Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No.14 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

For hearing of main case.

Date of hearing : 05.10.2023
Date of Order : 05.10.2023

None present for the Applicant.

O R D E R

ARSHAD HUSSAIN KHAN, J.- Through instant revision application under Section 115 CPC, the applicant has assailed the Order dated 21.12.2018 passed by learned Additional District Judge, Khipro in Civil Appeal No.114 of 2018, whereby the learned Judge while dismissing the appeal maintained the Judgment and Decree dated 13.02.2018 passed by the trial Court in F.C Suit No.58 of 2016.

2. From the record it appears that this civil revision application was presented in the office on 19.01.2019 and lastly it was fixed on 09.04.2019; however, since then neither the applicant nor his Counsel turned up to pursue this revision application, as such, I have gone through the record made available before me.

3. From the record it appears that the learned trial Court on the basis of divergent pleadings framed the issues and recorded the evidence of the parties and after hearing the learned Counsel for the parties decreed the suit in favour of the defendants / respondents vide judgment and decree dated 13.02.2018. Thereafter, the present applicant / plaintiff filed Civil Appeal No.114 of 2018 against the said judgment and decree before the lower Appellate Court. The lower Appellate Court while considering the record dismissed the appeal filed by the appellant / applicant and maintained the judgment and decree passed by the learned trial Court.

4. From the perusal of record, it appears that the applicant has now attempted to reopen the case through this revision application under Section 115 CPC, inter alia, on the ground that the impugned judgment and decree passed by the Courts below are illegal, void and liable to be set aside; that the learned trial Court while passing the impugned judgment has failed to consider that while decreeing the suit the defence plea could not be appreciated and considered and this fact has also been overlooked by the lower Appellate Court; that the trial Court has committed illegality while decreeing he suit; whereas, the lower Appellate Court has summarily dismissed the appeal filed by the present applicant without considering or appreciating the record.

5. This is a revision application under Section 115 CPC. The provision of Section 115 CPC envisage interference by the High Court only on account of jurisdiction alone, i.e. if a Court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when the Court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. Mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For the applicant to succeed under Section 115 CPC, he has to show that there is some material defect in procedure or disregard of some rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine the matter and erroneous action of a Court in exercise of such jurisdiction. It is also settled principle of law that erroneous conclusion of law or fact can be corrected in appeal and not by way of revision, which primarily deals with the question of jurisdiction of a Court i.e. whether a Court has exercised the jurisdiction not vested in it or has not exercised the jurisdiction vested in it or has exercised the jurisdiction vested in it illegally or material irregularity.

6. No any illegality or infirmity has been mentioned in the application which could warrant interference in the impugned decisions

by this Court. It is well settled that if no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also settled law that concurrent findings of the two Courts below are not to be interfered in revisional jurisdiction, unless extraordinary circumstances are demonstrated by the applicant. It is also trite law that a revisional Court does not sit in reappraisal of evidence and it distinguishable from the Court of appellate jurisdiction.

7. The upshot of the above discussion is that there appears no illegality, irregularity or jurisdictional error in the findings of the Courts below which could warrant interference of this Court. Hence, this Revision Application is found to be meritless and is accordingly dismissed alongwith pending application(s), if any.

JUDGE

Shahid