

in holding that the disputed construction has been raised on the land of Public Works Department now deserves a brief reference. Learn-Counsel is correct that no plea was raised by the tenant that the disputed construction is on the land of public Works Department and no issue was framed by the Rent Controller in this regard. However, what is necessary to be emphasised is that the observations made by the Rent Controller and the Appellate Authority about the location of construction can not operate to the prejudice of the petitioner because no issue had been framed by the Rent Controller in this regard. If, at all, any dispute arises between the petitioner and the Public Works Department about the title of the property, the observations made by the Rent Controller and the Appellate Authority will not any way prejudice the petitioner's case. However, this has no effect on the claim of the petitioner for eviction of the tenant on the grounds set out in his application.

(15) In the result. revision petition fails and the same is dismissed.

J.S.T.

Before Hon'ble G. S. Singhvi, J.

JOGINDER PAL,—Petitioner.

versus

RAJ RANI,—Respondent.

C. R. No. 3809 of 1994.

23rd January, 1995.

Code of Civil Procedure, 1908—S. 115—Revision—Explanation to S. 115 of any case decided includes any order impugned in the course of a suit or any other proceedings—'Case decided' means even a part of the case and on such fulfilment of conditions laid down in proviso (b) of S. 115 interference can be made in interlocutory orders.

Held, that a case may be said to be decided if the subordinate court decides it or adjudicates in a suit some right or obligation of the parties in controversy. Further explanation to S. 115, C.P.C. to my mind makes it abundantly clear that the expression "any case which has been decided" also includes an order made in the course of a suit or other proceedings.

(Para 10)

Further held, that the very purpose and object of Section 115 would be defeated if the court was to take the view that the interlocutory orders passed by the Civil Courts are not revisable under section 115 C.P.C. and that such orders can be challenged only when the judgment of the main case is appealed against. Explanation to Section 115 unambiguously lays down that in Section 115, expression "any case which has been decided" includes any order impugned in the course of a suit or any other proceedings. This explanation makes it clear that 'case decided' means even a part of the case and as such on the fulfilment of the conditions laid down in proviso (b) interference can be made with the interlocutory orders.

(Para 12)

V. K. Kataria, Advocate, *for the Petitioner.*

Munishwar Puri with Deepali Puri, Advocate, *for the Respondent.*

JUDGMENT

G. S. Singhvi, J.

(1) This revision petition is directed against the order dated 27th September, 1994 passed by the Sub-Judge IIInd Class, Patiala on an application filed by the defendant-petitioner under Order 14 Rule 5 read with Section 151 C.P.C. for framing additional issues. The petitioner is aggrieved by the impugned order because the learned Sub-Judge has dismissed his application.

(2) Brief facts of the case are that the plaintiff-respondent has filed a suit against the defendant-petitioner for possession of the property in dispute as well as for mandatory injunction. In the plaint, it has been alleged that the respondent is the owner of the property No. 839 which was given to the petitioner as a licensee. Defendant-petitioner has contested the suit by alleging that the plaintiff-respondent does not have any right over the property in question. He has pleaded that the plaintiff-respondent is not the owner of the property. The property is an evacuee property belonging to the Rehabilitation Department and as the defendant-petitioner is living in the disputed property since the year 1944, he has acquired a right to continue in possession. It has also been pleaded by the defendant-petitioner that earlier to the filing of suit, the plaintiff-respondent filed a petition under section 13 of the Punjab Rent Restriction Act, 1949 but got it dismissed in default when the defendant-petitioner raised an objection to the maintainability of the application on the ground that relationship of landlord and tenant did not exist between the parties.

(3) On the pleadings of the parties, the trial Court framed the following issues :—

- (1) Whether the plaintiff is entitled to possess the suit property ? OPP
- (2) Whether the suit is not maintainable in the present form ? OPD.
- (3) Whether the suit is not property valued for the purpose of court fee and jurisdiction ? OPD
- (4) Whether the suit is bad for non-joinder of the necessary parties ? OPD.
- (5) Whether the plaintiff filed a rent petition against the defendants previously which was dismissed by the Rent Controller Patiala,—vide order dated 9th February, 1993? OPD
- (6) Whether the suit property is not fully described, if so its effect ? OPD
- (7) Relief.

(4) After evidence of the parties was recorded by the trial Court, the defendant-petitioner moved an application under Order 14 Rule 5 read with Section 151 C.P.C. with the request that the following additional issues be framed :—

- (1) Whether the defendant is in possession of the suit property as a licensee of plaintiff ?
- (2) Whether the defendant has become the owner of the property by way of adverse possession ?
- (3) Whether the property is owned by the Rehabilitation Department ?

(5) After hearing the learned counsel for the parties, the trial Court held that there was no necessity of framing additional issues inasmuch the additional issues sought to be framed are covered by the first issue already framed on the basis of the pleadings of the parties. The trial Court further held that the application had been

filed with the sole object of filling the gaps in the evidence of the defendant-petitioner and that deficiency in the evidence of the parties cannot be allowed to be rectified by framing additional issues and then giving them the opportunity to lead additional evidence.

(6) Before I deal with the contention of Mr. Kataria on merits of the impugned order, it is necessary to dispose of a preliminary objection raised by the learned counsel for the respondent. Mr. Puri argued that against the order passed by a competent Court dismissing an application filed under Order 14 Rule 5 read with Section 151 C.P.C., revision petition is not maintainable under section 115 C.P.C. Mr. Puri further argued that the order passed by a competent Court on such application cannot be treated as a case decided and, therefore, the High Court cannot entertain the revision petition. He relied on two decisions of Allahabad High Court in *Amir Singh v. Om Parkash* (1) and *Sri Ram Narain v. Rajeshwari* (2).

(7) Section 105 as well as 115 C.P.C. as they stand after amendment of 1976, read as under :—

“105. Other orders.—(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in exercise of its original or appellate jurisdiction but, where a decree is appealed from any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1) where any party aggrieved by an order or decree from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.”

“115. Revision.—(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears :—

(a) to have exercised a jurisdiction not vested in it by law,
or

(1) A.I.R. 1978 Allahabad 15.

(2) A.I.R. 1978 Allahabad 214.

- (b) to have failed to exercise a jurisdiction so vested;
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

the High Court may make such order in the case as it thinks fit.

Provided that the High Court shall not, under the section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or order 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 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.”

(8) In *S. S. Khanna v. Brig. F.J. Dhillon* (3), it was observed as under :—

“The expression ‘case’ is a word of comprehensive import it includes civil proceedings other than suits, and is not restricted by anything contained in the section to ‘the entirety of the proceedings in a Civil Court. To interpret the expression ‘case’ as an entire proceeding only and not a part of a proceeding would be to impose a restriction upon the exercise of power of superintendence which the

jurisdiction to issue writs and the supervisory jurisdiction are not subject, and may result in certain case in denying relief to aggrieved litigant where it is most needed, and may result in the perpetration of gross injustice.”

The aforesaid decision was considered in *Baldev Dass v. Filmstan Distributors* (4). Shah, J. as he then was, speaking for the Court, laid down as under :—

“A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy, every order, in the suit cannot be regarded as a ‘case decided’ within the meaning of section 115.”

(9) A learned Single Judge of Rajasthan High Court considered the scope of Section 115 C.P.C. in the context of a challenge to an interlocutory order in *Ghevar Chand v. Jag Singh* (5), held as under :—

“Even when interlocutory order does not adjudicate or determine any rights or obligations of the parties in controversy in the suit, still, such an interlocutory order may occasion failure of justice or cause irreparable injury and as such, it can be said that such an order is revisable. The expression “any case which has been decided includes” “any order made.” It is true that the expression “any order made” includes within its embrace all sorts of orders. Such a wide connotation of course, cannot be given to the expression “any order”. An order, which may ultimately affect the decision of the suit or which may ultimately affect the right of the party, though it is not adjudicating the right, may, in my opinion, be covered under the expression “any order”. Take for example, party’s evidence is closed without any rhyme or reason. Assistance of issue of process has been illegally refused. It may be stated that no right in controversy has been adjudged, but, as such order ultimately affect the right of the party to affect the decision of the suit and so in my opinion, would be covered under the expression “any order.”

(4) A.I.R. 1970 S.C. 406.

(5) 1982 R.L.R. 229.

(10) It is, thus, clear that a case may be said to be decided * if the subordinate court decides it or adjudicates in a suit some right or obligation of the parties in controversy. Further explanation to section 115, C.P.C. to my mind, makes it abundantly clear that the expression "any case which has been decided" also includes an order made in the course of a suit or other proceedings. There is no room for controversy that the High Court is empowered to rectify an order of subordinate court at any stage of the suit or other proceeding. Proviso (b) to sub-section (1) of section 115, C.P.C. (hereinafter 'Proviso (b)') lays down that no variation or reversal of any order under section 115 C.P.C. in the course of a suit or other proceeding, shall be made by the High Court until and unless it is satisfied that the order of which revision is sought, is allowed to stand, of section 115, C.P.C. hereinafter 'Proviso (b)') lays down that to variation or reversal of any order under section 115 C.P.C. in the course of a suit or other proceedings, shall be made by the High Court until and unless it is satisfied that the order of which revision is sought, is allowed to stand, would either occasion failure of justice or cause irreparable injury to the party, which has challenged it in revision. Sub-section (2) of section 115 lays down that no variation or reversal of any order can be made by the High Court in exercise of its power under section 115, C.P.C. if an appeal lies against that decree or order to the High Court or to any court subordinate to it.

(11) Section 105, C.P.C. enacts that every interlocutory order made in the course of a suit or other proceeding which has not been appealed from because no appeal lay or because even though an appeal lay, an appeal was not taken, except an order of remand can be attacked in an appeal from the final decree on the grounds that there is an error, defect or irregularity in it; and that such error, defect or irregularity has affected the decision of the case. It was so held in *Satyadhyan v. Smt. Deorajin Debi* (6). "Affecting the decision of the case" means affecting the decision of the case on merits. Such error, defect or irregularity in the order, which has affected the decision of the case, may be set forth as a ground of objection in the memo of appeal, which may be filed against the decree. In other words, error, defect or irregularity in any order can be challenged in an appeal against the decree by taking a ground of objection in the memo of appeal.

(12) Moreover, it is necessary to bear in mind that the object behind enactment of Section 115 C.P.C. is to provide means to an

(6) A.I.R. 1960 S.C. 941.

aggrieved party to secure correction or rectification of non-appealable order. The very purpose and object of Section 115 would be defeated if the Court was to take the view that the interlocutory orders passed by the Civil Courts are not revisable under section 115 C.P.C. and that such orders can be challenged only when the judgment of the main case is appealed against. Explanation to Section 115 unambiguously lays down that in Section 115, expression "any case which has been decided" includes any order impugned in the course of a suit or any other proceedings. This explanation makes it clear that 'case decided' means even a part of the case and as such on the fulfilment of the conditions laid down in proviso (b) interference can be made with the interlocutory orders.

(13) From the above discussion, it follows that if any jurisdictional error has been committed by the Subordinate Court in the course of a suit or other proceeding, it can be corrected in revision provided that the order had occasioned failure of justice or caused irreparable injury to the party against whom the order has been made. The mere fact that such order can be challenged by way of an appeal against the decree under Section 105 C.P.C. would not be sufficient to hold that revisional jurisdiction of the Court under Section 115 cannot be exercised against such an order. Mere availability of remedy by way of appeal against the decree cannot be treated as a ground for taking the view that no failure of justice will be occasioned or irreparable injury will not be suffered by the party by an interlocutory order.

(14) First decision on which Mr. Puri has placed reliance does not lay down the proposition which the learned counsel for the respondents has advanced before the Court. In *Amir Singh v. Om Parkash* (supra), a learned Single Judge of Allahabad High Court held that even if the exercise of discretion under Section 115 C.P.C. is wrong, the order passed by a Subordinate Court under that Section cannot be termed as one suffering from any jurisdictional error. No doubt in *Ram Narain v. Rajeshwari* (supra) a learned Single Judge of the same Court has taken the view that an order which can be challenged in appeal against a decree, revision petition is not maintainable but with great respect, I find myself unable to subscribe to this view. In the short order of the Allahabad High Court, there is no discussion on the subject of maintainability of revision petition against an interlocutory order. The order does not make any reference to the judgments of the Supreme Court and at any rate, it is not possible to hold that the availability of an opportunity to an aggrieved party to challenge an interlocutory order in

an appeal which may be filed against a decree under Section 105 cannot be treated as a ground for holding that jurisdiction of the High Court under Section 115 stands ousted.

(15) Thus, the objection of Mr. Puri to the maintainability of the revision petition is rejected.

(16) On merits, Mr. Kataria's argument is that the trial Court has committed a material irregularity in declining the application of the petitioner and because in the absence of proper issues, the cause of the defendant-respondent would be seriously prejudiced. Mr. Kataria argued that unless the nature of property and the right of the petitioner to continue in the possession of the property is determined, no effective adjudication can be made by the trial Court on the controversy raised in the suit. Mr. Puri argued that the burden to prove issue No. 1 is on the plaintiff-respondent and, therefore, unless she succeeds in establishing her right over the property, the respondent cannot succeed. This issue inheres in itself an adjudication about the nature of property and the right, if any, of the defendant-petitioner over the property in dispute.

(17) After having considered the rival submissions, I find substance in the argument of Mr. Puri that issue No. 1 is comprehensive enough to cover all the additional issues sought to be framed at the behest of the defendant petitioner. The trial Court has rightly observed that the additional issues sought to be framed by the defendant are unnecessary and that this was nothing but an attempt by the defendant to fill in the lacuna in his evidence.

(18) The impugned order does not suffer from any jurisdictional error and at any rate, it cannot be said that irreparable injury will be suffered by the petitioner or that the impugned order has resulted in failure of justice.

(18) In the result, objection to the maintainability of the revision petition is rejected. However, on merits it is held that the order passed by the learned Sub-Judge IIInd Class does not require interference under Section 115 of C.P.C. Hence the revision petition is dismissed.

J.S.T.