
(2009) 01 KL CK 0037

High Court Of Kerala

Case No: CRP. No. un-numbered of 2009

Surendran Unnithan
and Others

APPELLANT

Vs

Sakthibadran and
Others

RESPONDENT

Date of Decision: Jan. 19, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 40 Rule 1, Order 43 Rule 1, 115, 115(1)

Citation: (2009) 1 KLJ 504 : (2009) 1 KLT 409 : (2010) 8 RCR(Civil) 1661

Hon'ble Judges: K.P. Balachandran, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K.P. Balachandran, J.

The matter is put up before this Court on the request of the counsel for the petitioners in view of the objection raised by the Registry regarding the maintainability of this revision petition against the order, appointing a Receiver, passed by the trial court and confirmed by the first appellate court in C.M. Appeal, in view of the decision of this Court in [Thilakan Vs. Kunhalankutty](#), .

2. Heard counsel for the petitioner. Section 115(1) CPC enables the High Court to 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." Explanation to Section 115 CPC states that in the said section the expression "any case which has been decided" includes inter alia any order made in the course of a suit. Proviso to Section 115(1) CPC states, however, that the High Court shall not, u/s 115 CPC, vary or reverse, inter alia, any order made in the course of a suit, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit. In the instant case, the interim application was for appointment of a Receiver and is an interlocutory order passed

in the course of a suit. For more reasons than one a revision will not be maintainable before this Court: (1) for the reason that even in the event of the impugned order having been decided in favour of the petitioner, it would not have finally disposed of the suit and (2) the order on an application for appointment of a Receiver, whether it is allowing the application or dismissing the application, which is made in the course of a suit, passed under Order XL Rule 1 CPC is made an appealable order under Order XLIII Rule 1(s) CPC. For the above two reasons, a revision is not maintainable u/s 115 of the CPC against the order appointing a Receiver and the judgment in CM. Appeal also is, therefore, not subject to revision. The objection raised by the Registry is upheld.