

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O.1032 of 2021

Sri Bapi Ghosh

VS.

Smt. Sarojini Ghosh & Ors.

For the petitioner

:Mr. Avishek Prasad, Adv.

Ms. Ankita Dey, Adv.

Mr. Sandipan Das, Adv.

For the Opposite Party nos.
8-11 & 14 & 15

:Mr. Probal Kr. Mukherjee, Sr. Adv.

Heard On

: 07.11. 2024, 25.09.2024,
21.11.2024

Judgement On

:07.01.2025

Bibhas Ranjan De, J. :

1. The instant civil revision application has been preferred under Article 227 of the Constitution of India with a prayer for setting aside the order no. 240, dated 04.03.2021 passed by Ld. Civil

Judge (Junior Division), 1st Court, Malda in connection with O.C. suit no. 234 of 1997.

Brief facts:-

2. The petitioner herein along with 8 other persons as plaintiffs instituted a title suit for declaration and permanent injunction against the opposite parties in respect of R.S. Dag no. 54 under R.S. Khatian No. 57 under Mouza- Avirampur, District- Malda. The petitioner also moved an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure (for short CPC) for ad interim injunction which was allowed by the Ld. Trial Court and Advocate Survey Commissioner was appointed. In the survey report, it got revealed that the petitioner is in enjoyment and possession in respect of his share of land. The plaintiffs no. 1 to 6 were represented by their Power of attorney holder Md. Tajammul Haque. On 28.05.2017 the said power of attorney holder died but the plaintiffs no. 1 to 6 did not take any necessary steps for which the petitioner herein moved one petition to expunge them which was allowed by the Ld. Court and the petitioner was directed to file one amended plaint. Subsequently, defendants moved one petition under Section 151

of the CPC for dismissal of the suit on the ground that the suit against plaintiffs no. 1 to 6 have been abated.

3. The Ld. Trial Court through the order impugned allowed the prayer of the defendants and accordingly dismissed the suit. Being aggrieved by and dissatisfied with the order of dismissal petitioner has preferred the instant revision application for appropriate relief.

Arguments:-

4. Ld. Counsel, Mr. Avishek Prasad, appearing on behalf of the petitioners has mainly canvassed his argument on the point that the Ld. Trial Court itself allowed the expunge petition and directed the petitioner to file one amended plaint for just adjudication of the matter but subsequently violating it's own order was pleased to dismiss the suit which is not at all justified.
5. Mr. Prasad has further contended that Ld. Trial Court after hearing the application under Order 39 Rule 1 & 2 of the CPC was pleased to pass an order of ad interim injunction. Therefore, before dismissing the suit the Ld. Judge should have considered that the petitioner has right, title & interest over the suit property. Before parting with, Ld. Counsel, has submitted that

the adjudication made by the Ld. Trial Court was not on merit and therefore immediate interference is sought for.

6. In support of his contention, Mr. Prasad has relied on a case of ***Major S.S. Khanna vs. Brig. F.J. Dillon reported in 1963 SCC OnLine SC 72.***

7. Ld. Sr. Counsel, Mr. Probal Kr. Mukherjee, appearing on behalf of the opposite parties by relying on the tone and tenor of the order impugned has contended that dismissal of a suit is to be construed as passing of a decree. In this regard, Mr. Mukherjee has highlighted the specific provision of Order 43 Rule 1(k) of the CPC which runs as follows:-

“ 1. Appeal from orders- ...

.....

(k). An Order under Rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;”

8. By relying on this provision Mr. Mukherjee has tried to make this Court understand that only an appeal shall lie from the impugned order and there is no scope for the petitioner to seek relief by invoking revisional jurisdiction. Ld. Senior Counsel has concluded his argument with a note that the instant revision

application has no legs to stand as appropriate forum to challenge the order impugned would be Appellate Court.

9. In support of his contention, Mr. Mukherjee has relied on the case of ***J.M. Biswas vs. N. K. Bhattacharjee and others reported in (2002) 4 Supreme Court Cases 68.***

Contentious Issue:-

10. In my opinion, the contentious issue involved in the instantaneous application revolves around the sole question that whether revision petition is maintainable when an appeal though not directly to the High Court, lies to a First Appellate Court and subsequently by way of a second appeal to the High Court.

Analysis:-

11. Before delving into the merit of the case hand, I think it would be pertinent to discuss the cited judgments referred on behalf of the parties.
12. In ***S.S. Khanna*** (supra) the Hon'ble Apex Court dealt with an issue relating to "whether the High Court had power to set aside an order which does not finally dispose of the suit, and when from the decree or from the final order

passed in the proceeding an appeal is competent'. Therefore, it cannot be said that the factual matrix of the referred case has any similarity with the case at hand. As a sequel, the findings of the Hon'ble Apex Court in that case cannot be squarely applied in the present case.

13. In **J.M. Biswas** (supra) the Hon'ble Apex Court held that:

“ The disputes raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. In the circumstances, continuing this litigation will be like flogging a dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interests of the Union”.

Therefore, the facts dealt with by the Hon'ble Apex Court is not identical to the issue involved in this revision application.

14. Now coming to the contentious issue in connection with the revision application at hand, at the very outset it would be pertinent to reproduce Section 115 of the CPC which provides for the High Court's revisional jurisdiction. Section 115 runs as follows:-

“ Section 115: Revision

[(1)] 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

(a) to have exercised a jurisdiction not vested in it by law,

(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:

- 15.** Time and again the Hon’ble Apex Court has interpreted Section 115 of the CPC and held that the expression ‘*in which no appeal lies thereto*’ means that no appeal should lie directly to the High Court. If it is the case that an appeal lies to the High Court, even indirectly, the revisional jurisdiction under Section 115 is barred. It has been further crystallized by the Hon’ble Apex Court that if the Trial Judge dismisses the suit and passes decrees, undoubtedly there should be an appeal and not revision.

16. In the light of the principle laid down by the Hon'ble Apex Court it would be safe to comment that a revision cannot be maintained if an appeal lies to the High Court either directly or indirectly. In the present case, an appeal lies from the decision rendered by the Trial Court. Therefore, the specific components of Section 115 in order to attract revisional jurisdiction is not available in the case at hand.

17. Now coming to another important aspect of discussion with regard to whether the order of dismissal can be claimed to be final adjudication and attain status of a decree, it would be pertinent to delineate the essential elements of a decree:-

(i) There must have been an adjudication in a suit.

(ii) The adjudication must have determined the rights of the parties in respect of, or any of the matters in controversy.

(iii) Such determination must be a conclusive determination resulting in a formal expression of the adjudication.

18. Once the matter in controversy has received judicial determination, the suit results in a decree either in favour of the plaintiff or in favour of the defendant. A Court may drop

a final decree or may not, but if by virtue of the order of the Court, rights have finally been adjudicated, irrefutably it would assume the status of a decree. Now coming to the case at hand, I have no hesitation in holding that the order passed by the Ld. Judge has the status of a decree and the challenge to the same has to be made before the appropriate forum where appeal would lie. The High Court in exercise of power under Article 227 of the Constitution of India cannot unsettle this.

19. The aforesaid discussion clearly boils down to a conclusion that the impugned order is not assailable in revision and the only remedy would be to prefer an appeal before the appropriate forum as required under law.

20. As a sequel, Civil revision application being no. C.O. 1032 of 2021 stands dismissed. However, as I am disposing of the matter on the ground that revision is not maintainable, I would hasten to add that I have not expressed any opinion on the merits of the case. There shall be no order as to costs.

- 21.** Connected applications, if there be, also stand disposed of accordingly.
- 22.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.
- 23.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]