Procedure, 1908 (as it stands in. the State of Madhya Pradesh with effect from 14-8-1984). It runs as follows: --

'provided that in respect of cases arising out of original suit or other proceedings of any valuation decided by District Judge the High Court alone shall be competent to entertain under this Section.....'

5. Sri Vishnu Awatar v. Shiv Autar (AIR 1980 SC 1475) was decided to dispose of three petitions for special leave against a Full Bench decision of the Allahabad High Court. There the Supreme Court interpreted the expression 'or other proceedings' occurring in the first proviso to Section 115 of the Code of Civil Procedure 1908 as amended by Section 3 of the Code of Civil Procedure (U.P. Amendment) Act, 1979. The amended provision runs as follows : --

'The High Court, in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above, including such suits or other proceedings instituted before August 1,1978 and the District Court in any other case, including a case arising out of an original suit or other proceedings instituted before such date, may call for the record of any case which has been decided by any Court subordinate to such High Court or District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate Court 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 or the District Court, as the case may be, may make such order in the case as it thinks fit;

Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court, the High Court alone shall be competent to make ah order under this Section :

Provided further that the High Court or District Court shall not under this Section vary or reverse any order including an order deciding an issue, made in the course of suit or other proceedings except where --

i) the order, if so varied or reversed would finally dispose of the suit or other proceedings; or

ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(Explanation) -- In this section, the expression 'any case which has been decided' includes any order deciding an issue in the course of a suit or other proceeding.'

6. It will be thus seen that the M.P. Amendment Act and the U.P. Amendment Act have similar phraseology in describing the jurisdictional facts except that in the M.P. Amendment the expression is 'District Judge' while in the U.P. Amendment the expression is the 'District Court'.

7. In Sri Vishnu Autar v. Shiv Autar, AIR 1980 SC 1575, the Court stated the question before it in the following terms : --

'.....We are concerned with the ambit andimpact of Section 3 of the Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1978 (for short, the Act) which forbids a revision under Section 115 of the Civil Procedure Code (acronymically, the C.P.C.) to the High Court from a judgment or order in appeal by the District Court where the suit out of which the case arises is not one of the value of Rs. 20,000/- and above.'

8. The Supreme Court stated at paragraph 6 as follows : --

'6. The High Court, in the last Full Bench decision traced the story of the race between the legislature and judicial interpretation and summed up the result rightly thus: Jupiter Chit Fund (Pvt.) Ltd. v. Dwarka Diesh, AIR 1979 All 218 at p. 225.'

The High Court was confined to cases arising out of original suits or other proceedings ofthe value of Rs. 20,000/- or above, including such suits or other proceedings, instituted before 1st August 1978. The jurisdiction of the District Court was in respect of any other case including a case arising out of an appeal suit or other proceeding instituted before such date. The legislature has continued to use the phrase 'Case arising out of original suits'. The interpretation placed upon this phrase by the Full Bench in Har Prasad Singh's case, AIR 1973 All 390 will apply. The revisional jurisdiction would hence not extend to cases arising out of the disposal of appeal or revisions by the District Court. The proviso is also in

the same terms as the proviso added in 1973 namely, it uses the phrase 'cases arising out of original suits or other proceedings'. As already seen, it will not cover cases arising out of disposal of appeals or revisions.

The words 'or other proceedings' in the phrase 'cases arising out of original suits or other proceedings' refer to proceedings of final nature. These words have been added in order to bring within the purview of the revisional jurisdiction orders passed in proceedings of an original nature, which are not of the nature of suits, like arbitration proceedings. This phrase cannot include decisions of appeals or revisions, because then the legislature will be deemed; to have contradicted itself. The words 'or other proceedings' have to be read ejusdem generis with the words 'original suits'. They will not include appeals or revisions.

The phrase 'in any other case' used with reference to the District Court will refer to cases arising out of original suits of the value of less than Rs. 20,000/- and also cases arising out of other proceedings of an original nature of a valuation below Rs. 20,000/-.

9. The point was further driven home at paragraphs 10 and 12 of the ruling in the following words : --

'Schematically, we are satisfied that decisions of District Courts rendered in appeal or revision are beyond revision by the High Court, if the suit is of less than Rs. 20,000/-. But an exception has been engrafted by the first proviso, to Section 3 to the effect that where an original decision has been made by a District Court the High Court's appellate or revisional power will come into play. That is as it should be, for one appeal or revision is almost universal. But otherwise the DistrictCourt's decision is immune to revisional probe by the High Court.

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Precedentially, the result is no different as the Full Bench of the High Court has been at pains to make out. Purposively speaking, it will be stultifying to interpret Section 3 to mean that orders in appeal by District Courts must suffer a distant journey to revisory justice from the High Court. Thus we reach the convergent

conclusion of 'no revision to the High Court', viewing the text of Section 3, lexically, literally, schematically, and in the setting of social justice of which saving the average litigant from the intoxication of tantalising litigation is a component.'

10. At paragrah 13 the Supreme Court spelled out the test for the High Court's jurisdiction to entertain revision petitions in the following terms : --

'The short test to refuse revisory jurisdiction to the High Court is to ascertain whether the decision sought to be challenged is in a case arising out of a suit of the valuation of Rs. 20,000/- and more. If the answer is 'yes' then the High Court has revisory power, but if the suit from which the case arises and in which the decision is made is one where the valuation is less than rupees 20,000 then the litigation cannot travel beyond the District Court except in that class of cases where the decision is taken for the first time by the District Court itself in a case arising out of an original proceeding.'

11. In the cases before me the orders were passed by the Judges or Additional Judges of the Court of District Judges in civil appeals arising out of suits (filed in the Courts of Civil Judges) of a valuation of less than Rs. 20,000/-. As held at paragraph 6 of the Supreme Court ruling the words 'or other proceedings' will not include appeals, which are, therefore, not original proceedings. Hence it is clear that the revision petitions are not maintainable at all.

12. The revision petitions (set out in the beginning) are, therefore, dismissed, as not maintainable. In the special circumstances of the case, there will be no orders as to costs in those revision petitions where the non-applicants were also heard on admission.

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