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Court : Rajasthan

Decided On : Mar-14-1983

Reported in : AIR1983Raj167; 1983()WLN49

Judge : N.M. Kasliwal, J.

Acts : [Constitution of India](#) - Articles 226 and 227; [Evidence Act, 1872](#) - Sections 63; [Code of Civil Procedure \(CPC\) , 1908](#) - Secion 115

Appeal No. : Civil Writ Petn. No. 219 of 1983

Appellant : Surendra Mohan Mathur

Respondent : Additional District Judge No. 2, Jaipur City, Jaipur

Advocate for Pet/Ap. : R.C. Kasliwal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

N.M. Kasliwal, J.

1. This writ petition under Articles 226 and 227 of the [Constitution of India](#) is directed against an order of learned Additional District Judge No. 2, Jaipur City, Jaipur, dated September 3, 1982, whereby the prayer of the petitioner to lead secondary evidence has been rejected. It is admitted by the learned counsel for the petitioner that a revision against the said order was filed before this Court and the same was withdrawn on October 8, 1982 in Civil Revision Petition No. 495/82. It is contended by the learned counsel for the petitioner that the learned trial Court has committed an error apparent on the face of record in not permitting the petitioner to lead secondary evidence with regard to draft prepared for a partition on October 18, 1970. It is contended that the learned Additional District Judge committed a clear error of law in taking the aforesaid view and as siren this Court should interfere under Article 227 of the [Constitution of India](#). Reliance is placed on Firm Poonam Nahta v. Amarchand, 1972 WLN 1124, Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137, Mehboob Alam v. Smt. Nasira Begum: 1977 Rai LW 324 : (AIR 1977 Raj 189), Motilal & Kanku Lal v. District Judge Pali, 1977 WLN (UC) 281, Smt. Pramod Saraswat v. Shri Ashok Kumar Saraswat; (AIR 1981 All 411) and Zenna Sorabji v. Mirabelle Hotel Co. (Pvt.) Ltd; AIR 1981 Bom 446.

2. In my view this is not a case in which powers under Article 227 of the Constitution can be exercised by this Court to hold that a secondary evidence should be permitted or not, as the determination of this question lies within the jurisdiction of the trial Court. Even if the trial Court has committed any error of law in taking such view no interference can be made in exercise of the powers of this Court under Articles 226 & 227 of the Constitution. The legislature by making an amendment in the Civil P. C. with effect from Feb. 1, 1977, in Section 115 CPC has made the scope of the power of revision very limited. Under the amended provisions of Section 115 CPC the High Court of subordinate Court if in passing such order the Court below has exercised a jurisdiction not vested in it by law or to have failed to exercise the jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity (sic). Further the High Court shall not vary or reverse such order except where the order if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding or the order if allowed to stand would occasion the failure of

justice or cause irreparable injury to the party against whom it was made. If the intention of the legislature is not to allow any revision against the impugned order under the amended provisions of Section 115 C.P.C. a litigant cannot be permitted to circumvent the above provision by taking recourse under Article 227 of the [Constitution of India](#). The intention of the legislature in amending Section 115 C.P.C. was to curb the litigation and not to permit revision against the interlocutory orders. The powers under Article 227 of the Constitution are extraordinary and in a case where any order has been passed by a Court in exercise of its jurisdiction, the same cannot be interfered under Article 227 of the Constitution, I do not find any force in the argument of the learned counsel for the petitioner that in case at this stage the impugned order would not be interfered with, the decision of the main case may take several years and thereafter such error would be corrected by the appellate Court in an appeal filed against the final decision of the suit. That eventuality may arise in every case and merely because such order would be corrected in appeal against the final decision of the suit, the order cannot be interfered under Article 227 of the Constitution. The case is being tried by a competent civil court and is at the stage of trial. Many issues are to be decided by the Court in this case and it cannot be said that the impugned order has been passed by the trial Court having no jurisdiction. The trial Court has jurisdiction to decide the question regarding, permitting a party to lead secondary evidence rightly or wrongly. Even if the order may be erroneous or illegal it cannot be said that the trial Court had no jurisdiction to pass such an order. The cases cited by the learned counsel for the petitioner up to 1977 are prior to the amendment made in Section 115 C.P.C. In *Smt. Pramod Saraswat v. Ashok Kumar Saraswat* (AIR 1981 All 441) (supra) under Section 115 as it stood in Uttar Pradesh the order passed in a divorce petition rejecting the application for examination of witnesses on commission was held not to be an order deciding an issue and so as to amount to a case decided, because words 'any order made' are not there in the explanation to Section 115 as is in force in U. P. Consequently it was held that revision petition against such an order was not maintainable. It was further held that it was no doubt true that the power of this Court under Art. 227 of the Constitution was quasi-judicial and administrative and may have been exercised suo motu in the interest of justice. But the very amplitude of the power restricts

occasion for its use. The court then in the circumstances of that case considered the question whether the impugned order was so illegal and unjust as to warrant interference under Article 227 of the Constitution, Thereafter the impugned order was considered on merits and it was held that although the revision under Section 115 C.P.C. cannot be allowed as it was not maintainable the court in exercise of its powers under Article 227 of the Constitution allowed the applicant vide its application for issue of commission for the examination of the three witnesses named therein. There is no discussion regarding the question of jurisdiction whether such order at all could have been passed by the trial Court in that case. In the peculiar facts and circumstances of that case it appears that the Court took the view that the order was so illegal and unjust as to warrant interference under Article 227 of the Constitution. There was a clear bar for filing a revision under Section 115 C.P.C. as it stood in U. P. In the case before me the provisions contained in Section 115 C.P.C. apply and I am clearly of the view that if under the scope of Section 115 C.P.C. the legislature intends this court not to interfere against the orders like the present one, the petitioner cannot invoke the jurisdiction of this Court indirectly under Article 227 of the Constitution. In *Zenna Sorabji v. Mirabelle Hotel Co. (Pvt.) Ltd.* (AIR 1981 Bom 446) (supra). Sharad Manohar J. took the view that where a substantial portion of the evidence which is relied upon by the courts below is found to be inadmissible or is (not?) of any evidentiary value, it would be open for the High Court even in its jurisdiction under Article 227 of the Constitution to have a second look on the finding arrived at by the courts below even though there was some other small evidence which went to support ultimate finding. This is so because in such a case it could not be said that the lower court could have arrived at the same conclusion on the basis of limited quantity of evidence. In the above case the petitions under Article 227 of the Constitution were filed against a final decision of the judgment of Bench of Court of Small Causes in Appeal No. 343/73 and Appeal No. 316/73. The suit was filed by the Trust for eviction of the various defendants. The suit was decreed by the trial Court against all the relevant defendants. Appeal No. 316/73 was filed by original defendant No. 2 and Appeal No. 343/73 was filed by original defendant No. 3. The appeal of original defendant No. 2 was dismissed by the Bench of the Small Cause Court whereas appeal No. 343/73 was allowed by the Bench. In these

circumstances special civil application No. 537/75 was filed by the Trust against the decree in Appeal No. 343/78 whereas Civil revision application No. 62/75 had been filed by original defendant No. 2 against the decree in Appeal No. 316/73. Thus the matter before the Bombay High Court was after conclusion of the proceedings in the suit as well as appeal. This was not a case where the Bombay High Court was considering the powers under Article 227 of the Constitution against an interlocutory order passed during the pendency of a case. Above authority lends no assistance to the controversy in hand before me in the present case.

3. In this view of the matter. I find no force in this writ petition and I am clearly of the opinion that the petitioner cannot invoke the jurisdiction of this Court under Article 227 of the [Constitution of India](#) against the impugned order.

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