Supreme Court of India
Pandurang Dhoni Chougule vs Maruti Hari Jadhav on 26 April, 1965
Equivalent citations: 1966 AIR 153, 1966 SCR (1) 102
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B. (Cj), Wanchoo, K.N., Shah, J.C., Mudholkar, J.R., Sikri, S.M.

PETITIONER:
PANDURANG DHONI CHOUGULE

Vs.

RESPONDENT:
MARUTI HARI JADHAV

DATE OF JUDGMENT:
26/04/1965

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
BENCH:
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
SHAH, J.C.
MUDHOLKAR, J.R.
SIKRI, S.M.

CITATION:
1966 AIR 153 1966 SCR (1) 102
CITATOR INFO :
R 1966 SC 439 (4)
R 1972 SC2379 (9)
R 1973 SC 76 (5)
RF 1978 SC1341 (12)

ACT:
Code of Civil Procedure, 1908 (5 of 1908), s. 115-Revisional Jurisdiction of High Court-Tests--Construction of document of law-When jurisdiction can be exercised.

HEADNOTE:
In a suit for redemption of a mortgage filed by the respondents' predecessors on a_ mortgage executed by them in favour of the appellants' predecessors, a decree was passed directing the respondents' predecessors -to pay a certain sum within a specified time to the appellant's predecessors and recover possession of the mortgage property and in case of failure to pay within the specific time they shall be deemed to have lost the right of redemption for all time. According to the respondents the money was not paid; even so, the relationship between the parties continued to be

that of the mortgagors and mortgagees. So the respondents filed an application-under the Bombay Agriculturists Debtors Relief Act for justice of the debt., The appellants also filed an application for adjustment of the debt due under the decree; but in doing so, they made it clear that they were making the application as a matter of precaution and without prejudice to their contentions that the equity of redemption had been extinguished and the parties no longer stood in the relationship of creditors and debtors. The trial court rejected the appellants' contention that the mortgage had been extinguished and held that the equity of redemption still vested in the respondents; but as the respondents' application was barred by time, it dismissed the respondents' application. On appeal, the District Court held, inter alia, that the decree was a composite decree and on the respondents' failure to pay the decrement amount within the time specified, their right lo redeem the mortgage was extinguished by virtue of the express terms contained in it, and dismissed the respondents' appeal. On revision under s. 115 of the Code of Civil Procedure, the High Court construed the decree as a preliminary decree and found that the clause purporting to extinguish the equity of redemption did not effect its essential character as a preliminary decree and did not in law out an end to the relationship of creditor and debtor between the parties. In appeal to this Court, the appellants contended that in reversing the conclusion of the District Court, the High Court exceeded its jurisdiction under s. 115 of the Code.

HELD : This contention was well founded and must be upheld. [106H]

While exercising its jurisdiction under s. 115 it is nut competent to the High Court to correct errors of fact however, gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. The tests laid down in Clauses (a) (b) and (c) of s.. 115, before the High Court exercises its revisional jurisdiction, are, does the alleged misconstruction of the statutory provision have relation to the erroneous assumption of the jurisdiction; or the erroneous failure to exercise jurisdiction; or the exercise of jurisdiction illegally or with material irregularity by the subordinate; court. It is well-settled that a plea of limitation or plan of

103.

res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A distinction must be drawn between errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and error of law which have no such relation or connection. It is undesirable and inexpedient to lay down general rule in regard to this position. [107 A-E; 108 D-E]

Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee and Others, A.I.R. 1964 S.C. 1336 and Vora Abbasbhai Alinahomed V. Haji Gulamnabi Haji Safibhai, A.I.R. 1964 S.C. 1341.

The construction of a document of title is no doubt a point of law. Even so, it cannot be held to justify the exercise of the High Courts' revisional jurisdiction under s. 115 of the Code because it has no relation to the jurisdiction of the Court. Like other matters which are relevant and material in determining the question of the adjustment of debts, the question about the existence of the debt has been left to the determination of the courts which are authorised to administer the provisions of the Act; and even in dealing with such questions, the trial court or District. Court commits an error of law, it cannot be said that, such an error of law would necessarily involve the question of the said court'-, jurisdiction within the meaning of s. 115 of the Code. [108H-109C]

OBITER : When Legislature pass Acts dealing with socio-economic matters, or make provisions for the levy of sales-tax, it is realised that the operative provisions of such legislation present difficult problems of construction; and as sometimes, the Act in question provides for a revisional application to the High Court or authorises a reference to be made to it. In such cases, the High Court will undoubtedly deal with the problems raised by the construction of the relevant provisions in accordance with the extent of the jurisdiction conferred on it by the material provisions contained in the statute itself. Sometimes, however, no such specific provision is made, and the question raised in regard to the construction, of the provisions of such a statute reach the High Court under its general revisional jurisdiction under s. 115 of the Code. In this class of cases, the revisional jurisdiction of the High Court has to be exercised in accordance with the limits prescribed by the said section. [107 E-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 163 of 1963. Appeal by special leave from the judgment and decree dated October 31, 1960 of the Bombay High Court in Civil Revision Application No. 2131 of 1957.

S. P. Sinha and M. I. Khowja, for the appellants. C. B. Agarwala and A. G. Patraparkhi, for the respondents. The Judgment of the Court was delivered by : Gajendragadkar, C.J. This appeal by special leave arises out of proceedings initiated under the provisions of the Bombay Agricultural Debtors Relief Act, 1939 (No. 28 of 1939) (hereinafter called 'the Act'). The respondents Maruti Hari Jadhav and two others moved the B.A.D.R. Court at Karad on May 26, 1949, for adjustment of the debt alleged to be due from them to the appellants, Pandurang. Dhondi Chougule & others. Their

case was that the debt in question was due under a mortgage deed executed by their gand-father in favour of the grand-father of the appellants on August 29, 1881. By this mortgage, six agricultural lands situated atKapil in the former State of Oundh had been mortgaged to the portage with possession for a sum of Rs. 575. In 1908, the respondents predecessoes-in-interest sued on this mortgage in the Court of the Sub-Judge at Kapil (Civil Suit No. 28 of 1908-09). This suit was, however, withdrawn with liberty to file a fresh suit. Then followed another suit by the respondents in the same Court for redemption of the mortage (No. 102 of 1932-33). On September 2, 1936, a decree came to be passed in the said suit. According to the respondents, the decree directed them to pay Rs. 3,677-12-6 within six months from the date on which it was drawn but the said money had not been paid; even so, the relationship between the parties continued to be that of 'the mortgagors and the mortgagees, and so, they were entitled to claim adjustment of the debt in question. The respondents also pleaded that the decree which was passed in the said suit was in the nature of a preliminary decree, and though the appellants were entitled to apply for making the said decree final after the expiration of the six months' period prescribed by it, they took no such action and the mortgage debt, therefore, remains unpaid arid the equity of redemption vesting in the respondents is unextinguished. That, in brief, is the nature of the claim made by the Respondents in the application made by them under the Act for adjustment of their debt due to the appellants.

It appears that the State of Oundh merged in the erstwhile State of Bombay and thereafter the Act was extended to the said State. That is how the respondents commenced the present proceedings under the provisions of the Act thus extender to the State of Oundh.

The appellants also made an application for the adjustment of the debt due under the decree in Suit No. 102/1932-33 in the Court of Joint Civil Judge Karad; but in doing so,, they made it perfectly clear that they were making the application is a matter (-f precaution and without prejudice to their contention that the equity of redemption had been extinguished and the parties no longer stood in the relationship of creditors and debtors. In fact, it was the appellants the first made the application on May 19, 1949, and the respondents followed by their application on May 26, 1949. For the purpose of hearing these two applications were consolidated by the trial Court.

At the hearing of these proceedings the appellants raised several contentions. They urged that the mortgage was extinguished and the respondents were therefore, not entitled to claim adjustment of the debt, and they also contended that the application made by the respondents was barred by time. The trial Judge rejected the appellants' argument that the mortgage had been extinguished, and held that the equity of redemption still vested in the respondents. He, however, found 'that the respondents' application for adjustment of the debt was barred by time.In the result, the respondents failed and their application was dismissed.

The matter then went in appeal to the District Court, North Satara. The appellate Court held that the decree in suit No. 102 of 1932-33 amounted to a final decree which absolutely debarred the right of the mortgaging to redeem the property in view of the fact that had failed to pay the decretal amount within the time prescribed by it. It also agreed with the view taken by the trial Court that the respondents application was barrey by limitation. In the result, the appeal preferred by the respondents was dismissed.

The dispute the reached the Bombay High Court in its revisional jurisdiction under s. 115 of the Code. Before the High Court it was urged that the Code of Civil Procedure did not apply to the State of Oundh at the relevant time; that is why by an interlocutory judgment, the High Court remanded the proceedings to the trial Court with a direction that the issue as to whether the Code of Civil Proceedure applied to the State of Oundh at the relevant time, should be tried. On remand, the trial Court made a finding that the Code of Civil Procedure had been made applicable to the State of Oundh as far back as 1909-10. The High Court had also directed that the issue as to who was, in possession of the property at the relevant time, should be tried; and the finding returned by the trial Court was that the appellants were in possession of the mortgaged property not as mortgaeges, but as owners from 2nd March, 1937. After these findings were returned, the revision application was argued before the High Court; and the main point which was urged before the High Court at that state was whether the respondents' right to redeem the mortgage had been extinguished by the decree passed in civil suit No. 102 of 1932-33. The High Court has differed from the District Court and has taken the view that the decree did not determine the respondents' right to redeem the mortgage. In regard to the finding recorded by the courts below that the respondents' application was barred by time, the High Court took the view that the question as to whether the application is within sixty years from the expiry of the period prescribed in the mortgae deed for repayment is entirely irrelevant inasmuch as the said application is substantially for the adjustment of debt under the decree passed in suit No. 102 of 1932-33. On that view of the matter, the High Court has set aside the orders passed by the courts below and has remanded the proceedings to the trial Court with a direction that the application made by the respondents for adjustment of the debt should be tried in accordance with law. It is against this order that the appellants have come to this Court by special leave.

Before proceeding to deal with the contentions raised before us in the present appeal, it would be convenient to set out the relevant portion of the decree in suit No. 102 of 1932-

33. The operative part of the decree reads thus :-

> "The plaintiffs should pay to defendants I and 2 Rs. 3,677-12-6 within six months from today and should recover possession of the suit property as the heirs of Gopala free from the mortgage. In case the plaintiff,,, do not pay the amount within the prescribed time, the plaintiffs shall be deemed to have lost the right of redemption for all time".

The District Court has held that this decree is a composite decree and on the failure of the respondents to pay the decretal amount within the time specified. their right to redeem the mortgage is extinguished by virtue of the express terms contained in it. The High Court has construed the decree as a preliminary decree has found that the clause purporting to extinguish the equity of redemption does not affect its essential character as a preliminary decree and does not in law put an end to the relationship of creditors and debtors between the parties.

The first question which falls for our decision in the present appeal is whether the High Court was justified in interfering with the decision of the District Court that the decree in question

extinguished the respondents' right to redeem the mortgage. Mr. Sinha for the appellants contends that in reversing the conclusion of the District Court, the High Court ha-, exceeded its jurisdiction under S. 115 of the Code. In our opinion'. this contention is well-founded and must be upheld.

The provisions of s. 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under s. 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of s. 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well-settled that a plea of limitation or a plea of yes judicata is a plea of law which concerns the Jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdicdon which fall within the purview of s. 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under 115. The history of recent legislation in India shows that when Legislatures pass Acts dealing with socioeconomic matters, or make pro-visions for the levy of sales-tax, it is realized that the operative provisions of such legislation present difficult problems of construction; and so, sometimes, the Act in question provides for a revisional application to the High Court in respect of such matters or authorises a reference to be made to it. In such cases, the High Court will undoubtedly deal with the problems raised by the construction of the relevant provisions in accordance with the extent of the jurisdiction conferred on it by the material provisions contained in the statute itself. Sometimes, however, no such specific provision is made, and the questions raised in regard to the construction of the provisions of such a statute reach the High Court under its general revisional jurisdiction under s. 115 of the Code. In this class of cases, the revisional jurisdiction of the High Court has to be exercised in accordance with the limits prescribed by the said section. It is true that in order to afford guidance to subordinate courts and to avoid confusion in the administration of the specific law in question, important questions relating to the construction of the operative provisions contained, 5Sup./65-8 in such an Act must be finally determined by the High Court; but in doing so, the High Court must enquire whether a complaint made against the decision of the subordinate court on the ground that it has misconstrued the relevant provisions of the statute, attracts the provisions of s.

115. Does the alleged misconstruction ,of the statutory provision have relation to the erroneous assumption of jurisdiction, or the erroneous failure to exercise jurisdic- tion, or the exercise of jurisdiction illegally or with material irregularity by the subordinate court ? These are the tests laid down by s. 115 of the Code and they have to be borne in mind before the High Court decides to exercise its revisional jurisdiction under it.

This question has been recently considered by this Court in Manindra Land and Building Corporation Ltd., v. Bhutnath Banerjee and Others(1); and Vora Abbasbhai Alimahomed v. Haji

Gulamnabi Haji Safibhai(2). The effect of these two decisions clearly is that a distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection. It is, we think, undesirable and inexpedient to lay down any general rule in regard to this position. An attempt to define this position with precision or to deal with it exhaustively may create unnecessary difficulties. It is clear that in actual practice, it would not be difficult to distinguish between cases where errors of law affect, or have relation to, the jurisdiction of the court concerned, and where they do not have such a relation.

Considering the point raised by Mr. Sinha in the light of this position, it seems to us that the High Court was in error in assuming jurisdiction to correct what it thought to be the misconstruction of the decree passed in civil suit No. 102 of 1932-33. As we have already seen, in the present debt adjustment proceedings, one of the points which arose for decision was whether the mortgage debt was subsisting at the time when the respondents made their application, and the District Court had found that the respondents' equity of redemption had been extinguished. This finding was based on the construction of the said decree. It is difficult to see how the High Court was justified in reversing this finding under s. 115 of the Code. The construction of a decree like the construction of a document of title is no doubt a point of law. Even so, it cannot be held to justify the exercise of the

(1) A-I.R. 1964 S.C. 1336.

(2) A.I.R. 1964 S.C. 1341.

High Court's revisional jurisdiction under s. 115 of the Code because it has no relation to the jurisdiction of the Court. Like other matters which are relevant and material in determining the question of the adjustment of debts, the question about the existence of the debt has been left to the determination of the court.-, which are authorised to administer the provisions of the Act; and even if in dealing with such questions, the trial court or the District Court commits an error of law, it cannot be said that such an error of law would necessarily involve the question of the said courts' jurisdiction within the meaning of s. 115 of the Code. We are, therefore, satisfied that on the facts of this case, the High Court exceeded its jurisdiction in interfering with the conclusion of the District Court that the decree in question had extinguished the respondents' equity of redemption.

This conclusion is enough to dispose of the present appeal, because the main ground on which the High Court has reversed the concurrent decision of the courts below dismissing the respondents' application for adjustment of the debt, is furnished by its finding that the decree in question did not extinguish the equity of redemption vesting in the :,respondents. In fact, it was as a result of this decision that the High Court reversed the finding of the courts below that the respondents' application was barred by time. Having regard to the fact that we are inclined to take the view that the High Court exceeded its jurisdiction in reversing the finding of the District Court as to the effect of the decree in question, we do not think it is necessary to consider the further question as to whether the High Court was right in holding that the decree in question was a preliminary decree and the clause which purported to extinguish the equity of redemption was inoperative and invalid and as much, it did not affect the essential character of the decree as a preliminary decree. The result, is, the appeal is allowed, the order passed by the High Court is set aside and that of the

District Court restored. There would be no order as to costs. Appeal allowed.