CASE NO.:
Appeal (civil) 104 of 2002

PETITIONER:
PREM BAKSHI & ORS.

Vs.

RESPONDENT:
DHARAM DEV & ORS.

DATE OF JUDGMENT: 09/01/2002

BENCH:
K.T. Thomas & S.N. Phukan

JUDGMENT:

Phukan, J.

This appeal by special leave is directed against the order of the High Court of Punjab & Haryana at Chandigarh. Shortly put, the facts are as follows: -

The suit land originally belonged to Durga Dass who mortgaged the same to Sunder Dass and Udhey Ram. The appellants and respondent Nos.2 to 5 are the legal heirs of Sunder Dass and Udhey Ram. When it came to the notice of the appellants that on the death of Durga Dass, defendant/respondent No.1, Dharam Dev got his name mutated in the revenue record, the present suit was filed for declaration of joint ownership of the land of the appellants and respondent Nos.2 to 5 on the ground that neither Durga Dass nor his legal heirs could get the suit land redeemed within a statutory period and also for permanent injunction restraining respondent No.1 from alienating the suit land. In the said suit an application under Order 6 Rule 17 CPC for amendment of the plaint was filed. It was pleaded that from a subsequent civil suit filed by the respondent No.1 against the appellants, it came to the knowledge of the appellants that the suit land was sold by Durga Dass to Sunder Dass and Udhey Ram adjusting the mortgage amount and later on a pre-emption suit filed by Amar Nath, son of Kamal Krishna and another, which was decided in the year 1943 and it was decreed that the plaintiffs in that suit on payment of certain amount, within the time specified by the Court, to Sunder Dass and Udhey Ram, the suit would stand decreed and in case of non payment, suit would stand dismissed. The present respondent No.1 is the son of Amar Nath. It was stated in the said application that as the amount directed by the court was not paid, there was no decree for pre-emption and the suit stood dismissed and accordingly, prayer was made for amendment of the plaint. The trial court allowed the application which was set aside by the High Court by the impugned order on the ground that the appellants want to attack a decree passed in 1943 in the present suit which was filed in the year 1999 and, therefore, it is barred by limitation.

The short question for determination is whether the impugned order was revisable by the High Court by exercising powers under Section 115 CPC. The said section runs as follows: -

"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

(b) to have failed to exercise a jurisdiction so vested, or

(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 this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other 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 any 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."

The proviso to sub-sections (1) and (2) with explanation was added by the amending Act of 1976. By this amendment the power of the High Court was curtailed; the intention of the legislature being that High Court should not interfere with each and every interlocutory order passed by the trial court so that the trial of a suit could proceed speedily and that only the interlocutory order coming under clause (a) or (b) of the proviso would be entertained by the High Court.

In Major S.S. Khanna versus Brig. F.J. Dillon [AIR 1964 SC 497 = 1964 (4) SCR 409] this court considered the expression "any case which has been decided' in sub-section (1) of Section 115 CPC and held that the expression 'case' is a word of comprehensive import and includes civil proceedings other than suits and is not restricted by anything contained in the said section to the entirety of the proceeding in a civil court and to interpret the expression 'case' as an entire proceeding only and not a part of the proceeding would impose an unwarranted restriction on the exercise of powers of superintendence by the High Court. This view of the High Court has now been legislatively adopted by the parliament by introducing the explanation to sub-section (1) of Section 115 CPC and, therefore, an interlocutory order would be revisable. There is no doubt that present order being an interlocutory order is revisable under Section 115, but

for exercising powers under this section by the High Court, the order must satisfy one of the conditions mentioned in clause (a) and (b) of the proviso.

The proviso to sub-section (1) of Section 115 puts a restriction on the powers of the High Court inasmuch as the High Court shall not, under this section vary or reverse any order made or any order deciding a issue, in course of a suit or other proceedings except where (I) the order made would have finally dispose of the suit or other proceedings or, (ii) the said order would occasion a failure of justice or cause irreparable injury to the party against whom it is made. Under clause (a), the High Court would be justified in interfering with an order of a subordinate court if the said order finally disposes of the suit or other proceeding. By way of illustration we may say that if a trial court holds by an interlocutory order that it has no jurisdiction to proceed the case or that suit is barred by limitation, it would amount to finally deciding the case and such order would be revisable. The order in question by which the amendment was allowed could not be said to have finally disposed of the case and, therefore, it would not come under clause (a).

Now the question is whether the order in question has caused failure of justice or irreparable injury to respondent No.1. It is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They only would serve advance notice to the other side as to the plea, which a party might take up. Hence we cannot envisage a situation where amendment of pleadings, whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party.

From the facts extracted above it would show that appellants only wanted to bring to the notice of the court the subsequent facts and after amendment of the plaint, respondent No.1 would get opportunity to file written statement and he would be able to raise all his defence. Ultimately if the suit is decided against the respondent No.1, he would have a chance to take up these points before the appellate court. It cannot be conceived of a situation that the proposed amendment if allowed would cause irreparable injury or failure of justice as the remedy of the respondent No.1, as stated above, is by way of an appeal. We are, therefore, of the view that the order allowing the amendment would not come under clause (b).

Accordingly, we hold that the High Court erred in law in interfering with the order of the trial court allowing the prayer for amendment of the plaint.

In the result, we find merit in the present appeal and accordingly it is allowed by setting aside the impugned order and restoring the order of the trial court. Considering the facts and the circumstances of the case, we allow the parties to bear their own costs.

..J.
[K.T. Thomas]

J.
[S.N. Phukan]

January 09, 2002
JUDIS