

Before R. N. Mittal, J.

MITHAN LAL,—Petitioner

versus

GANGA DEVI TRUST,—Respondent.

Civil Revision No. 1501 of 1977

August 22, 1978.

Code of Civil Procedure (V of 1908) as amended by the Code of Civil Procedure (Amendment) Act (104 of 1976)—Sections 47, 99A, 115 and Order 41 Rule 35—Suit for ejectment decreed—Decree not containing specific direction for ejectment—Such decree—Whether executable—Omission to specify relief in the decree—Whether an irregularity—Objections under section 47 rejected—High Court—Whether should interfere in revision.

Held, that where the appellate Court decrees the suit for ejectment but by an oversight it does not pass an order of ejectment from the property in dispute and the decree is prepared in accordance with the judgment with no specific direction as to ejectment, it is only an irregularity which does not vitiate the decree. If the judgment is read along with the plaint, the only conclusion is that the Court ordered ejectment of the judgment-debtor from the premises in dispute. It is true that the proper course for the Court was to pass a decree in consonance with Order 41 Rule 35 of the Code of Civil Procedure, 1908 but if it failed to do so, the High Court cannot interfere in revision against an order under section 47 of the Code. Section 99A has been added in the Code by the Amendment Act, 1976 wherein it is provided that no order under section 47 shall be reversed or substantially varied on account of any error, defect or irregularity in any proceeding relating to such order unless such error, defect or irregularity has prejudicially affected the decision of the case. Section 115 which relates to revisions, has also been modified by the said Amendment Act and a proviso has been added to subsection (1) of the said section. It is said in the proviso that the High Court shall not under section 115, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. From a reading of the abovesaid section it is evident that unless the order occasioned a failure of justice or caused irreparable injury it cannot be upset by the High Court.

(Para 4)

Petition under section 115 C.P.C. for revision of the order of the Court of Shri D. D. Yadav, Sub-Judge, 1st Class, Ambala Cantt., dated 21st September, 1977 dismissing the objections filed by the objectors/judgment debtors.

V. K. Vashisht, Advocate, for the petitioner.

M. M. Singh Liberhan, Advocate, for the Respondent.

JUDGMENT

R. N. Mittal, J. (oral)

(1) This order will dispose of Civil Revision Nos. 1501, 1521, 1525, 1537 and 1550 of 1977, which contain similar questions of law. The facts in the judgment are being given from Civil Revision No. 1501 of 1977.

(2) Smt. Ganga Devi Trust (hereinafter referred to as the Trust) instituted a suit for ejection of Mithan Lal from the premises in dispute, situated in Ambala Cantt., which was dismissed by the trial Court. An appeal was taken by the Trust to the Senior Subordinate Judge, Ambala, who accepted the same. Mithan Lal came up in second appeal to this Court which was dismissed as withdrawn. Subsequently the Trust started execution of the decree passed by the first Appellate Court, wherein objections were raised by him, *inter alia*, on the ground that the first Appellate Court had not passed the decree in specific terms and consequently it was inexecutable. The executing Court decided the objections raised by the judgment-debtor against him. He came up in revision petition to this Court. At the time of preliminary hearing, the learned Single Judge admitted it only on one ground. The admitting order is as follows:—

“Admitted only on the ground that the decree sought to be executed does not direct ejection. To be listed for hearing at No. 1 on an actual date in November, 1977. Stay execution till the decision of this petition for revision.”

(3) It is contended by the learned counsel for the petitioner that the first Appellate Court, while accepting the appeal, did not pass a specific order for ejection. He has further argued that if it

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was so, the decree could not be executed unless it was amended and framed in accordance with Order 41, rule 35, Civil Procedure Code. On the other hand, the learned counsel for the respondent has vehemently submitted that the order of the first Appellate Court at the most amounted to an irregularity and in case the executing Court did not hold that the order required modification, this Court will not interfere with the order of the executing Court, in view of sections 99 and 115(2) of the Civil Procedure Code.

(4) I have heard the learned counsel for the parties at a considerable length and find force in the contention of the learned counsel for the respondent. It is not disputed that the first Appellate Court set aside the decree of the trial Court, but did not pass further order that the petitioner shall be ejected from the property in dispute. Order 41, rule 35 enjoins that the decree shall contain, *inter alia*, a clear specification of the relief granted or other adjudication made. The decree was prepared in accordance with the judgment and there was no specific direction in the decree for ejection of the petitioner. It is true that the proper course for the first Appellate Court was to pass a decree in consonance with Order 41, rule 35, but if it failed to do so, this Court cannot interfere in revision against an order under section 47 of the Code. Section 99-A has been added in the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1976, wherein it is provided that no order under section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case. Section 115, which relates to revisions, has also been modified by the said Amendment Act and a proviso has been added to sub-section (1) of the said section. It is said in the proviso that the High Court shall not, under section 115 vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. From a reading of the abovesaid section, it is evident that unless the order occasioned a failure of justice or caused irreparable injury, it cannot be upset by this Court. In the present case, it is not disputed that the suit was for ejection of the petitioner and it was decreed by the first Appellate Court. It appears, through an oversight the order of ejection was not specifically passed. Consequently it was also not incorporated in the decree. It is only an

irregularity which does not vitiate the decree. If the judgment is read along with the plaint, the only conclusion is that the appellate Court ordered ejectment of the petitioner from the premises in dispute. The appellate Court has also the power to amend the decree at this stage. The objection raised by the petitioner is of a technical nature and no irreparable injury would be caused to him in case the order of the executing Court is not reversed. Section 99-A also bars the jurisdiction of this Court to upset such a decision as it does not prejudicially affect the right of the petitioner.

(5) For the aforesaid reasons, I do not find any merit in these revision petitions and dismiss the same with no order as to costs.

N.K.S.

Before D. S. Tewatia and Kulwant Singh Tiwana, JJ.

SURESH CHAND and others,—Petitioners

versus

DIRECTOR OF PANCHAYATS, HARYANA and another,—
Respondents.

Civil Writ No. 3084 of 1978

November 22, 1978.

Punjab Gram Panchayat Act (IV of 1953) as amended by Punjab Gram Panchayat (Haryana Amendment) Act (III of 1976)—Sections 100(2), 102(1) and (1A)—Constitution of India, 1950—Article 226—Complaints made by residents of a village and an elected member of the Gram Panchayat against the Sarpanch—Sarpanch suspended under section 102(1) on such complaints—Such Sarpanch reinstated subsequently—Complaints challenging the order of reinstatement—Complainants—Whether have a locus standi to file a writ petition—Term ‘injury’ and ‘substantial failure of justice’ used in Article 226—Meaning of—Order suspending or reinstating a Sarpanch under section 102(1)—Nature of—Whether quasi-judicial—Remedy under section 100(2)—Whether an alternative remedy so as to bar a writ petition under Article 226(3).

Held, that a Sarpanch presiding over the meetings of the Gram Panchayat has to take certain decisions which are administrative as