

(1973) 04 AHC CK 0022

In the Allahabad High Court

Case No : Civil Revision No. 1136 of 1971

Basti Ram Roop Chand

APPELLANT

Vs

Radhey Shyam Gulab Chand and Another

RESPONDENT

Date of Decision : 27-04-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2

Citation : AIR 1973 All 499

Hon'ble Judges : T.S. Misra, J

Bench : Single Bench

Advocate : G.P. Bhargava and A.N. Bhargava, for the Appellant;

Final Decision : Dismissed

Judgement

T.S. Misra, J.—This revisional application is directed against the order of the Additional District Judge, Kanpur. It has arisen in the following circumstances:

The plaintiff-opposite party commenced an action against the defendant-applicant and Union of India for a decree of Rs. 13,485.12 together with pendent lite and future interest. Both the defendants have filed separate written statements contesting the suit. An issue relating the jurisdiction of the court was framed. The defendant made an application praying that the said issue be tried as a preliminary issue. This application was opposed by the plaintiff. The Trial Court having found that in a suit for recovery of damages on account of breach of contract the question of jurisdiction was a mixed question of law and fact, did not consider it expedient to try the issue as a preliminary issue and consequently rejected the application of the defendant. Against that decision the defendant went up in revision before the District Judge. The learned Additional District Judge who heard and disposed of the revision found that for deciding the issue relating to jurisdiction, the court would have to record the evidence and give a finding on fact whether the goods were to be delivered and price was to be paid in pursuance of the contract at Kanpur or not. As the same evidence was to be produced again in support of the claim if the court found that it had jurisdiction,

it was considered that it was not a fit case that the issue be decided as a preliminary issue. Having found that the Trial Court had not committed any illegality or irregularity in the exercise of its jurisdiction, the revision application was dismissed.

2. The defendant has now come to this Court in Revision. Now, the question of jurisdiction may be a pure question of law or a mixed question of law and fact and it will depend on the facts of each case whether it is of the one or the other category. In the instant case as pointed out above the claim is based on the alleged breach of contract. It was urged by the plaintiff that the cause of action for the suit arose at Kanpur inasmuch as the contract was F. O. R. Kanpur, the goods were despatched from Kanpur and the price of goods was payable at Kanpur. In view of these allegations the question of jurisdiction in the instant case is obviously a mixed question of law and fact. Under Rule 2 of Order 14 of the CPC while the Court is bound to try as preliminary issue a question of law on which the entire suit may be disposed of but where the question is not purely of law or it is a mixed question of law and fact, the court has no jurisdiction to try issue as a preliminary issue. (See Major S.S. Khanna Vs. Brig. F.J. Dillon, In the instant case as the question of jurisdiction was a mixed question of law and fact, the Trial Court had no jurisdiction to try that issue as a preliminary issue. In this view of the law, the Trial Court was, therefore, justified in not proceeding to decide the issue of jurisdiction as a preliminary issue.

3. In these circumstances, there is no force in this application. It is accordingly dismissed with costs. The order whereby the proceedings in the suit were stayed by this Court, is hereby vacated. The record of the case shall be sent back to the court below without any delay.