

Ramdatt Vs Paras Ram and Others

Court: High Court of Himachal Pradesh

Date of Decision: Aug. 3, 1953

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 115

Citation: AIR 1954 HP 29

Hon'ble Judges: A.P. Choudry, J.C.

Bench: Single Bench

Advocate: K.C. Pandit, for the Appellant; Rajendra Nath, holding brief for D.N. Aggarwala, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Chowdhry, J.C.

1. This is a plaintiffs application in revision against the judgment and decree of the learned District Judge of Mahasu and Sir-mur dated 21-4-1952

whereby the decision of the trial Court dismissing the suit was upheld.

2. Certain land was sold by the defendant-respondent Kapuro to the defendant-respondent Paras Ram. Thereupon the present suit was filed by

Jwala Ram, Ram Datt and Dharam Dass as collaterals of the vendor for two reliefs in the alternative, one a declaration that the alienation would not

be binding on the reversionary rights of the plaintiffs after the death of the vendor and the other pre-emption of the sale. The suit was dismissed in

regard to both the reliefs by the trial Court, and that decree, as just stated, was maintained on appeal by the District Judge.

3. This revision is not concerned with the alternative relief based on pre-emption because the petitioner has failed to make good the necessary

court-fee. The only point for consideration with regard to the other relief is whether the plaintiffs and the vendor were descendants from a common

ancestor. It is, however, not necessary to go into the merits of the re-vision (although the learned counsel for the petitioner did argue on merits

also) for it is liable to dismissal on another ground, as follows.

4. The present revision was filed on 1-9-1952. It purports to be on behalf of the plaintiff Jwala Ram only through Sri K. C. Pandit Advocate. The

learned advocate, however, had no power on behalf of Jwala Ram but only on behalf of the plaintiff Ram Datt. Accordingly, he put in an

application to this Court on 22-4-1953 praying that the revision be treated as one on behalf of Ram Datt, and that Jwala Ram be made a

respondent and notified. That application was argued on merits to-day by Sri K. C. Pandit. It may, however, be stated that on the same date that

the aforesaid application was preferred, i.e., on 22-4-1953, he was ordered to have all the necessary parties notified. No step was, however,

taken to get any notice issued to Jwala Ram. On this ground alone this revision would be liable to rejection. Another point worthy of note is that

one of the plaintiffs, Bali Ram, has not been implead-ed in the present revision. The matter does not, however, rest there.

5. From what has been stated above it is clear that the present revision will really be deemed to have been filed on 22-4-1953 by the plaintiff Ram

Datt. In other words, it was filed exactly a year after the dismissal of the appeal by the learned District Judge. The learned counsel for the petitioner

Ram Datt argued on the basis of--"Sukhdeo v. Yashodabai", AIR 1932 Nag 20 (A) that under Order 1, Rule 10, Civil P. C., the name of Ram

Datt can be substituted for that of Jwala Ram as a petitioner at any stage. That case has, however, no application since the application under Order

1, Rule 10 was filed within limitation.

It was laid down by this Court as long ago as 3-10-1950 in--"Beg Ram v. Charan Das" AIR 1951 Him 16 (B), that the ninety-day rule of

limitation applicable in the case of an appeal would also be adopted in future in the case of a revision. The learned counsel for the petitioner,

however, argued that this ruling is in conflict with the provisions of para. 35, Hima-chal Pradesh (Courts) Order, 1948, and therefore it does not

lay down good law.

6. The argument of the learned counsel was this. Proviso (i) to sub-para. (1) of para. 35 of the said Order prescribes a period of 90 days for filing

revision petitions covered by Clause (b) of the said sub-paragraph. These are revision petitions where an important question of law or custom is

involved which requires further consideration. That admittedly is not the nature of the present revision petition, which falls under Clause (a) of the

said paragraph. No period of limitation has been prescribed for revision petitions like the present filed under Clause (a) of the sub-paragraph, and

it was urged by the learned counsel that the necessary inference is that there was to be no period of limitation for the institution of such revisions.

I do not agree with this interpretation of the relevant provisions of para. 35, Himachal Pradesh (Courts) Order, 1948.

7. By the mere fact of a specific period of limitation having been laid down in respect of revision petitions covered by Clause (b) it cannot be said

positively that there was to be no limitation whatsoever in respect of revision petitions filed under Clause (a). All that can be said is that whereas a

particular period of limitation was laid down in respect of revision petitions covered by Clause (b), para. 35 was silent as regards limitation for

revision petitions falling under Clause (a). That being so, there was nothing to prevent this Court from laying down the said rule of limitation for

revision petitions as a matter of practice to be followed in this Court, as has been done by a number of High Courts.

The practice has no doubt been laid down with a view to obviate preferment of revisions with delay. The decision of this Court is, therefore, not in

conflict with the provisions of the Himachal Pradesh (Courts) Order, and therefore the contention that it does not contain good law has no force.

Even if the said decision of this Court be disregarded, the present revision would still be liable to dismissal on the ground of its having been filed

with inordinate delay for, as adverted to above, it will be deemed to have been filed on behalf of Ram Datt a year after the passing of the judgment

against which the present revision has been filed.

8. The revision is accordingly dismissed as time-barred, or, in any case, as having been filed with too much delay. The plaintiff-petitioner Ram Datt

will pay the costs of the defendant-respondent Paras Ram, which costs will include the Rs. 25/- ordered on 22-4-1953 but admittedly not yet paid

by the petitioner to the respondent.