

Ashok Kumar v. Union Territory of Chandigarh and another
(J. V. Gupta, J.)

Code." The same view was expressed by K. S. Tiwana, J. in *Tejinder Kaur v. Balbir Singh*, (4), with which we concur.

(5) Section 125 requires, as a *sine qua non* for its application, neglect by husband. Relying on this observation of their Lordships of the Supreme Court in *Bai Tahira's* case, learned counsel for Parkash urged that Jaswant Kaur has failed to prove this essential ingredient of section 125. The finding of the Additional Sessions Judge to the contrary against Parkash, which is unassailable in this petition under section 482 of the Code, makes the contention devoid of merit.

(6) For the foregoing reasons, this petition fails and the same is hereby dismissed.

H. S. B.

Before J. V. Gupta, J.

ASHOK KUMAR,—Petitioner.

versus

UNION TERRITORY OF CHANDIGARH and another,—Respondents.

Civil Revision No. 1912 of 1979.

April 11, 1980.

Code of Civil Procedure (V of 1908)—Sections 113 and 115—Application filed under section 113 dismissed by the trial Court—Discretion of Sub-Judge in such matters—Whether calls for interference in revision under section 115.

Held, that under section 113 of the Code of Civil Procedure 1908 it is for the trial Court to state a case and refer the same for the opinion of the High Court and if the trial Court is not satisfied that the case pending before it involves a question as to the validity of any Act, ordinance etc. the High Court in the exercise of its jurisdiction under section 115 will not direct the court to refer the same to the High Court. Thus, the discretion exercised by the trial Court in dismissing the application cannot be interfered with under section 115 of the Code. (Para 2).

Petition Under Section 115 C.P.C. for revision of the Order of Shri B. C. Rajput, Sub-Judge 1st Class, Chandigarh, dated 18th October, 1979, dismissing the application and declining to make reference.

M. R. Agnihotri, Advocate, for the Petitioner.

Anand Sarup, Senior Advocate.

M. L. Bansal, Advocate with him,—for the Respondents.

JUDGMENT

J. V. Gupta, J.—

(1) The plaintiff-petitioner has filed this revision petition against the order of the trial Court, dated 18th October, 1979, whereby his application under Section 113 read with Order 46 and Section 151, of the Code of Civil Procedure has been dismissed.

(2) The learned counsel for the respondents has raised a preliminary objection that no revision petition is maintainable against the order of the learned Subordinate Judge, dismissing the plaintiff's application under Section 113 of the Code of Civil Procedure, because it is for the trial Court to state a case and refer the same for the opinion of the High Court. Since the trial Court was not satisfied that the case pending before it involves a question as to the validity of any Act, Ordinance etc., the High Court in the exercise of its jurisdiction under Section 115 of the Code of Civil Procedure, will not direct the Court to refer the same to the High Court. I find force in this contention, Section 113 of the Code of Civil Procedure, reads as under:—

“Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.”

From the language of the said Section, the contention of the learned counsel for the respondents is clearly borne out. The trial Court

Jhao Lal v. Kishan Lal and others (M. M. Punchhi, J.)

has categorically stated that, "I am further of the opinion that no case is made out under Section 113 of the Code of Civil Procedure for making reference to the High Court for declaring the said Regulations as invalid or illegal". Thus, the discretion exercised by the trial Court cannot be interfered with under Section 115 of the Code of Civil Procedure, by this Court. Consequently, the revision petition is dismissed. However, counsel for both the parties agree that a direction be given to the trial Court that the suit be decided within three months from today, if possible. From the nature of the suit, I find that not much evidence may be required to be adduced by the parties. The matter can be disposed of expeditiously. It is, therefore, directed that the trial Court shall dispose of the suit within three months from the date already fixed in the suit. However, there will be no order as to costs.

H.S.B.

Before M. M. Punchhi, J.

JHAO LAL,—Appellant.

versus

KISHAN LAL and others,—Respondents.

Regular Second Appeal No. 1839 of 1968.

March 18, 1980.

Transfer of Property Act (IV of 1882)—Section 58—Specific field numbers subjected to usufructuary mortgage—Certain other rights such as share of shamlat deh not specifically included—Such rights—Whether can be said to be impliedly included in the mortgage.

Held, that a reading of section 58 of the Transfer of Property Act, 1882 would show that a mortgage is the transfer of an interest in specific immovable property for the purpose of securing payment of money advanced. Advisedly, the legislature in insisting on specifications to immovable property in the case of mortgage had a twin object in view (i) that the transfer was merely as a security and likely to revert back to the owner, and (ii) the security was likely to be retained by the mortgagee in the event of prescription. In this view of the matter in the case of usufructuary mortgage where possession has also passed there can be no mortgage of implied