

Sobha and ors. Vs. Behari Lal and ors.

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Court : Himachal Pradesh

Decided On : Apr-17-1980

Reported in : AIR1981HP18

Judge : H.S. Thakur, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115 - Order 13, Rule 2 - Order 18, Rule 17A - Order 41, Rule 27

Appeal No. : Civil Revn. Petn. No. 163 of 1979

Appellant : Sobha and ors.

Respondent : Behari Lal and ors.

Advocate for Def. : Ramesh Chand, Adv.

Advocate for Pet/Ap. : K.D. Sood, Adv.

Disposition : Petition allowed

Judgement :

ORDER

H.S. Thakur, J.

1. The petitioners have filed this revision petition against the order dated 3-9-1979 passed by the learned Sub-Judge, First Class, Kangra, whereby an application

under Order 18, Rule 17A and Order 13, Rule 2 of the Code of Civil Procedure filed by the petitioners was rejected. Briefly the facts of the case are that the plaintiffs-petitioners filed a suit against the respondents for declaration and injunction in respect of the land in suit. The suit was decreed by the trial court, but the respondents preferred an appeal in the Court of the District Judge, Kangra at Dharamsala. The learned Additional District Judge accepted the appeal on 21-9-1970 and remanded the case to the trial court, after framing two additional issues. The additional issues so framed are reproduced as under :--

'(1) When did the succession of Sobha open? OPP

(2) Whether the plaintiffs are entitled to 1/2 share of the land mentioned in para No. 2 (c) of the plaint? OPP'

2. The learned Additional District Judge while remanding the case to the trial court made a direction that the parties be allowed to adduce evidence on the two additional issues and that the suit be decided afresh. It may be pointed out that the petitioners at the time when the appeal was pending before the learned Additional District Judge filed an application under Order 41, Rule 27 of the Code of Civil Procedure for allowing them to produce additional evidence in the case. The only additional evidence which was intended to be produced was an attested copy of an entry reflected in the register of deaths and births regarding the death of Shri Chartu. The petitioners had filed the attested copy of such an entry along with the application and the application was filed on 13th of December, 1969 and was supported by an affidavit.

3. The petitioners desired to tender in evidence the death certificate of Shri Chartu in the Court of the Sub-Judge, First Class, Kangra which they had not filed soon after the case was remanded to that court by the learned Additional District Judge. It was why they filed the application under Order 18, Rule 17A and Order 13, Rule 2 of the Code of Civil Procedure to receive the said copy in evidence. The learned Sub-Judge, however, has rejected that application on 3rd of September, 1979. Aggrieved by this order of the learned Sub-Judge, the petitioners have filed this revision petition.

4. At the outset it is contended by Shri Ramesh Chand, learned counsel for the respondents, that the revision petition is not competent as the order passed by the trial court does not tantamount to a 'case decided'. He has referred to a moment of this Court in *Nand Kishore v. Kishan Chand* (AIR 1977 Him Pra 68). In this case the question involved was whether a document which required registration under Section 17 of the Indian Registration Act was admissible in evidence or not. The trial court had admitted that document in evidence. Aggrieved by that order of the trial court a revision was filed in this Court and the same was dismissed, holding that the said order did not constitute a 'case decided' within the meaning of Section 115 of the Code of Civil Procedure. It is further contended by the learned counsel for the respondents that the order passed by the trial court is entirely discretionary and cannot be interfered with, in the exercise of the revisional power of a High Court. It is also contended by the learned counsel that the trial court has held that the petitioners had not been able to satisfy it that the document could not be tendered earlier in evidence by them after the exercise of due diligence. According to the learned counsel for the respondents, this being a finding of fact this Court would not be justified in reversing this finding. It is also contended by Shri Ramesh Chand, learned counsel for the respondents, that there is no error of jurisdiction or any illegality or irregularity in the exercise of its jurisdiction within the meaning of Section 115 of the Code of Civil Procedure. As such, it is contended that the order of the trial court cannot be interfered with.

5. On the contrary, it is contended by the learned counsel for the petitioners that after the amendment of Section 115 of the Code of Civil Procedure the scope of revisional power of a High Court has been widened. He has drawn my attention to a judgment in the case *Tata Iron & Steel Co. Ltd. v. Rajarishi Exports (P) Ltd.* (AIR 1978 Orissa 179). It has been observed in this judgment that by adding the Explanation to Section 115 the scope and ambit of a revision has been widened and the limitation put on the expression 'any case which has been decided' under Section 115, by the decision reported in AIR 1970 SC 406 and some other decisions would no longer hold good in view of the amendment of the said section.

6. I have perused the facts of this case and am of the view what the decision relied upon by the learned counsel for the respondents is no longer a good law. This

view is further supported by a decision of Calcutta High Court in the case Food Corporation of India v. Biren-dra Nath Dhar (AIR 1978 Cal 264). So far, as the question of jurisdiction of this Court is concerned, in view of the fact that the scope of the revisional power has been widened, as discussed above, this Court is quite competent to interfere in a matter' in order to secure the ends of justice. The main object behind the procedural law is to do justice if the facts and circumstances of a case so warrant. Taking into consideration the facts and circumstances of this case, it is desirable that the petitioners are allowed to produce the aforesaid document in evidence. It may be pointed out again that the petitioners had filed an application in the court of the Additional District Judge, Kangra under Order 41, Rule 27 of the Code of Civil Procedure so that the said document could also be read in evidence. An attested copy of the document was also filed along with the application. I had sent for the record of the lower appellate court, and find that the application as also the document is on the file. Under Order 13, Rule 2 of the Code of Civil Procedure, no document shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the court for the non-production thereof. The learned counsel for the petitioners has drawn my attention to a decision in the case Hari Ram Goenka v. Lachmi Singh (AIR 1926 Pat 537). It has been held in this case that where a court rejects a document on the ground of its late production, though no suspicion can possibly attach to the document, the High Court can interfere with such wrong exercise of discretion in second appeal. There is no dispute between the parties that this is a document which is maintained by the Health Department in the discharge of its official duties. As such, such a document cannot be manufactured and is free from suspicion. It is thus in the interest of justice that the petitioners are permitted to produce this document in evidence.

7. The learned counsel for the respondents has also contended that in view of the provision contained in Order 18, Rule 17A of the Code of Civil Procedure, the petitioners cannot be permitted to produce this document in evidence as they have not exercised due diligence in producing the same at the proper time, There is no doubt that the document was not produced soon after the case was remitted by the learned Additional District Judge to the trial court, but there are facts and circumstances to indicate that the petitioners have not been so negligent as to

disentitle them to produce this document. As pointed out earlier above, the petitioners had produced an attested copy of the document in the court of the learned Additional District Judge. The petitioners may be under a reasonable belief that that document had been remitted by the learned Additional District Judge to the trial court. When it was discovered that the said document was not so remitted, the petitioners filed an application for allowing the production of this document. Bearing in mind the circumstances of the case, it is just and proper that this document is allowed to be produced in evidence.

8. In view of my aforesaid discussion, I have no alternative but to allow this revision petition. The revision petition is accordingly allowed with no order as to costs.

9. The parties shall appear before the trial court on 9th May, 1980.

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