
AIR 1963 MP 9 : (1963) JLJ 104

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Civil Appeal No. 57 of 1960

Gulmohammad and
Others

APPELLANT

Vs

Viniyabai and Others

RESPONDENT

Date of Decision: Sept. 19, 1960

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Lunacy Act, 1912 - Section 40, 41, 42, 62, 63

Citation: AIR 1963 MP 9 : (1963) JLJ 104

Hon'ble Judges: Shiv Dayal Shrivastava, J; A.H. Khan, J

Bench: Division Bench

Advocate: R.M. Karkare, for the Appellant; J.P. Shrivastava, Garde and Sapre, for the Respondent

Judgement

A.H. Khan, J.

This is an appeal against an order u/s 151, C. P. C. passed under the Lunacy Act. No appeal lies against an order passed by a court under its inherent powers. The proper remedy is to file a revision. We reject the appeal. This, as suggested by my learned brother should be treated as a revision.

Shiv Dayal, J.

2. This appeal has been preferred from an interlocutory order passed by the Additional District Judge Shajapur in case No. 260 (Lunacy) whereby he has directed stay of all other suits and proceedings in which Siddhnath is a party.

3. Biniyabai respondent No. 1 is the wife of Siddhnath; Babu (Resp. No. 2) is their son and Shyama Bai (Respondent No. 3) their daughter. These three respondents, it is said before us, have instituted proceedings under sections 62 and 63 of the Lunacy Act in the said Court alleging Siddhnath to be a lunatic. They also urged that certain suits and

proceedings were pending in different courts where the question of Siddhnath's lunacy arose. They applied to the Additional District Judge to stay all those suits and proceedings, a list whereof was filed by them.

4. It is stated by the appellants before us that the Additional District Judge allowed the said application without hearing them. Copies of those applications have not been filed with the appeal. However, the appellants state that the application for stay of the various matters was made u/s 151 of the Code of Civil Procedure.

5. The first question that arises is whether this appeal is competent. Shri Karkare relies on section 83 of the Lunacy Act which lays down that an appeal lies from "any order made under this Chapter". The Chapter begins with section 62 and ends with section 83. This Chapter contemplates an inquiry by the Court to ascertain whether the person alleged to be a lunatic is or is not so. As a result of this inquisition, the Court is empowered to pass certain orders under sections 64 to 82 read with sections 40 to 42 of the Act. It seems clear to me that the orders spoken of in section 83 are those which a Court is empowered to pass under the said sections of that Act, for example, for custody of lunatics and for management of their estates. It is not provided in section 83 that every order passed by the Court "in a proceeding under this Chapter" shall be appealable. To put it differently, the expression "under this Chapter" has reference to "orders" and not to "proceedings". In chapter V of the Lunacy Act an order for staying other proceedings is not contemplated.

6. Here, rightly or wrongly, an application was made u/s 151 of the Code of Civil Procedure. I say nothing whether the CPC applies to such proceedings or not, nor do I say whether the order passed by the Additional District Judge is right or wrong. It remains a fact that the order under appeal was passed in exercise of inherent powers reserved in section 151 of the Code of Civil Procedure. As such it cannot be said that it is an order passed under Chapter V of the Lunacy Act, although it is passed in connection with the proceedings under that Chapter.

7. The order passed u/s 151 of the CPC is not appealable.

8. There is no doubt that this appeal does not lie and must accordingly be dismissed.

9. Shri Karkare states that the order purported to have been passed under Chapter V of the Lunacy Act and, therefore, it was doubtful whether an appeal lay u/s 83 or not and he alternatively prayed in the appeal to treat it as a revision petition. At the hearing this relief is pressed for. I am of the opinion that this appeal having been filed in this Court within 45 days of the impugned order (after deducting the time spent in obtaining copies), it should be treated as a revision.

10. This appeal is held to be incompetent, but it shall now be treated as a revision and shall be placed before a Single Judge.