

Uttam Kumar and anr. Vs. Jaipur Vastra Vyapar Singh Ltd. and ors.

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Court : Rajasthan

Decided On : Feb-12-1971

Reported in : 1971WLN(UC)9

Judge : L.N. Chhangani, J.

Appeal No. : S.B. Civil Revision No. 312

Appellant : Uttam Kumar and anr.

Respondent : Jaipur Vastra Vyapar Singh Ltd. and ors.

Advocate for Def. : Mr. Joshi

Judgement :

L.N. Chhangani, J.

1. This is a revision by the defendants challenging the decisions of the Additional Civil Judge, Jaipur City on issues Nos. 7 and 9 in a suit which is still pending before him. These issues read as follows-

7. Whether the Hindu in dispute is sufficiently stamped and the suit is maintainable on that?

9. Whether Jagdish, Mukund Sharan, Ramesh Chand, Krishna Bai and Gita Bai are necessary parties to the suit?

The trial court following two decisions of this Court reported in Tikamchand Laxmichand and Ors. ILR 1960 (10) Raj. 1607 and Moolchand v. Shankerdutta 1965 R.L.W. 33 held that the hundi the basis of the; suit is exempt from payment of stamp duty and the suit is maintainable even without it's being sufficiently stamped Under issue No. 9, the trial court held that the existing defendants being severally liable, commission on the part of the plaintiffs to bring on record all the legal representatives of the deceased Radheyshyam does not result in the abatement of the suit against the existing defendants. Feeling aggrieved by the decision of the trial court on these issues, the defendants have filed the present revision petition.

2. Mr. Joshi appearing for the respondent no I has raised a preliminary objection based upon the principle laid down in the Full Bench decision reported in Harakchand and Ors. v. The State of Rajasthan and Ors. ILR 1970 (20) Raj. 88. The learned Counsel relied upon the following observations of the Full Bench:

Wanchoo C.J. (as he then was) in Moonlal v. Sampatlal ILR 1952 2 Raj. 1010 has taken the view that the finding of a trial court that a document is not a promissory note and was admissible in evidence on payment of duty and penalty could be revised by the High Court under Section 115, C.P.C. With utmost respect we are of the opinion that this view is not correct. Similarly the observations of this Court in Poonamchand v. Messrs Bastiram Deokishan 1969 R.L.W. 248, that the question as to whether a document is admissible or not admissible is a matter of procedure, is not correct.

The principle laid down in this case is fully applicable to the present case in so far as the petitioners' challenge to the decision on 'issue No. 7 is concerned and it is not open to him to any contrary view.

3. I am also not inclined to exercise the revisional jurisdiction in connection with the trial court's decision on issue No. 9. The order is of an interlocutory nature and it is open to the petitioners to challenge it in any appeal against the final decision.

4. Having considered the arguments, I am satisfied that no case for interference in revision has been made out. The revision is dismissed. No order as to costs.

