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Civil Revision No. 120 of 2018

Court: Rajasthan High Court (Jodhpur Bench)

Date of Decision: Sept. 7, 2018

Acts Referred:

Code of Civil Procedure, 1908 " Section 100, 102, 115

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

Bench: Single Bench

Advocate: A.K. Rajvanshy

Final Decision: Dismissed

Judgement

Petitioner-defendant has preferred this revision petition under Section 115 CPC to challenge judgment and decree dated 16th of March, 2018, passed

by Addl. District Judge, Merta (for short, "Appellate Court"), whereby learned appellate Court has affirmed judgment and decree dated 20th of

October 2011 passed by Civil Judge, (Jr. Div.), Degana, District Nagaur (for short, "Trial Court").

The facts, in brief, are that respondent-plaintiff filed a civil suit against petitioner before the trial Court for recovery of a sum of Rs.22,633.~, ~,

Precisely, in the plaint, it is inter-alia averred by the respondent-plaintiff that petitioner-defendant from time to time purchased foodgrains and

pesticides on credit from his firm Gangavisan Hanuman Prasad and requisite entries were made in the account books.~, ~, As per version of the

respondent-plaintiff, in the interregnum period, 14th of November, 1998 to 15th of March, 1999, petitioner purchased goods worth Rs.14,596 on credit

and when the amount was not paid, finally a notice was given and besides aforesaid amount, interest Rs.8,737 @24% cumulatively, a sum of

Rs.22,633 was claimed by the respondent-plaintiff.

The suit was contested by petitioner-defendant and a detailed written statement was filed.Ã, Ã, In the written statement, many objections were

incorporated by the petitioner-defendant and in the entire claim was repudiated.Ã, Ã, The learned trial Court, on the basis of pleadings of parties,

settled four issues for determination.Ã, Ã, On behalf of respondent-plaintiff, he himself appeared in the witness box besides examining two other

witnesses.Ã, Apart from oral evidence, 9 documents were also produced.Ã, Ã, To counter the evidence of respondent-plaintiff, petitioner himself

appeared in the witness box and examined three other witnesses.Ã, For substantiating its defence, petitioner also produced 6 documents.

Learned trial Court, after hearing the rival parties, decided all the issues against petitioner-defendant and in favour of respondent-plaintiff.Ã, Ã, On the

basis of decision on all the four issues, the learned trial Court decreed the suit of respondentplaintiff for a sum of Rs.14,596 with interest @6% per

annum. Being aggrieved by the same, petitioner-defendant approached learned appellate Court but the learned appellate Court, after reappreciation of

evidence available on record, fully concurred with the findings and conclusions of the learned trial Court and dismissed the appeal.

I have heard learned counsel for the petitioner and perused the impugned judgment.Ã,

Learned counsel for the petitioner in support of his arguments has placed reliance on following judgment: Ishwar Dass Jain (dead) through LRs Vs.

Sohan Lal (dead) by LRs.Ã, (AIR 2000 SC 426).

The endeavour made by the petitioner-defendant by way of this revision petition to annul concurring judgments of both the Courts below, in my view,

is a very daunting task.Ã, Ã, As a matter of fact, at the threshold, petitioner preferred second appeal under Section 100 CPC but considering decretal

amount being less than Rs.25,000 and embargo under Section 102 CPC regarding maintainability of appeal, at his request, the appeal was converted

into civil revision petition under Section 115 CPC.

Upon consideration of the arguments of learned counsel, it has come to the fore that whole endeavour of the learned counsel is to re-appreciate the

evidence for upsetting concurrent findings of fact recorded by both the Courts below.Ã, Ã, While it is true that Legislature has put an embargo on

entertaining second appeal against a money decree of less than Rs.25,000, and therefore, the petitioner can very well invoke revisional jurisdiction, but

then, in such a situation, scope of judicial review cannot be enlarged and the parameters envisaged under Section 115 CPC are to be satisfied.Ã, Ã,

It is trite that revisional jurisdiction of this Court under Section 115 CPC is very much limited and the same is not akin to appellate jurisdiction.Ã, Ã,

The revisional jurisdiction can be exercised when it is noticed by the Court that subordinate court has exercised jurisdiction not vested in it by law or

failed to exercise a jurisdiction so vested, or has acted in excess of its jurisdiction and committed illegality or materially irregularity.

There remains no quarrel that learned trial Court was clothed with the jurisdiction to try the suit and it has decreed the suit on appreciation of

evidence.Ã. Subsequently, the appellate Court also examined the matter de novo and fully concurred with the findings and conclusions of the trial

Court, therefore, in my view, it cannot be said that both the Courts below have exercised their jurisdiction illegally or with material irregularity.Ã, Ã, Ã,

In exercise of revisional jurisdiction, re-appreciation of evidence is not permissible more particularly when there is concurrent finding by both the

Courts below.Ã, Ã, The judgment in Ishwar Dass Jain (supra), on which learned counsel for the petitioner has placed reliance, is factually

distinguishable inasmuch as the subject matter of the suit therein was redemption of usufructuary mortgage.Ã, Here, in the instant case, it was a

simple case of money recovery suit and therefore the aforesaid judgment cannot render any assistance to the cause of the petitioner.Ã,

In totality, I am afraid, no case is made out for interference in exercise of revisional jurisdiction and consequently revision petition fails and the same is

hereby dismissed.