
(1988) 07 MP CK 0029

Madhya Pradesh High Court (Indore Bench)

Case No: C.R. No. 92 of 1988

Vimalchand and
Another

APPELLANT

Vs

Smt. Gyanmala

RESPONDENT

Date of Decision: July 6, 1988

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 33 Rule 1, Order 33 Rule 1A, 115, 115(1)

Citation: AIR 1989 MP 140

Hon'ble Judges: S.K. Dubey, J

Bench: Single Bench

Advocate: K.B. Joshi, for the Appellant; N.K. Dave, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.K. Dubey, J.

This is a revision u/s 115 of the Civil P.C, against the order dated 6-1-1988, passed by the District Judge, Dewas in Misc, Civil Case No. 14/84, allowing the application under 0.33, R, 1, C.P.C. of the non-applicant, allowing the non-applicant to sue as an indigent person and ordered the plaint filed by her to be treated as a plaint in the suit and the suit has to proceed in all other respects as a suit instituted in the ordinary manner, except for payment of court-fees.

2. The main contention of Shri K. B. Joshi, learned counsel for the petitioners (non-applicants before the Trial Court) was that the report of the Collector in respect of pauperism was against the non-applicant, but the learned District Judge, without considering the said report and holding that no report is received, held on enquiry made by it, the non-applicant/plaintiff as an indigent person. The Court-fees payable on the suit for partition is of Rs. 11,000/- on the share of the plaintiff/ non-applicant, which the plaintiff

has to receive if ultimately the decree is passed against the defendants. The non-applicant/plaintiff was having ornaments of about 40,000/- to Rs. 50,000/- and thus the non-applicant was possessed of sufficient means to enable her to pay fees, prescribed by law, for the plaint in the suit. Shri Joshi relied upon the judgment of this Court in Civil Revision No. 489/75 decided on 3-12-79 (Ramchandra v. Ku. Hemlata (1980) 1 MPWN, Note No. 238). He also submitted for the purpose of maintainability of the revision that the view of the Patna High Court in [Mohammad Abbas Mallik Vs. Tahera Khatoon and Others](#), was dissented from by the Kerala High Court in [V. Sreedharan Vs. T.T. Nanu and Another](#), . His another contention is that in the C.P.C. by way of amendment in the year 1976, the provisions of Order 33, Rule 1A were inserted. As such, when the report was called of the Collector, in the case there was no occasion to proceed further and the report was to be accepted which was against the non-applicant/plaintiff. Shri Joshi also had drawn my attention towards the proceedings dt. 8-12-86 and 4-8-87 of the trial Court, in respect of the calling of the report of the Collector, Dewas and Indore. Shri Joshi by reading Order 33, Rule 1A of C.P.C. contends that when the report was called, there was no occasion to hold an independent enquiry or even when the enquiry was held, then the Court was bound to consider the report of the Collector, which was against the non- applicant/plaintiff.

3. Shri N. K. Dave, learned counsel appearing for the non-applicant/plaintiff submitted that the applicants before this Court have no right to challenge the order in view of the proviso of Section 115, C .P.C. The grievance, if any is between the State and the plaintiff. The application submitted under O.33, R. 1 was filed as long back as on 25-1-84 which took more than four years for its disposal. The non-applicant/plaintiff is being deprived of her share improperly and mesne profits to which she is entitled from the assets and properties left by her father, when the report of the Collector was not received, even then non-applicant/plaintiff herself moved an application about the report by filing a certified copy and submitted that the said report is not binding in the proceedings, as an independent enquiry has been held by the trial Court. He also took me through the statements recorded before trial Court and submitted that the order of trial Court is legal and proper and does not call for any interference.

4. I have perused the record of the trial Court. In the enquiry before the trial Court, the non-applicant/plaintiff examined herself, in her cross-examination she stated that she sold the ornaments when her mother-in-law was ailing and spent the said amount on the treatment of her mother-in-law (refer paras 6 and 7 of her statement). In rebuttal to her statement, out of the two present applicants, one Vimalchand examined himself. In cross-examination, he admitted the fact that after sale of ornaments, the non-applicant/plaintiff spent Rs. 500/- per day on the treatment of her mother-in-law. This treatment continued for about a month. The trial Court after considering all the factors granted the benefit of the benevolent provisions of Order 33, Rule 1, C.P.C., holding the non-applicant to be an indigent person. No doubt true, that the learned trial Court has mentioned in the order impugned that the report of the Collector has not been received

but the certified copy of the report of the Collector was filed by non-applicant herself on 13-6-87.

5. A bare perusal of the report of the Collector shows that it is a mechanical report, non-speaking and slipshod. It was not based on any material nor the Collector has discussed in the order from what material the Collector came to the conclusion that the non-applicant is not an indigent person. The Collector, Indore only has agreed with the report of the Collector, Dewas. Record of the Collector, Dewas is also tagged with this revision. The order dt. 5-11-85 of the Collector, Dewas states that the property of the non-applicant is situated at Indore. The Collector, Dewas only recommended to Collector, Indore to give a report about the pauperism of the non-applicant and it is that order, which has been concurred by the Collector, Indore. Such a report of the Collector, Indore cannot be said to have any bearing on the facts of pauperism to disprove the fact that the non-applicant is not an indigent person. Thus, the non-consideration of the report was not fatal, in the facts and circumstances of the case. In case, the report would have been after the consideration and enquiry against the non-applicant the position would have been certainly different. (The report from the Collector is to be called for in cases where the Collector is supposed to be better fitted to hold inquiries. The Court, however, cannot automatically adopt the report which is only to help the Court in judicially determining the issue). (See [Kewel Krishnan Vs. Khazan Singh](#), . In my opinion though the order of the trial Court mentions that the report of the Collector is not received, but this fact has no material bearing on the case when the trial Court held an independent enquiry and after recording the statements of the applicants and non-applicant came to an independent finding, holding that the non-applicant has no sufficient means to pay the Court-fees of Rs. 11,000/-,

6. Order 31, Rule 1A, C.P.C., does not help in any manner the applicants before this Court. Order 33, Rule 1A reads as under :

"Inquiry into the means of an indigent person.-- Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the Chief Ministerial Officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question."

The language of Order 33, Rule 1A is clear and unambiguous, which gives power to Court to call for the report of the Chief Ministerial Officer and to base the said report as its own finding, which has not been done in this case. But, on the other hand the Court itself made an inquiry into the question of pauperism and came to a finding of non-applicant being an indigent person. Order 33, Rule 1A of C.P.C. only provides for inquiry in respect of the means of an indigent person by the Chief Ministerial Officer of the Court, and to adopt such report as its own finding or to make an independent inquiry about the financial solvency of indigent person. The inquiry by Collector is only with a view to help the Court in arriving at a finding in respect of the issue of pauperism. See case of [Kewel Krishnan](#)

7. No doubt true that defendant has a right to challenge the application of pauperism as held in case of [Shri M.L. Sethi Vs. Shri R.P. Kapur](#), but when the order is passed after recording of evidence and after due appreciation of the facts and material on record, then it cannot be interfered with in revision. It is also to be noted that in Clause (a) of the explanation (1) of Order 33, Rule 1 possession of property is not enough, but what is essential is possession of sufficient means which must be such from which the money can be raised for payment of Court-fees. The subject-matter of the suit cannot be said to be the sufficient means.

8. The other aspect of the matter is that according to Clause (b) of proviso to Sub-section (1) of Section 115 of C.P.C., no order under revision is to be reversed or varied if it has not caused any failure of justice or caused any irreparable injury to the party against whom it is made. This aspect of the matter was recently considered by me in C.R. No, 16/87 (Hukamchand v. Kailash) decided on 23-6-88. By permitting the non-applicant to prosecute the suit as an indigent person, the defendants before this Court cannot be permitted to raise a grievance unless it is linked with the jurisdiction of the Court, as mainly the matter of Court-fees is between the plaintiff and State. (See C.R. No. 489/75, decided on 3-12-79 reported in (1980) 1 MPWN 238 (Ramchandra v. Ku. Hemlata). The applicant before this Court could not point out anything or could not suggest that the impugned order affects the jurisdiction of the Court, which is trying the suit. In view of this no interference is called for in this revision.

9. The result is that the revision has no merit as no illegality or material irregularity affecting the merits of the case was detected from the record nor the order can be said to be without the jurisdiction, or passed with an erroneous approach. Consequence of this, the revision is dismissed with costs. Counsel's fees Rs. 200/-, if certified. The record of the case be sent forthwith and the trial Court is directed to proceed with the suit expeditiously. The parties shall appear before the trial Court on 25th July, 1988.