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votes at the election were not the persons whom they claimed to be, and all that was in dispute was whether the resolutions by which they had been selected were in order, and, as I have already said, that is a matter which could only be gone into in an election petition. The result is that I would accept the appeal and dismiss the petition under Article 226 of the Constitution, but leave the parties to bear their own costs.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

B.R.T.

FULL BENCH

Before S. B. Capoor, Inder Dev Dua and Prem Chand Pandit, JJ.

KRISHAN KUMAR GROVER,—*Petitioner.*

versus

PARMESHRI DEVI AND OTHERS,—*Respondents.*

Civil Revision No. 334 of 1962.

1965

September, 20th

Code of Civil Procedure (V of 1908)—Section 115—Revision against an order holding plaint to be insufficiently stamped and directing plaintiff to pay additional court fee within specified time—Whether competent.

Held, that under section 115 of the Code of Civil Procedure, a revision petition is competent at the instance of a plaintiff against an order holding that additional Court fee is payable on the relief claimed and directing him to pay the additional Court fee on his plaint within the time specified by the Court.

Case referred by the Hon'ble Mr. Justice S. B. Capoor, on 28th January, 1964, for decision of an important question of law involved in the case. The Division Bench consisting of the Hon'ble Chief Justice Mr. D. Falshaw and the Hon'ble Mr. Justice A. N. Grover further referred the case to a Full Bench. The Full Bench consisting of Hon'ble Mr. Justice S. B. Capoor, the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice Prem Chand Pandit on 20th September, 1965, after deciding the question of law referred, returned the case to the Single Bench for decision.

Petition under Section 44 of the Punjab Courts Act, 1918, read with Section 115 of the Code of Civil Procedure, 1908, for revision of the order of Shri Kartar Singh, Senior Sub-Judge, Amritsar, dated the 17th May, 1962, requiring the plaintiff to pay ad valorem *Court fee of Rs. 59,262, up to 31st May, 1962.*

A. M. SURI, C. M. NAYAR AND S. M. SURI, ADVOCATE, for the Petitioner.

K. L. KAPUR, AND VINOD KUMAR SURI, ADVOCATES for the Respondents.

ORDER OF THE HIGH COURT

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CAPOOR, J.—The question for decision before the Full Bench is——whether a revision petition under section 115 of the Code of Civil Procedure, 1908, is competent at the instance of a plaintiff against an order holding that additional court-fee is payable on the relief claimed and directing him to pay the additional court-fee on his plaint within the time specified by the Court.

This question arose before a Single Judge in Civil Revision No. 334 of 1962 *Krishan Kumar Grover* v. *Shrimati Parmeshri Devi*. The plaintiff had filed a suit in the court of a Subordinate Judge at Amritsar for partition of the property and for rendition of accounts against the defendants. Issues were framed and certain issues were treated as preliminary and issue No. 1 was—whether the plaint is properly stamped. The plaintiff had under article 17(b) of Schedule II of the Court-fees Act paid court-fee of Rs. 19.50 P. for partition of properties and had valued the plaint at Rs. 200 for rendition of accounts. The value of the plaint for purposes of jurisdiction was fixed at 20,000. The trial Court finding that Rs. 57,256 was the value of the shares claimed by the plaintiff in the various properties involved, held that he should have paid *ad valorem* court-fee on the sum of Rs. 57,256 and it allowed him time up to the 31st May, 1962, to make up the deficiency of the court-fee. This was the order impugned in the revision petition and pending its decision further proceedings in the trial Court have been stayed.

On account of the conflict of authorities on the above legal question, it was referred to a larger Bench and the Division Bench, before which the reference came up, has,—*vide* its order, dated the 27th April, 1964, considered it advisable that the matter be decided by the Full Bench.

Section 115 of the Code of Civil Procedure, the scope of which has to be considered, is in the following terms:

> "115. 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—

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(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."

The Privy Council has in numerous cases, the latest being *Joy Chand Lal Babu* v. *Kamalaksha Chaudhry and others* (1), at page 242, held that a subordinate court does not act illegally or with material irregularity simply because it decides wrongly a matter within its competence. The Court has jurisdiction to decide a case wrongly as well as rightly. Nevertheless, if the erroneous decision results in the subordinate court exercising a jurisdiction not vested in it by law or failing to exercise a jurisdiction so vested, a case for revision arises under sub-section (a) or sub-section (b) and sub-section (c) can be ignored.

It has now to be seen whether the order of the subordinate court calling upon the plaintiff to pay by a certain date the additional court-fee on the plaint, which in its view it should properly bear, is (1) "a case decided" by that court and (2) has occasioned a failure to exercise the jurisdiction vested in the court—So far as the first point is concerned, it has now been settled by the Supreme Court in *Major S. S. Khanna* v. *Brig. F. J. Dillon* (2), that the expression "case" is a word of comprehensive import; it includes civil proceedings other than suits, and is not restricted by anything contained in the section to entirety of the proceedings in a civil court. Where in an interlocutory order the Subordinate Judge holds that the suit filed by the plaintiff is not maintainable, the decision having a direct bearing on the rights of the plaintiff to a decree must be regarded as a "case" which has been decided." The same principle should apply to a case in which the Subordinate Judge decides that the court would not proceed further with the case until additional court-fee on the plaint has been paid by the plaintiff because that

(1) A.I.R. 1949 P.C. 239.
(2) A.I.R. 1964 S.C. 497.

decision also has a direct bearing on the rights of the plaintiff to a decree.

If the plaintiff does not comply with the order of the court by the date specified, the next step which the court would take and has to take is stated in rule 11, Order 7, of the Code of Civil Procedure, which provides that in a case where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so, the plaint shall be rejected. No doubt, in the definition of "decree" as contained in clause (2) of section 2 of the Code, a decree shall be deemed to include the rejection of a plaint and the order rejecting the plaint on account of the plaintiff having failed to correct the valuation decided by the court within the time fixed by it is appealable, but the fact that an appeal lies from the ultimate decree or order passed in the suit is by itself not enough to shut out the original jurisdiction of the High Court. This has been made clear by the Supreme Court in *Major S. S. Khanna* v. *Brig. F. J. Dillon* (2), and it has been observed that once it is granted that the expression "case" includes a part of a case, there is no escape from the conclusion that revisional jurisdiction of the High Court may be exercised irrespective of the question whether an appeal lies from the ultimate decree or order passed in the suit. If an appeal lies against the adjudication directly to the High Court or to another Court from the decision of which an appeal lies to the High Court, it has no power to exercise its revisional jurisdiction but where the decision itself is not appealable to the High Court directly or indirectly, exercise of revisional jurisdiction by the High Court would not be deemed excluded.

For the determination of the second question viz. whether an order of the nature in question occasions failure to exercise jurisdiction, it would be helpful to see what is the real nature and peculiar characteristic of an order calling upon the plaintiff to pay additional court-fee as a result of the finding that his claim has been undervalued. This is not a finding upon the merits of the case between the parties but is an administrative finding though judicially performed. As observed by the Supreme Court in *Sri Rathnayar-maraja* v. *Smt. Vimla* (3), the question,

(3) A.I.R. 1961 S.C. 1299.

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whether proper court-fee is paid on a plaint, is primarily a question between the plaintiff and the State. These observations were made in an appeal by the defendant from orders made in revision by the High Court of Mysore affirming substantially the order of the trial Court as to the court-fee payable on certain reliefs claimed by the plaintiff. Their Lordships held (at page 1300) that the Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action and their Lordships were unable to appreciate what grievance the defendant could make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff had paid adequate court-fee on his plaint. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court-fee payable on the plaint. The matter before the Supreme Court was the converse of the one giving rise to the present reference. The Subordinate Judge, instead of staying his hands and refusing to exercise jurisdiction, had actually proceeded with the case. On the other hand, where by its decision on an administrative matter as the revenue between the plaintiff and the State, the Court on account of its finding that additional court-fee is payable declines to proceed further with the case until that payment is made, it may properly be held that by its discretion on an administrative matter the court has failed to exercise the jurisdiction for which civil courts have been set up, that is, to settle disputes of civil nature between the parties and to administer justice according to the laws of the land. The condition laid down in clause (b) of section 115 of the Code is, therefore, satisfied.

Coming now to the authorities of various High Courts, I might first refer to *Shrimati Anguri Devi* v. *Gurnam Singh* (4), in which Harnam Singh, J. held that an order demanding additional court-fees is revisable under section 115, as in such cases there is a refusal to exercise jurisdiction in the matter and try the case on the merits unless additional court-fee demanded is paid. The learned Judge cited *Ratnavelu Pillai* v. *Varadaraj Pillai* (5), in support

(4) I.L.R. 1951 Punj. 155=A.I.R. 1951 Simla 238.
(5) A.I.R. 1942 Mad. 585.

of his view and there is no further discussion of the question. A contrary view was expressed by Falshaw J. (as he then was) in *Dr. Harbans Lal Khosla* v. *Mohan Lal Sanon* (6), and has been reiterated by the learned Chief Justice in *Ram Dhari* v. *Fateh Chand and others* (Civil Revision No. 44 of 1962 decided on the 20th September, 1963) and *National Bank of Lahore, Limited* v. *Messrs. Punjab Ceramic Supply Co., and others* (Civil Revision No. 505 of 1962, decided on the 29th November, 1963). His view has been adopted by Mehar Singh, J. in *Gurmukh Singh* v. *Ram Nath* (Civil Revision No. 647 of 1960, decided on the 17th April, 1961). It is unfortunate that the judgment in *Smt. Anguri Devi* v. *Gurnam Singh* (4), was not brought to the notice of the learned Judge when the counsel addressed arguments before him in *Dr. Harbans Lal Khosla* v. *Mohan Lal Sanon* (6), or at the hearing of the revision petitions. However, after the date of the reference of the instant case by the Single Bench, an identical question has been considered by the Circuit Bench of this Court at Delhi in *Sheel Kumar* v. *Aditya Narain and another* (7), decided on the 22nd April, Mahajan J., who delivered the judgment and with whom Dua, J. agreed, reviewed the case-law and held that the decision of Falshaw, J. could not be sustained either in principle or in authority.

In *Dr. Harbans Lal Khosla* v. *Mohan Lal Sason* (6), it was considered that whether the decision of the lower court for proper valuation of the suit is right or wrong, this court should not interfere as none of the conditions laid down in the three clauses of section 115 of the Code of Civil Procedure has been satisfied. This question has been sufficiently discussed above and reasons have been given for the view that an order holding that the plaint had been undervalued and calling upon the plaintiff to pay additional court-fee by a certain date operates as failure to exercise jurisdiction vested in the Court by law. The further reason given by the learned Judge was that the High Court should be particularly reluctant to interfere since if only one further step is taken and, the plaintiff, having failed to value his suit properly and pay the necessary court-fee, the plaint is rejected, that

(6) A.I.R. (1954) Punj. 205.

(7) I.L.R. (1965) 1 Punj. 265=1964 P.L.R. 916.

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order is appealable and so there was no reason why the plaintiff should be allowed to challenge the preliminary order in revision. This view can no longer be sustained on account of the decision of the Supreme Court in *Major S. S. Khanna* v. *Brg. F. J. Dillon* (2). It must, however, be mentioned that in *Dr. Harbans Lal Khosla's case* (6), it was brought to the notice of learned Judge that the plaintiff had actually failed to pay the court-fee and his plaint had been rejected and thus a right of appeal had accrued to the plaintiff.

Coming now to the authorities of other High Courts, they would appear to be practically unanimous in favour of the view taken by the Division Bench of our Court in *Sheel Kumar* v. *Aditya Narain and another* (7), as to the revision petition being competent under section 115 of the Code of Civil Procedure. Some decisions of the Calcutta High Court are *Ramrup Das and others* v. *Mohunt Sujaram Das and others* (8), *and Sailendra Nath Kundu* v. *Surendra Nath Sarkar and others* (9). *In Mahadeo Gopal Pondse and others* v. *Hari Waman Bhate and another* (10), it was held by the Division Bench that an order demanding court-fees in excess of what the plaintiff has paid is virtually a refusal to exercise jurisdiction, and as such, if it is erroneous the High Court will interfere with it in revision. This case was relied upon by the Full Bench of the same Court in *Shankar Maruti Girme* v. *Bhagwant Gunaji Girme and others* (11), at page 260. In *Kulandai Pandichi and another* v. *Indran Ramaswami Thevan* (12), a Division Bench of the Madras High Court after reviewing the previous case-law held at page 417 that where a Judge, on an erroneous view of the Court-fee payable, refuses to proceed with the suit until the proper Court-fee is paid, he fails to exercise jurisdiction as a party is entitled to have his case tried if he paid the Court-fee. Hence, the order was revisab'e. The learned Judges observed that while the Courts would generally not interfere in revision where an equally efficacious remedy was open to the party, they had in several cases interfered where the remedy by way of appeal would entail unnecessary hardship on the party,

(8) 7 I.C. 92.
(9) A.I.R. 1935 Cal. 279.
(10) A.I.R. 1945 Bom. 336.
(11) A.I.R. 1947 Bom. 259.
(12) A.I.R. 1928 Mad. 416.

involve multiplicity of proceedings or would not give the party as complete and efficacious a relief as interference with an interlocutory order and the case satisfied the requirements of section 115 of the Code of Civil Procedure. A Full Bench of the same Court in *Chintalapati Murthiraju* v. *Chintalapati Subbaraju and others* (13), affirmed the same principle holding that the insistence on the payment of the additional court-fee amounted, in the circumstances, to a refusal to exercise jurisdiction. The mere fact that an appeal would lie later from the consequential order passed by the Subordinate Judge, if the stamp fee were not paid was no ground for refusing to entertain the petition. The only decision of the Allahabad High Court cited at the bar was *Lakshmi Narain Rai* v. *Dip Narain Rai* (14), which again decided in favour of the plaintiff-petitioner as to the competency of the revision petition against the order calling upon him to pay additional court-fee on the plaint. The Full Bench of the Patna High Court in *Ramkhelawan Sahu* v. *Bir Surendra Sahi and others* (15) held firstly that the superior court will interfere in revision where the jurisdiction is derived from statute, e.g., the Court-fee Act, and the matter is one of construction of the statute, for instance, the particular category into which the suit falls and the proper court-fee payable on it, and secondly, that in deciding the question of court-fee, the Court is deciding an issue as between the Crown and the plaintiff; and should its decision be adverse to the plaintiff, it amounts to a decision to refuse to exercise its jurisdiction to try the issue as between the plaintiff and the defendant and so that decision is subject to the revisional jurisdiction of the High Court. I have reserved to the last for consideration the point of reference in *Balaji Dhumnaji Koshti* v. *Mt. Mukta Bai* (16), because it contains a very illuminating discussion of the point under consideration. They observed as follows :—

> "A party comes to Court and having paid the proper fee and having punctiliously observed all the other rules imposed upon him asks the Court to decide his case and settle the dispute between his opponent and himself. What does the Court

(13) A.I.R. 1944 Mad. 315.
(14) A.I.R. 1933 All. 350 (D.B.).
(15) A.I.R. 1938 Patna 22.
(16) A.I.R. 1938 Nag. 122 (F.B.).

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do ? It refuses to hear him. It refuses to look at his case. Instead of investigating his grievances it decides something quite different and enters into a question not between him and his opponent but between him and the Crown. Is that not a refusal to exercise jurisdiction ? Or alternatively is it not a grave defect in procedure to refuse to proceed with a claim or an appeal on a plaint or a memorandum which is properly stamped? Their Lordships of the Privy Council decided *Rachappasubrao* v. *Shidappa Venkatrao* (17), at page 518—

> 'The Court-fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State. This is evident from the character of the Act, and is brought out by section 12, which makes the decision of the first Court as to value final as between the parties, and enables a Court of Appeal to correct any error as to this, only where the first Court decided to the detriment of the revenue'.

Therefore, they refused to allow a defendant to utilise the provisions of the Act to obstruct his opponent, and refused to entertain his objection raised for the first time in appeal that the Court had no jurisdiction to proceed "upon an insufficiently stamped plaint. It is clear then that a question of this kind is only a side-issue. It is not *inter partes* and does not invalidate a decision simply because the plaint or the memorandum of appeal was understamped. Of course, Courts undoubtedly have jurisdiction to determine the amount of court-fees payable and to reject the memorandum of appeal if it is insufficiently stamped, and so it is possible that the High Court has no power of interference under section 115(a). Can it then invoke clause (c) ? Here also the matter is circumscribed by the decision of their Lordships of the Privy Council in *Balakrishna Udayar* v. *Vasudeva Ayyar* (18), at page 799. The illegality or irregularity must in

(17) I.L.R. 43 Bom. 507.
(18) I.L.R. 40 Mad. 793.

some way affect either jurisdiction or at least the procedure of the Court as is explained in *Sheo Prosad Bungshidur* v. *Ramchunder Haridas* (19), page 338 and *Devi Dass* v. *Nilkanthrao* (20), at page 77. But is that not just what the order in the present case does? What exactly does it mean ? It makes the payment of a certain sum of money a condition precedent to the hearing of the case. However, much the Court may have jurisdiction to make such an order, if the effect of it is a refusal to proceed to trial at all in circumstances when the Court is bound to do so, it must, we think, be regarded as an irregularity which effects either jurisdiction or procedure within the meaning of clause (c) and within the meaning of their Lordships' decision; and inasmuch as it is not merely incidental and interlocutory but finally and effectively shuts the plaintiff out from all hope of redress in the suit itself the error must be regarded as material." With these observations, I respectfully agree.

Mr. K. L. Kapur, on behalf of the defendant-respondent urged that the order of the Subordinate Judge merely specified a date by which the additional court-fee had to be paid and did not itself provide that in case the order was not complied with by that date the plaint would be dismissed, and he put up a hypothetical supposition that in between the date of the order and the date specified in it, an application for review may be made to the Subordinate Judge or he may on reconsideration change his mind. It is, however, taking a very shallow view of the matter to confine oneself strictly to the terms of the order and not to the necessary consequence which would follow on account of the mandatory provisions in rule 11, Order 7 of the Code. Mr. Kapur has adopted the arguments which prevailed with Burn, J. in *K. Manaithunainatha Desikar* v. *Gopala Chettiar and others* (21), who observed that an order which by itself does not fall within the terms of section 115 of the Code of Civil Procedure cannot be revised by the High Court merely because it is bound to be followed by some other order which may be without jurisdiction. The learned Judge also observed that if the plaintiff made good the deficiency no question of rejection of his plaint would arise and even if he did

(19) I.L.R. 41 Cal. 323.
(20) I.L.R. (1936) Nag. 73.
(21) A.I.R. 1939 Mad. 380.

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not, it was not beyond the bounds of possibility that the learned Subordinate Judge might discover that he had made a mistake in the order now under appeal and might cancel his demand for extra court-fee. These are all, however, extraneous considerations and it is not to be presumed that Judges might exercise a power of review where no review was legally open. Some of these arguments had already been disposed of by a Division Bench of the Madras Court in *Kulandai Pandichi and another* v. *Indran Ramaswami Pandia Thevan* (12), where it was observed that it was difficult to see how the mere addition of the consequence which would under Rule 11, Order 7, Civil Procedure Code, follow from the non-payment of the Court-fee demanded would make any difference as the same consequence would follow even if the order was silent as to what was to be done in the case of non-payment. The possibility of the plaintiff complying with the order thus giving rise to an appeal was also considered as not necessary ruling out the right of revision. As a matter of fact the Full Bench of the Madras Court in *Chintalapati Murthiraju* v. *Chintalapati Subbaraju and others* (13), had to observe that the decision of the three Division Benches had in effect repudiated the opinion which found favour with Burn J. and these decisions were final so far as the learned Judge was concerned. It is, therefore, futile to refer to the opinion of that learned Judge.

Mr. K. L. Kapur also referred to the decision of Gajendragadkar, J. (as he then was) in *Shree Bajwa Ganesh Oil and Rice Pulse Mills and others* v. *Parikh Occhevlal Amratlal* (22), in which the matter arose from the order of a Civil Judge, Senior Division, in a suit in which court-fee was ordered to be paid on set-off claimed by the defendant and a revision was preferred against that order. It was held that the findings recorded by the trial Judge on any of the issues could be challenged by the aggrieved party before a Divisional Bench of the High Court. If the High Court were to decide the point of Court-fees at this stage, it would not be fair to the party, that may be aggrieved by this order, because a revisional application is heard by a Single Judge. Besides, the finding on the question of court-fees would not affect the question of jurisdiction of the Court in the case. Therefore, it would not be in the interest of the defendant that the merits of the

(22) A.I.R. 1956 Bom. 253.

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order should be considered and decided finally in a revisional application. Even if the defendant pays Court-fees under compulsion of the order, it would be open to him to take the point in appeal that the order was wrong and that the Court-fees paid by him should be refunded. That being so, the revision application was not entertained. With regard to this decision, I would only say, with the utmost respect, that in so far as it may be construed as holding, that the finding on the question of court-fees would not affect the question of jurisdiction of the Court, it is contrary to the view of the Full Bench of Bombay High Court (to which the learned Judge was a partly) in *Shankar Maruti Girme* v. *Bhagwant Gunaji Girme and others* (11).

In the end, Mr. K. L. Kapur referred to certain observations of their Lordships of the Supreme Court in *Major S. S. Khanna* v. *Brig. F. J. Dillon* (2), to the effect that even if the conditions laid down in section 115 of the Code are satisfied, the High Court would not necessarily interfere with the discretion of the subordinate court as the exercise of this jurisdiction under section 115 of the Code is discretionary. These are, however, matter touching the facts of the particular case with which we are not concerned in this reference, confined as it is to a purely legal question.

For the reasons given above, the answer to the question under reference as posed in the opening paragraph of this judgment must be in the affirmative. The case will now go to the Single Bench for decision.

Dua, J.

DUA, J.—I concur in the answer proposed and fully agree with the reasoning and the conclusion of my learned brother Capoor, J. I may, however, add a few words on the scope of section 115, Code of Civil Procedure, as I construe it on the statutory language.

Section 115 of the Code, empowers the High Court to call for the record of any case decided by any subordinate Court in which no appeal lies to such High Court and to make suitable orders if such subordinate Court appears to have exercised jurisdiction not vested in it by law, or to have failed to exercise jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity. This section which has been in existence from the inception of the Code of Civil Procedure of 1908, though

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the history of this provision can in a way be traced back to 1879 and in part even to an earlier point of time, was obviously designed to reserve to the High Court, to a somewhat restricted degree, a kind of supervisory power, too an extent, similar to what is now reserved to the High Court, by Article 227 and perhaps, from one point of view, also by Article 226 of the Constitution for the purpose of giving a relief to an aggrieved suitor against grave injustice and hardship caused by serious jurisdictional or similar infirmity. Two of the basic limitations of this power are that it can be exercised only over the Courts subordinate to the High Court and where no appeal lies thereto.

It is contended that if an order determining the amount of Court-fee is interfered with on revision, it would render nugatory or a dead letter the right of appeal from the subsequent final order rejecting the plaint. This contention appears to me to be too feeble to claim acceptance for the purpose of depriving the High Court of its statutory jurisdiction under section 115 and also for depriving an aggrieved suitor of his right to seek justice from the High Court on revision against an order which otherwise plainly falls within the purview of this section. An order rejecting a plaint is only to be deemed to be a decree under section 2(2) of the Code and, therefore, in common with all decrees, subject to appeal in appealable cases. It is noteworthy that under section 105 of the Code, every non-appealable order, affecting the decision of the case, is open to challenge in appeal from the final decree. Now, if the above argument were to prevail than apparently in no case in which an appealable decree can ultimately be passed, can the High Court call for the record pertaining to an interlocutory order, or entertain a revision against an interlocutory order, or entertain a revision against an interlocutory order, and the High Court must with-hold its hands on the simple ground that the order impeached is interlocutory. This legal position seems to me to be quite unacceptable, for, it can be sustained neither on principle nor an authority. Indeed, the scheme of the Code read as a whole would also seem to negative such legislative intendment. Though, a suit may be "a case" and the proceedings analogous to a suit may also be "cases", nevertheless, there may, according to the scheme of the Code, be "cases" within "cases", and the expression "cases" as used in section 115, construed in the background of the object and purpose of this section and the entire

scheme of the Code, is plainly designed and intended to cover interlocutory orders; at least it does not exclude interlocutory orders merely because they are interlocutory.

The case of a defendant seeking revision of an adverse order on a question of Court-fee is, from every relevant point of view, distinguishable from that of the plaintiff seeking similar relief, in that, in the case of the plaintiff the impugned order has the practical effect of refusal by the Court to proceed with the trial of his suit until and unless he pays more Court-fee. Dictates of justice in his case must speak in a tone different from the case of a defendant who merely wants the plaintiff to pay more Court-fee to the State. To equate these two cases is to ignore and miss the plain basic distinction between the effect of the two orders on the parties to whose prejudice they may respectively operative.

I may here appropriately repeat, what is often apt to be forgotton, ignored or missed, that the Code of Civil Procedure is designed and intended to facilitate justice and further its ends. Section 115, like other provisions of the Code, has, therefore, to be construed in this background so that if a case is covered by the language of this section and there is no other material legal infirmity, the High Court's jurisdiction should not be shut out, and the aggrieved party should get speedy justice in accordance with law without further avoidable delay, expense or hardship. To construe and interpret section 115 in the manner suggested by the respondent appears clearly to ignore, or at least to give insufficient consideration, to this fundamental background. From whichever point of view we may consider the question, the respondent's contention is not easy to sustain.

PREM CHAND PANDIT, J.—I also agree.

K.S.K.

FULL BENCH

Before S. B. Capoor, I. D. Dua and D. K. Mahajan, JJ.

PRITAM SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE AND OTHERS,—*Respondents.*

Civil Writ No. 1453 of 1963.

1965

December, 24th

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Ss. 32-FF and 32-G,—Whether valid—Gift of part of the property in favour of next heir—Whether amounts to acceleration of succession—Notice to the donee—Whether necessary to be given before declaring surplus area of the donor.