(1974) 09 BOM CK 0017

Bombay High Court (Nagpur Bench)

Case No: C. Rev. Application No. 301 of 1968

Manohar Govindrao Siras		APPELLANT
	Vs	
Ramchandra Govindrao Siras and others		RESPONDENT

Date of Decision: Sept. 17, 1974

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 135, 141, 151
- Limitation Act, 1963 - Section 5
- Provincial Small Cause Courts Act, 1887 - Section 25

Citation: (1975) MhLj 373

Hon'ble Judges: C.S. Dharmadhikari, J

Bench: Single Bench

Advocate: W.G. Somalwar, for the Appellant; W.G. Deo, For L. Rs. of Deceased opponent No. 1, P.V. Holay, For L. Rs. of Deceased opponent No. 2, for the Respondent

Final Decision: Allowed

Judgement

C.S. Dharmadhikari, J.

The applicant-plaintiff filed a suit for partition and separate possession of his 1 /4th undivided share in the properties as well as money-lending business etc. as referred to in the schedules attached to the plaint. On the basis of valuation, the court-fee payable was Rs. 1100/-. As according to the plaintiff, he was not possessed of sufficient means to enable him to pay the said court-fee he filed the suit in forma pauperis.

2. In the written statement defendant No. 1 contended that the plaintiff has not disclosed all his estate truly and faithfully in the schedule attached to the plaint. According to him, the plaintiff has suppressed the fact that he along with defendants 1 to 3 and one Shankarrao Siras has obtained a preliminary decree for partition for movable and immovable property left by one Shridharrao Siras, who

died in the year 1952. Defendant No. I further made an offer that he is prepared to purchase the plaintiff''s 1 /12th share in the said property for Rs. 2500/-with all risks of litigation by way of appeal etc. He further contended that the plaintiff has sufficient means to pay the prescribed court-fee. During the course of proceedings in answer to the interrogatories served, the plaintiff admitted that he had obtained a decree for partition as alleged by defendant No. 1, but according to him, the said decree has not become final in view of pendency of an appeal bearing Civil Appeal No. 14 of 1967 pending in the Court of District Judge, Chanda. After framing necessary issues and appreciating the evidence on record the learned Judge of the trial Court came to the conclusion that the plaintiff has failed to prove that he is pauper as contemplated by the provisions of Order 33, rule 1 of the CPC and, therefore, the application filed by the plaintiff was rejected and time was granted to him to pay the court-fees. Against this order the present revision petition was filed. It appears from the record that during the pendency of this revision petition respondent No, 1 Ramchandra died on 14-11-1967. Thereafter an application for bringing the legal representatives on record was filed by the applicant on 29th of January 1972.

3. Opponent No. 2 Purushottam died on 4-11-1970. An application for bringing his legal representatives on record was filed by the applicant on 20th January 1972. The applicant then filed an application for setting aside abatement as well as condonation of delay on 29th January 1972. It seems that the said applications came up for hearing before this Court on 1-7-1974 and this Court rejected the application filed by the applicant u/s 5 of the Limitation Act. However, the contention raised by the learned counsel that Order 22 of the CPC is not applicable to the present proceedings, was directed to be decided along with the revision petition itself.

4. When the matter came up for hearing before me a preliminary objection was raised on behalf of the contesting opponents, viz., proposed legal representatives that the present petition has abated and as the application filed by the plaintiff u/s 5 of the Limitation Act was already dismissed by this Court, the revision petition itself should be dismissed as abated, without going into the merits of the matter. In support of this contention the learned counsel for the proposed legal representatives, Shri Holay, relied upon the decision of Calcutta High Court in Anandmovi Dasi v. Rudra Mahanti XXI Indian Cases 407 and a decision of Madhya Bharat High Court in Chakrapani Laltprasad v. Saharilal AIR 1953 M. P. 272. Shri Holay further contended that the proceedings instituted u/s 115 of the CPC are in substance proceedings instituted in the appellate jurisdiction of this Court and, therefore, in substance amount to an appeal, though styled as revision. Therefore, according to him, in view of the provisions of Order 22, rule 11 of the CPC the provisions of Order 22, will also apply to a revision petition, filed by a party u/s 115 of the Code of Civil Procedure. In support of this contention Shri Holay has relied upon the decision of the Supreme Court in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, .

5. On the other hand it is contended by Shri Somalwar, the learned counsel for the applicant, that the provisions, of Order 22 of the CPC are not applicable to the proceedings u/s 135 of the Code of Civil Procedure. According to him, the proceedings taken u/s 115 of the Code could not be termed as appeal for the purposes of Order 22 of the Code of Civil Procedure. He further contended that a specific provision has been made in Order 22, rule 11 so far as appeals are concerned. No such provision has been made by the CPC so far as revision petitions are concerned and, therefore, said provision will not apply to the proceedings taken u/s 115 of Code of Civil Procedure. In support of his contention Shri Somalwar has relied upon a full Bench decision of the Lahore High Court in AIR 1949 Lahore 186 , a Fall Bench decision of the Rajasthan High Court in Babulal and Another Vs. Mannilal, , a decision of Delhi High Court in Union of India v. Ganga A I R 1971 Del 65, of a Punjab High Court in Ram Saran Dass Tara Chand Vs. Ram Richhpal L. Mannu Lal and Another, and a decision of this Court in Hafasji Ibrahim Vs. Mangalgirji Mathuragirji, , which is based upon the decision of Oudh High Court in AIR 1939 277 (Oudh) . In Hafasji Ibrahim and others v. Mangalgiri this Court was concerned with the proceedings pending before the Collector in revision under the Mamlatdars'' Courts Act and in this context it was held by this Court, relying upon a decision of the Oudh High Court in AIR 1939 277 (Oudh) and a decision of the Madras High Court, that provision of Order 22 of the CPC does not apply to such proceedings. Further in this context it was observed by this Court as under:

"Order 22 applies in terms to all suits and appeals. The question is whether by reason of section 141 of the Code the procedure provided under Order 22 can be made applicable to these proceedings. Their Lordships of the Privy Council in 22 I A 44 have laid down that the proceedings spoken of in section 141 of the Code refer only to original matters in the nature of suits such as proceedings in probates, guardianships, and so forth. Now it cannot possibly be said that a revisional application is an original matter in the nature of a suit and, therefore, to my mind Order 22 would not apply to the revisional application pending before the Collector. I find that a learned Judge of the Madras High Court in Pendyala Basawanjanayulu and Others Vs. Lingamullu Ramalingayya, has taken the view that Order 22, rules 3 and 4, are applicable to proceedings u/s 115, CPC and an order passed by the High Court on a petition u/s 115 in ignorance of the fact of death of the petitioner more than 90 days previously is one made without jurisdiction and is a nullity. In that case the learned Judge took the view that Order 22, rule 3, applied to revisional proceedings u/s 115 of the Code and he also took the view that Article 176, Limitation Act. applied. With respect to the learned Judge, he does not seem to have considered the decision of the Privy Council to which I have referred, nor did he consider whether revisional proceedings u/s 115 can be called an original matter in the nature of a suit. In any case it is difficult to see how Article 176, Limitation Act. would apply, because Article 176 refers to the legal representatives of a deceased plaintiff or of a deceased appellant; and, in a revisional application, you neither have

a plaintiff nor an appellant but only an applicant or a petitioner. To my mind it seems that the better view is the view taken by the Lucknow Court in 15 Luck 26. Radha Krishna Srivastava J. took the view there that Order 22, Civil Procedure Code, does not apply to an application for substitution of the name of a legal representative in place of a deceased party in a revision application; and he further held that there was no rule of limitation governing an application for substitution of parties in a revision application. The learned Judge further points out that the revising Court would require a representative of the deceased applicant or opponent in order to decide the matter and, therefore, the Court would require a legal representative to be brought on record u/s 151 Civil Procedure Code. The learned Judge further took the view that assuming any article of the Limitation Act applied at All it would not be Article 177 but Article 181 which is the residuary article as far as application are concerned."

A similar view was taken by the Lahore High Court in Mohd. Sadaat Ali Khan v. The Administrator, Corporation of City of Lahore. After referring to various decisions of different High Courts the Full Bench of the Lahore High Court ultimately held:

"Order 22, Rule 3, CPC is not applicable to revisions. It cannot be read in conjunction with section 141 as section 141 is so drafted as to enable a Court to apply the procedure in regard to suits to such proceedings as are in pari materia with suits and thus original in character. A revision is very much unlike a suit. The procedure provided for suits would be mostly inapt and inappropriate to proceedings in revision. Further Article 176, Limitation Act, cannot be made applicable to a revision. Hence where a party going in revision dies pending the revision petition and an application is made by his legal representatives to be brought on record after the expiry of the period of 90 days the petition for revision cannot be dismissed on the ground of abatement."

Apart from the various reasons given by the Full Bench of the Lahore High Court, one of the reasons given by the Full Bench was as under:

"The powers u/s 115 of the CPC are limited and can only be exercised in the three cases mentioned therein and that only ex debito justitiae. If the High Court decides to act u/s 115 suo motu, can it be legitimately contended that it would have no power left to do so only because a party to the case had died either before or even after the date on which it was decided to take action under this section, t do not think so. If the High Court finds injustice to have been done, should it be allowed to remain perpetuated simply because one of the parties to the case had happened to die before or after the order calling for the record of the case had been passed by the High Court. By whom, moreover, is an application to bring the deceased''s legal representatives on the record to be made? Surely not by the Court. It could have ordered them to be brought on the record but to that order Article 176, Limitation Act, is not applicable. It only applies to applications. This was a simple case. But what about petitions for revision which have been filed by private individuals? They have

no legal right to be heard in support of such applications although as a matter of prudence they usually are and if the Legislature had merely intended private individuals or parties to a case to draw the attention of the High Court, as the words of section 115, CPC seem to me to indicate, it could not be prevented from making the legal representatives of a deceased petitioner or respondent consequent either on one death or on a series of deaths as parties to the proceedings in revision. For to hold that it had no such power would be tantamount to holding that it cannot do justice even in the limited number of cases referred to in section 115 and even when it is clearly of the view that it should interfere in order to do complete justice between the parties or their legal representatives as the case may be within the terms of that section."

Then the Full Bench of the Lahore High Court held that the provisions of Order 22, Rule 3 of the CPC are not applicable to revisions and a petition for revision could not, therefore, be dismissed on the ground of abatement. The Full Bench of Rajasthan High Court in Babulal v. Mannilal also took the similar view. The same view has been taken by the Punjab High Court in Ram Saran v. Ram Richhpal with regard to the provisions of section 25 of the Provincial Small Cause Courts Act. Relying upon the Full Bench decision of Rajasthan High Court in Babulal and Another Vs. Mannilal, and Full Bench decision of Lahore High Court in AIR 1949 Lahore 186 , Punjab High Court also took the same view. In Union of India v. Gangawati and others the Division Bench of the Delhi High Court observed:

"The provisions of Order 22 have been made specifically applicable to appeals by Order 22, Rule 11, Civil Procedure Code. It is not applicable to revisions and the inherent power of the Court to substitute parties can be exercised in case of revisions only in the context of exercising judicial discretion in interfering with the order of the Court below."

Therefore, in my opinion, the view taken by this Court in Hafasji v. Mangalgiri is in conformity with the view taken by different High Courts of the country, and it is not necessary for me at this stage to reconsider the said decision, though an argument in that behalf was advanced by Shri Holay, the learned counsel for the proposed legal representatives.

6. It was contended by Shri Holay that in view of the decision of the Supreme Court in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, the law laid down by this Court in Hafasji Ibrahim Vs. Mangalgirji Mathuragirji, and the other High Courts in that behalf is no more good law and hence the whole matter should be reconsidered over again. It is not possible for me to accept this contention of Shri Holay at this stage. It is no doubt true that in Shankar Ramchandra v. Krishnaji Dattatraya Bapat it has been held by the Supreme Court that:

"The right of appeal is one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below. Two things which are required

to constitute appellate jurisdiction are the existence of the relation of superior and inferior Court and the power on the part of the former to review decisions of the latter. When the aid of the High Court is invoked on the revisional side it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below. Section 115 of the CPC circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider, and larger sense.".

However, from this observation of the Supreme Court it cannot be held that even for the purposes of Order 22 of the CPC the term "appeal" as used in Order 22, Rule 11 should also be construed in a larger sense. On the contrary it is observed by the Supreme Court in Rami Manprasad Gordhandas and Others Vs. Gopichand Shersing Gupta and Others, that:

"No doubt the Label under which a revision is tiled, if erroneous, does not estop the party from praying that the revision may be dealt with under the proper law applicable to the case and such a prayer is open to consideration by the Court. But such a prayer has, as a rule, to be made in the Court which is requested to exercise its judicial discretion for that purpose. Section 115, Civil Procedure Code, it is plain, vests the High Court with a discretionary power to be exercised judicially to interfere only when the cause of justice demands it. The High Court is not bound to interfere merely because the conditions in clauses (a), (b) or (c) of section 115 are satisfied."

If this is the position, then in my opinion, it cannot be construed that revision petition filed u/s 115 of the CPC is practically an appeal for all purposes including for the purposes of Order 22, Rule 11 of the Code.

7. In Calcutta cases, referred to above, there is no discussion on the point, but it was only held that the principles underlying Order 22 will apply to the proceedings in revision. To say that Order 22 as well as the provisions of Article 176 of the Limitation Act will apply in terms is one thing then to say that the principles underlying the said provision will apply to the proceedings before the High Court u/s 115 of the Code of Civil Procedure. Even if it is held that principles underlying Order 22 will apply to such proceedings, in my opinion, it cannot be said that the provisions of Order 22 of the CPC or Article 176 of the Limitation Act will in terms apply to the said proceedings. On the contrary from the law laid down by this Court as well as other High Courts it is quite clear that the provisions of Order 22 and the Limitation Act in terms will not apply to the proceedings in revision u/s 115 of the Code of Civil Procedure.

8. In this view of the matter, in my opinion, it cannot be said that the present revision petition has abated as the applicant has failed to bring legal representatives

of deceased opponent No. 2 Purushottam on record within a period of 90 days. An application for bringing the said legal representatives was already filed by the petitioner applicant. Having regard to the contentions raised in the said application and the respective rights of the parties, in my opinion, this is a fit case wherein this Court should exercise its jurisdiction u/s 151 of the CPC for bringing legal representatives of deceased opponents on record. The said application is, therefore, allowed and the legal representatives of deceased opponent No. 1 Ramchandra and opponent No. 2 Purushottam are directed to be brought on record. The matter be placed for hearing after the legal representatives are brought on record and notices on merit are duly served upon them.