

Kehr Singh v. Satbir etc. (Pandit, J.)

(14) So far as the ruling in *Lal Chand's case* (1), on which reliance has been placed by both the Courts below, is concerned, it is enough to say that the learned Additional District Judge had himself observed that the report of that case was a very short one and it could not be gathered therefrom as to whether any adjournment had been granted after an order under Order 17, rule 3, Code of Civil Procedure, was passed. Moreover, it was clearly mentioned therein—"There can be no doubt that the trial Court decided the suit on the merits under order 17, rule 3, Civil Procedure Code.....". In the present case, however, I have already held above that the order, dated 13th December, 1967, was in reality under the provisions of Order 17, rule 1, sub-rule (3) and not under Order 17, rule 3, Code of Civil Procedure.

(15) In view of what I have said above, I would partly accept this revision, set aside the orders of Courts below and direct the trial Court to dispose of the application, dated 1st January, 1968, filed by the defendant for setting aside the *ex parte* decree, dated 30th December, 1967, on merits. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout. Parties have been asked to appear before the trial Court on 5th April, 1971.

K. S. K.

REVISIONAL CIVIL

Before P. C. Pandit, J.

BEHARI LAL ETC.,—Petitioners

versus

SHMT. KAUSHALYA DEVI,—Respondent.

C. R. No. 1050 of 1970.

March 10, 1971.

Code of Civil Procedure (Act V of 1908)—Section 115 and Order 41, rule 1—Punjab High Court Rules and Orders—Volume V, Chapter I-A—Rule 7—Revision petition under section 115—Copy of the trial Court's judgment—Whether has to be filed along with it—High Court—Whether can exempt the filing of such copy under Order 41 rule 1.

Held, that under Rule 7 of Chapter I-A of Punjab High Court Rules & Orders, Volume V, a copy of the order of the trial Court has to be filed along with a revision petition under section 115 of Code of Civil Procedure. The High Court cannot exempt the filing of such copy under Order 41, rule 1 of the Code, because that provision is applicable to appeal, whether the appellate Court has been given the power to dispense with the production of a copy of the judgment on which the decree appealed from is founded, but there is no law under which the High Court in revision petition can dispense with the certified copy of the judgment of the trial Court. (Para 2).

Petition for revision under section 115 C.P.C. for revision of the order of the Court of Shri Aftab Singh Bakshi, Additional District Judge (III), Ludhiana, dated 6th August, 1970, affirming that of the Court of Shri Gurjit Singh Sandhu, Sub-Judge 1st Class, Ludhiana, dated 10th April, 1970, dismissing the application of the defendant/applicants.

ROOP CHAND, ADVOCATE, for the petitioners.

RAM RANG, ADVOCATE, for the respondents.

JUDGMENT *

PANDIT, J.—(1) A preliminary objection has been raised by the learned counsel for the respondent that these revision petitions have not been properly filed, inasmuch as the petitioners have not put in the certified copies of the orders of the trial Court. Reference in this connection is made to Rule 7 in Chapter I-A of Rules and Orders of the Punjab High Court, Volume V. The said rule says—

“Every such petition shall be stamped as required by law and shall be accompanied by a copy of the decree or order in respect of which such application is made and by a copy of the judgment upon which such decree is founded.

In the case of petitions for revision of the decree or order of an appellate court, a copy of the judgment or order of the court of the first instance shall also be filed.”

(2) A perusal of this rule would show that it is necessary that the petitioner should file a copy of the order of the trial Court as well. It is true that the petitioners, along with the revision petitions, had filed an application under Order 41, rule 1 read with sections 141/151 of the Code of Civil Procedure, for dispensing with the production of the copy of the judgment of the trial Court and

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the reason given therein was that the facts were clear from the copy of the judgment of the lower appellate Court and, therefore, it was a fit case in which a copy of the judgment of the trial Court could be dispensed with. Learned counsel for the petitioners has not brought to my notice any provision of law, under which such an application can be made in the case of revision petition. Order 41, rule 1, applies to appeals from original decrees and by virtue of Order 42, rule 1, Code of Civil Procedure, rules of Order 41 would apply, so far as may be, to appeals from appellate decrees. Under Order 41, rule 1, the appellate Court has been given the power to dispense with the production of a copy of the judgment on which the decree appealed from is founded, but the learned counsel was unable to show that in revision petitions also, this Court can dispense with the certified copy of the judgment of the trial Court. That being so, it has to be held that these revision petitions have not been properly filed in this Court.

(3) The preliminary objection, therefore, prevails and these revision petitions are, consequently, dismissed. There will, however, be no order as to costs.

K.S.K.

MISCELLANEOUS CIVIL

Before R. S. Narula & P. C. Jain, JJ.

RAM SINGH, ETC.,—Petitioners.

versus

BISHAN SARUP BANSAL, SUPERINTENDING CANAL OFFICER ETC.,—
Respondents.

C. W. No. 677 of 1966.

March 17, 1971

Northern India Canal and Drainage Act (VIII of 1873)—Sections 30-A to 30-F and 68—Construction of new watercourses—Whether can be ordered under section 68 without following the procedure under section 30-A to 30-F.