

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CIVIL REVISION PETITION NO.4234 OF 2015

Between:

N.Sivaraj Madiga and 3 others

.... PETITIONERS

AND

M.Durga Reddy

.... RESPONDENT

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DATE OF JUDGMENT PRONOUNCED: 04.03.2016

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HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO:

- 1 Whether Reporters of Local :
 newspapers may be allowed to see
 the Judgments?
- 2 Whether the copies of judgment :
 may be marked to Law
 Reports/Journals
- 3 Whether Their Ladyship/Lordship:
 wish to see the fair copy of the
 Judgment?

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

+ CIVIL REVISION PETITION No.4234 of 2015

% Dated: 04.03.2016

BETWEEN

N.Sivaraj Madiga and 3 othersPetitioners

And

M.Durga Redy ... Respondent

! Counsel for the Petitioners : Sri Vedula Srinivas

^Counsel for the Respondent : Sri V.Ravi Kiran
Rao

<Gist:

>Head Note:

? Citations:

1. AIR 1953 SC 23
2. (2004) 4 SCC 664
3. AIR 1966 SC 153
4. (2002) 1 SCC 535

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION No.4234 of 2015

ORDER:

This revision is preferred by the defendants in O.S.No.1515 of 2010 on the file of the Principal Senior Civil Judge's Court, Ranga Reddy District.

The sole respondent herein is the plaintiff in the suit. The said suit is instituted under Section 6 of the Specific Relief Act (for short 'the Act') seeking directions to the defendants to handover physical possession of the suit schedule property comprising of 77 square yards in plot No.10, survey No.11/1 situated at Harijan Colony, Habsiguda, Uppal Mandal, Ranga Reddy District. The 1st petitioner/1st defendant herein was the predecessor-in-interest and title of the suit schedule land. It is the case of the respondent/plaintiff that the 1st petitioner/1st defendant has purchased the suit schedule land forming Plot No.10 admeasuring 150 square yards through a registered sale deed dated 16.04.2003 bearing document No.4431 of 2003 from Sri S.Anand George and his brother Sri S.Dilip George. It is the case of the respondent/plaintiff that he has purchased a total extent of 450 square yards site comprising of adjacent plot Nos.9 and 10 of Harijan Colony, Habsiguda, Uppal Mandal, Ranga Reddy District through a registered sale deed dated 14.09.2005 bearing document No.9547/2006 (9258/2005). To this document Smt. S.Suhasini, Sri B.I. Jhon Wesley and Sri N. Shivaraj Madiga, the 1st petitioner/1st defendant herein are shown as vendors while the respondent/plaintiff is shown as vendee/purchaser. In the preamble of this document, it is described that vendor Nos.1 and 2 have purchased the schedule-A property on 16.12.2002 while vendor No.3 has purchased a collapsed

house bearing No.1-10 corresponding to new No.1-1-10, plot No.10 forming part of survey No.11/1 admeasuring 150 square yards situated at Harijan Colony. Two separate schedules called schedule-A and schedule-B property are appended to this document. Since there is no dispute whatsoever with regard to schedule-A property comprising of 300 square yards, it is not relevant to deal with it any further.

Schedule-B property is described as under:

SCHEDULE OF THE PROPERTY

- All that the collapsed house bearing No.1-10, corresponding to new No.1-1-10, on Plot No.10, forming part of Sy.No.11/1 admeasuring 150 Sq.Yds., or 125.4 Sq.Mtrs., Situated in Harijan Colony, Habsiguda Village, Uppal Mandal, Ranga Reddy District, and bounded by:-

NORTH	::	30' Wide Road
SOUTH	::	Plot No.20
EAST	::	30' Wide Road
WEST	::	Plot No.9 of S. Suhasini

A plan was appended to this sale deed duly reflecting the whole of plot No.9 comprising of 300 square yards and plot No.10 comprising of 150 square yards, thus totalling to 450 Sq.yds. The plan appended as well as the Schedule-B and rest of the sale deed bears the signatures of all the 3 vendors including the 1st petitioner/1st defendant herein.

It will be relevant to note that a 30 feet wide road is lying to the North of plot No.9 while plot No.10 also has the same road on its Northern side while it has also a 30 feet road on its Eastern side.

It will also be relevant to notice covenant No.3 of the registered sale deed, document No.9547/2006 which runs as under:

“3. THAT the VENDORS in pursuance to the above conveyance had delivered the vacant, physical and peaceful possession of the schedule property to the VENDEE for his enjoyment without any hindrance or obstructions whatsoever from anybody.”

It will be also relevant to notice that this document which is presented for registration on 14.09.2005 has been subjected to a scrutiny for deficit stamp duty and consequently, the differential stamp duty was paid on 14.06.2006 and thereafter the document was assigned the number No.9547/2006 on 28.06.2006, though it was assigned initially No.9258 of 2005.

The suit is instituted on the premises that in June 2010 the defendant No.1 forcefully commenced modifying works in suit schedule property to induct the other defendants as tenants into the suit schedule property and when the plaintiff made protest and raised objections for the same the 1st petitioner/1st defendant threatened the plaintiff with dire consequences and also threatened to file false criminal case under the Scheduled Castes and Scheduled Tribes (Prevention Of Atrocities) Act. It was also the case of the plaintiff, the respondent herein, that he approached the High court and instituted W.P.No.15415 of 2010 when the 2nd petitioner herein/2nd defendant is sought to be inducted as tenant to carry on the retail liquor outlet. However, the said writ petition did not survive for adjudication as the 2nd petitioner/2nd defendant has been granted a license by the State Government for carrying on retail outlet of liquor at the suit schedule premises, during the pendency of the said writ petition. Since the said suit is decreed now, the present revision is preferred, as under sub section 3 of section 6 of the Act, no appeal is provided against any such judgment and decree passed.

It will be relevant to notice that the 1st petitioner/1st defendant has filed O.S.No.2592/2008 for cancellation of sale deed bearing document No.9547/2006 in respect of part of house bearing No.1-10 admeasuring 77 square yards comprising of plot No.10 in survey No.11/1 situated at Harijan Colony, Habsiguda. The 1st petitioner/1st defendant has also filed another suit O.S.No.915/2010 seeking perpetual injunction to restrain 3 persons namely V.Yadagiri, Suresh

and B.Kailashpathi Goud from ever interfering with the peaceful possession and enjoyment of the plaintiff in the plaint schedule property. It will be also relevant to notice that earlier thereto a firm by name M/s. Kailash Printers represented by its proprietor B.Kailashpathi has filed suit O.S.No.2102/2009 seeking perpetual injunction to restrain the sole defendant therein from ever interfering with the peaceful possession and enjoyment of the plaintiff in the plaint schedule property. The 1st petitioner/1st defendant herein was impleaded as the sole defendant to O.S.No.2102 of 2009. All the four suits bearing O.S.Nos.2592/2008, 1515/2010, 915/2010 and 2102/2009 were clubbed and tried together. By a common judgment rendered on 27.07.2015, the learned Principal Senior Civil Judge, Ranga Reddy District, decreed the suit O.S.Nos.1515/2010 and 2102/2009 and dismissed O.S.Nos.2592 of 2008 and 915 of 2010. As was already noticed supra, the 1st petitioner herein was the plaintiff in both the suits O.S.Nos.2592/2008 and 915/2010.

While the 1st petitioner was examined as PW.1, the respondent herein was examined as DW.1. Exs.A.1 to A.15 were marked on behalf of the 1st petitioner herein while Exs.B.1 to B.6 were marked on behalf of the respondent herein. Ex.A1 is the sale deed dated 16.04.2003 bearing document No.4431/2003 through which the 1st petitioner herein has purchased the suit schedule property comprising of 150 Sq.Yds. To this document bearing No.4431/2003 the schedule of property is described as under:

“SCHEDULE OF THE PROPERTY

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All that the Collapsed House No.1-10 on Plot No.10, in Survey No.11/1, admeasuring 150 Sq.yds., or 125.4 Sq.Mts., Situated at Harijan Colony, Habsiguda Village, Uppal Kalan Municipality, Uppal Mandal, Ranga Reddy District, within the jurisdiction of the Sub-Registrar, Uppal, Ranga Reddy District and bounded by:-

NORTH :: 30' Wide Road
SOUTH :: Plot No.20

EAST :: 30' Wide Road
WEST :: Plot No.9

And more clearly shown in the plan and Red colour annexed herewith”

Ex.A2 is a copy of the sale deed bearing document No.9547 of 2006 dated 14.09.2005. The original of Ex.A2 is marked on behalf of the respondent herein as Ex.B2. Exs.A.3 to A.10 and A.15 are electricity demand bills while Ex.A.11 and A.12 are the payment receipts while Ex.A.13 is the copy of the order passed in W.P.No.15415 of 2010 dated 03.08.2010 referred to supra. Ex.A.14 is a copy of the proceedings of the Deputy Director of Social Welfare Department dated 26.06.2003 marked to 1st petitioner herein.

It is not disputed that through Ex.A1, the 1st petitioner herein has acquired right, title and interest in respect of the suit schedule property. The claim of the respondent herein is that the same property has been purchased by him through Ex.B2, copy of which is marked also as Ex.A2. The description of the schedule property found in Ex.A.1 and Ex.B.2 (A.2) tallies in all respects. Ex.B2 is disputed by the 1st respondent herein on the premises that he has sold only 73 square yards, but not 150 square yards, which has been purchased by him under Ex.A1. That is the reason why the 1st petitioner has filed O.S.No.2592/2008 seeking cancellation of Ex.B2 (=Ex.A2) to the extent of 77 square yards, and that suit has now been dismissed. It can be seen that the suit schedule property was described as lying in dilapidated condition as is reflected in Ex.A1 as well as Ex.B2. Ex.B2 never described that only 73 square yards out of 150 square yards has been sold by the 1st petitioner herein to the respondent. Even the plan annexed to Ex.B2 does not reflect that only 73 square yards out of 150 square yards was sold. On the contrary, it reflects as if the entire 150 square yards has been sold. As was already noticed supra, the whole of 150 square yards is abutting 2 roads on North as well as on the

Eastern side and that is how the boundaries have been reflected in Ex.B2. In view of the principle contained under Sections 61, 62, 64, 91 and 92 of the Indian Evidence Act, it follows that once Ex.B2 (=Ex.A2) is admitted in evidence, the contents of that document are also liable to be treated as admitted in evidence though the contents may not be conclusive evidence of the fact.

In one of the earliest decision of the Supreme Court in "***Keshardeo Chamria v. Radha Kissen Chamria***"^[1], the contours of the power exercisable under Section 115 CPC was considered in great detail and it was laid down by a 4-Judge Bench as under:

"We now proceed to consider whether a revision was competent against the order of 25-4-1945 when no appeal lay. It seems to us that in this matter really the High Court entertained an appeal in the guise of a revision. The revisional jurisdiction of the High Court is set out in s. 115 Code of Civil Procedure in these terms :

"The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears

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(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 may make such order in the case as it thinks fit."

A large number of cases have been collected in Edn. 4 of Chitaley & Rao's Code of Civil procedure (vol. I), which only serve to show that the High Courts have not always appreciated the limits of the jurisdiction conferred by this section. In *Mohunt Bhagwan Ramanuj Das v. Khetter Moni Dassi*, 1 Cal. W. N. 617, the High Court of Calcutta expressed the opinion that sub-cl. (c) of s. 115, Code of Civil Procedure, was intended to authorise the High Courts to interfere and correct gross and palpable errors of subordinate Courts, so as to prevent grave injustice in non, appealable cases. This decision was, however, dissented from by the same High Court in *Enat Mondul v. Baloram Dey*, 3 Cal. W. N. 581, but was cited with approval by Lord-Williams J. in *Gulabchand Bangur v. Kabiruddin Ahmed*, 58 Cal. -111. In these circumstances, it is worth-while recalling again to mind the decisions of the Privy Council on this subject and the limits stated therein for the exercise of jurisdiction conferred by this section on the High Courts.

As long ago as 1894, in *Rajah Amir Hassan Khan v. Sheo Baksh*

Singh, 11 Ind. App. 237, the Privy Council made the following observations on s. 622 of the former Code of Civil Procedure, which was replaced by s.115 of the Code of 1908:

"The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the case, and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

In 1917 again in *Balakrishna Udayar v. Vasudeva Aiyar*, 44 Ind. App. 261, the Board observed:

"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."

In 1949, in *Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras*, 76 Ind. App. 67, the Privy Council again examined the scope of s. 115 and observed that they could see no justification for the view that the section was intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate Courts so as to prevent grave injustice in non-appealable cases and that it would be difficult to formulate any standard by which the degree of error of subordinate Courts could be measured. It was said :

"Section 115 applies only to cases in which no appeal lies, and, where the Legislature has provided no right of appeal, the manifest intention is that the order of the trial Court, right or wrong, shall be final. The section empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate Court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction: and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate Court on questions of fact or law."

Later in the same year in *Joy Chand Lal Babu v. Kamalaksha Chaudhury*, 76 Ind. App. 131, their Lordships had again adverted to this matter and reiterated what they had said in their earlier decision. They pointed out :

"There have been a very large number of decisions of Indian High Courts on S. 115 to many of which their Lordships have been referred. Some of such decisions prompt the observation that High Courts have not always appreciated that although error in a decision of a subordinate Court does not by itself involve that the subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under sub-s. (c), nevertheless, if the erroneous decision results in the subordinate court exercising a jurisdiction so vested, a case for revision arises under sub-s. (a) or sub-s. (b) and sub-s.(c) can be ignored.

7. REFERENCE may also be made de to the observations of Bose J. in his order of reference in *Narayan Sonaji v. Sheshrao Vithoba*, A. I. R. 1948 Nag. 258 wherein it was said that the words "illegally" and "material irregularity" do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with.

We are therefore of the opinion that in reversing the order of the executing Court dated 25-4-1945 reviving the execution, the High Court exercised jurisdiction not conferred on it by s. 115 of the Code. It is plain that the order of the Subordinate Judge dated 25-4-1945 was one that he had jurisdiction to make, that in making that order he neither acted in excess of his jurisdiction nor did he assume jurisdiction which he did not possess. It could not be said that in the exercise of it he acted with material irregularity or committed any breach of the procedure laid down for reaching the result."

It is, therefore, for the 1st petitioner herein to impeach that document and it's contents thereof in an appropriate manner. In other words, the burden is on him to impeach the contents of Ex.B2, and he has failed to discharge the said burden. Covenant No.3 of Ex.B2 has clearly demonstrated that the 1st petitioner herein has delivered possession of the suit schedule property to the respondent herein. Therefore, the petitioners herein have failed to dislodge the veracity of the claim of the respondent herein, that he was in possession pursuant to Ex.B.2 (A.2).

It will be also relevant to notice that the 1st petitioner herein has filed another suit O.S.No.915/2010 seeking injunction against 3 others, who are the tenants of the respondent herein. The 1st petitioner herein has lost the said suit also. On the contrary one of those 3 persons namely Kailashpathi has earlier instituted O.S.No.2102/2009 against the 1st petitioner herein seeking injunction as the 1st petitioner herein was allegedly interfering with his possession. That suit is now decreed.

It is true that a suit instituted under Section 6 of the Act is considered as a summary proceedings and it is only intended for securing restoration of possession to the plaintiff who has been dispossessed not in accordance with law. The respondent/plaintiff has specifically averred that it is during June 2010, the 1st petitioner herein started making unauthorized improvements to the suit schedule property with a view to induct the other defendants as tenants therein and when the plaintiff resisted, he was threatened with dire consequences. It is, therefore, a clear case where the plaintiff has set up that he was unjustly dispossessed during June 2010 by undertaking improvements to the dilapidated building and hence he instituted the suit O.S.No.1515 of 2010 in three months thereafter.

The Supreme Court has clearly brought out the scope and ambit of provisions of Section 6 of the Specific Relief Act in **Sanjay Kumar Pandey and others Vs. Gulbahar Sheikh and others**^[2], in the following words:

“A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-Section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this Section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title

to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.

A perusal of the order of the High Court shows that the High Court has for the purpose of reversing the decree of the trial Court relied on the oral statements of Natai Sheikh, PW-3 and Ram Sevak Ram, PW-5. One sentence each from the two depositions has been extracted and set out by the High Court in its order for the purpose of forming an opinion that they are not the plaintiffs but the defendants who were in possession of the suit property before six months from the date of the institution of the suit. The High Court has not looked into all the material available on record and has also not indicated clearly the availability of any of the grounds within the parameters of Section 115 of the Code so as to exercise revisional jurisdiction calling for reversal of the decision of the trial Court under Section 6 of the Act. The revision filed before the High Court cannot be said to have been satisfactorily disposed of.”

But, however, it is for the petitioners to establish that the judgment and decree passed in the suit is liable to be revised within the well laid out parameters contained in Section 115 CPC. Unless it is demonstrated that the subordinate Court has acted in exercise of its jurisdiction illegally or with material irregularity, the revision is not maintainable. It may be true that instead of preferring the revision under Section 115 CPC, it has been preferred under Article 227 of the Constitution so that there can be wider scope for the scrutiny of this Court in exercise of its power of superintendence.

It is a settled principle of law that if a subordinate court has jurisdiction to adjudicate a list brought before it, may decide it rightly or wrongly, whether the question be one of law or of fact. That itself would not make such a case fall under any of the 3 clauses mentioned in Section 115(1) CPC. It is wholly apt to recall at this moment, the

words of P.B.Gajendragadkar, Chief Justice, speaking for the constitution Bench of the Supreme Court in

“Pandurang Dhondi Chougule and others Vs. Maruti Hari Jadhav

and others^[3]” as under:

“The provisions of S. 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under S. 115, it is not competent to the High Court to correct errors of fact, however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As Cls. (a), (b) and (c) of S. 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law. or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate Courts which are related to question of jurisdictions. It is well-settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the Court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of S. 115 of the Code. But an erroneous decision on a question of law reached by the subordinate Court which has no relation to questions of jurisdiction of that Court, cannot be corrected by the High Court under S. 115.”

Further, it has been settled that material irregularity in exercise of jurisdiction does not cover either errors of fact or law (***Madanlal Vs. Shyamlal***^[4]).

Keeping these principles in mind, while conceding that the exercise of jurisdiction under Article 227 is wider than the one provided under Section 115 CPC, all I need to observe is that an order which is passed which would sub-serve and promote the interest of justice should be preserved rather than the one which is likely to produce the opposite result. The 1st petitioner herein has admitted to have sold a part of the suit schedule property namely 73 square yards

to the respondent herein through Ex.B2(=Ex.A2). Whereas the case of the respondent is that he has purchased the entire suit schedule property comprising of 150 square yards. Ex.B2 document, which is a registered sale deed and the covenant contained therein together with the description of schedule-B property and the plan annexed thereto clearly support the case of the respondent that he purchased the whole of 150 Sq.yds and was put in possession of a dilapidated building standing thereon. To dislodge this claim, the 1st petitioner herein has filed O.S.No.2592/2008, but that suit was dismissed. This apart O.S.No.2102 of 2009 was filed by one of the tenants of the respondent herein seeking injunction against the 1st petitioner herein, that suit is decreed. It presupposes, therefore, that it is tenant of the respondent herein who was found in possession of the suit schedule property in the year 2009 and hence, the averment of the plaintiff/respondent herein that it is during June 2010, the 1st petitioner herein started unauthorized improvements to the suit schedule property with a view to induct the other defendants as tenants, stands to reason to be accepted. He has succeeded in that attempt, as is reflected from Ex.A13, copy of the judgment rendered in W.P.No.15415 of 2010 dated 03.08.2010 instituted by the respondent herein. It is, therefore, clear that during June 2010, the respondent herein has been unjustly deprived of his possession of a dilapidated house by unauthorizedly undertaking improvements thereto so as to realise huge sums of money as monthly rents therefrom.

Therefore, I am of the view that the order passed by the learned Principal Senior Civil Judge in O.S.No.1515/2010 does not call for any interference as there is no failure of exercise of jurisdiction on the part of the said Court.

Accordingly, the civil revision petition is dismissed.

Consequently, miscellaneous petitions, if any shall stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

04.03.2016

Note: Mark L.R.Copy
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- [\[1\]](#) AIR 1953 SC 23
[\[2\]](#) (2004) 4 SCC 664
[\[3\]](#) AIR 1966 SC 153
[\[4\]](#) (2002) 1 SCC 535