(1981) 01 CAL CK 0003

Calcutta High Court

Case No: C.R. No. 754 of 1978

Kalibala Akhuli and Others		APPELLANT
	Vs	
Sambhu Akhuli and Others		RESPONDENT

Date of Decision: Jan. 30, 1981

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 11, 115, 115(1)
- Evidence Act, 1872 - Section 136
- West Bengal Land Reforms Act, 1955 - Section 8

Citation: 85 CWN 506

Hon'ble Judges: B.N. Maitra, J

Bench: Single Bench

Advocate: Sudhis Dasgupta, Tarun Chatterjee and Bejon Majumdar, for the Appellant; Syamaprosanna Roychowdhury, for the Respondent

Final Decision: Dismissed

Judgement

B.N. Maitra, J.

A misc. case for pre-emption filed u/s 8 of the West Bengal Land Reforms Act was being heard by the learned Munsif. The case was previously dismissed. An appeal was preferred and it was allowed. The case was sent back on remand. After the order of remand, the petitioners, who are the pre-emptors, put some questions to a witness and the same were disallowed. Then they filed an application for the purpose. It was rejected as not maintainable and it was ordered to be returned to the petitioners. Hence this revisional application. It has been contended on behalf of the petitioners that by the amending Act of 1976, Sec. 115 of the CPC has undergone a radical change. Sec. 115(1) says that High Court can exercise its powers of revision regarding "any case which has been decided". The explanation added by the amendment made in 1976 has denned the expression "any case which has been decided". That explanation expressly says that it "includes any order made, or any

order deciding an issue, in the course of a suit or other proceeding." In the case of Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, at p. 170 it has been stated that the word ''includes'' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. Since by that explanation the expression ''includes'' has been intentionally used by the legislature, that has enlarged the meaning of the expression "any case which has been decided". In view of the enlarged meaning of such expression, the court will have no hesitation in stating that the order passed by the learned Munsif is covered by the aforesaid words "any case which has been decided" and is accordingly revisable. In Stroud''s Judicial Dictionary, Fourth Edition, Volume III, at PP. 1333 and 1334 it has been stated that the word ''include'' is a word of extension and not of restrictive definition and it is generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute. When it is so used it must be construed as comprehending, not only such things as they signify according to its natural import, but also those things which the interpretation clause declares that the same shall include. If the order is allowed to stand, then it would mean another remand by the appeal court. In the case of Tata Iron and Steel Co. Ltd. Vs. Rajarishi Exports (P) Ltd., , it has been stated that by the explanation added to section 115 of the Code by the amending Act of 1976, the scope and ambit of revision has been widened and consequently the decision reported in Baldevdas Shivlal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, and some other decisions are no longer good law.

2. The learned Advocate appearing on behalf of the opposite parties has referred to the provisions of Sec. 136 of the Indian Evidence Act, rule 11 of Order 18 of the Code of Civil Procedure. The case of Alekh Pradhan and Others Vs. Bhramar Pal and Another, at p. 60 has been cited to show that the same Judge, who decided the case of Tata Iron and Steel Company v. Rajarishi Exports (supra), has followed the case of Baldevdas Shivlal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, and stated that where the court passes an order allowing a witness to be examined, no right or obligation of the parties in controversy has been decided and hence a revisional application is incompetent. The case of Sabitri Debi and Another Vs. Baikuntha Das and Another, has been cited to show that by refusing to send a document to the hand-writing expert, the court does not adjudicate upon any right or obligation of the parties in controversy and hence no revision lies. Reference has also been made to the case of Manohar Lal Vs. Valerior (Cawnpore) Pvt. Ltd. and Another, for supporting that contention. If the present revisional application is allowed, then similar petitions might be filed by the parties in future and that will only protract the litigation, which has already become very old.

3. So the question arises whether the order in question is revisable and whether the expression "any order made" appearing in the explanation to the amended Sec. 115 of the Code is wide enough to include the present prayer for exercising the right of revision by the High Court when the learned Munsif rejected the prayer for allowing

some questions to be put to a witness.

4. By the amending Act of 1976, the following proviso has been added :

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where--

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation : In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

5. In the case of Central Bank of India Vs. Shri Gokal Chand, at p. 800 it has been stated that orders regarding issue of commission for examining witnesses, inspection, fixing a date of hearing, admissibility of a document or the relevancy of a question are matters which do not affect the rights or liabilities of the parties. In the case of Madhu Limaye Vs. The State of Maharashtra, at p. 53 it has been stated that a case may be said to be decided if the court adjudicates for the purpose of the suit some rights and obligations of the parties in controversy. The same view was taken in the aforesaid case of Baldevdas Shivlal v. Filmistan Distributors (Supra). In that case the Court overruled an objection regarding a question put to a witness and permitted that question to be put. The Supreme Court stated that no case was decided and hence no revision lay.

6. The records show that some questions were put to a witness. The court noted these questions and disallowed the same. Then the petitioners filed an application to that effect and that too was rejected. That application was ordered to be returned. The provisions of rule 11 of Order 18 of the Code, referred to on behalf of the opposite parties, show that the court will have to give decision. But no reason was assigned why the questions were disallowed. A reference to section 136 of the Evidence Act is not germane. It has to be seen whether, by the amending Act of 1976, the scope of revisional jurisdiction has been widened. The amendment was made in 1976 to point out the restrictions which have been put when the High Court exercises the power of revision. That is clear from the clauses (a) and (b) of the proviso, which say that the order in question must be one if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceeding, or if the order is allowed to stand, would occasion a failure of

justice or cause irreparable injury, respectively. Unless either of these tests is satisfied, the High Court cannot exercise its power of revision regarding an order envisaged by the provisions of section 115. It also seems that in spite of inclusion of the explanation at the end of the proviso, the revisional powers of the High Court have not been enlarged or extended. The manner in which such revisional power is exercisable has only been chalked out by inserting the aforesaid two clauses (a) and (b), otherwise there will be spate of cases and there will be no end of litigation. If the petitioner''s contention, that after such amendment any order is revisable, has to be accepted, then when a petition for adjournment is rejected in exercise of Court''s discretion, a revision will lie. By rejecting the questions put on behalf of the petitioners, the learned Munsif did not adjudicate for the purpose of the pre-emption case any right or obligation of the parties in controversy. The case is pending and hence the petitioners will have to ventilate their grievance in this respect in the court of appeal, should their application for pre-emption be eventually rejected by the learned Munsif.

Hence the submissions made on behalf of the petitioners cannot be accepted. It is held that the order in question is not revisable and the present application is not maintainable u/s 115 of the Code.

The Rule is discharged.

There will be no order as to costs.