

(1991) 02 KAR CK 0052
In the Karnataka High Court
Case No : CRP No. 6374/1990

Dr. Naba Kishore Pal

APPELLANT

Vs

Dr. Salabanna and Others

RESPONDENT

Date of Decision : 26-02-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (1991) 2 KarLJ 404

Hon'ble Judges : N. Y. Hanumanthappa, J

Judgement

The plaintiff an unsuccessful candidate who sought election to the governing council of first defendant filed a suit in O.S. No. 384/1990 in the Court of the Principal Munsiff, Bijapur, Karnataka for the following relief:

"(a) Declare that the alleged decision to nominate the defendant No. 2 as President-elect for the year 1990 of the defendant No. 1-Association, is illegal and inoperative;

(b) Declare that the defendant No. 2-Dr. N.K. Pal is not entitled to function either as President-elect for the year 1990 or as President for the year 1991, on the basis of the alleged decision to nominate him as President-elect for the year 1990;

(c) Declare that till the General Body of defendant1-Association takes a decision on the report of the Counting Officer and tellers regarding the candidate who has been declared as elected nobody can function in any capacity on the basis of the election held;

(d) Grant a permanent injunction against the defendant Nos. 1 and 2 restraining the defendant No. 2 from functioning in any capacity on the basis of his nomination as President-elect for the year 1990.

(e) Saddle the costs of the suit on the defendants;

(f) Grant permission to amend the plaint if found necessary and;

(g) Grant any other relief which this Hon"ble Court deems fit in the circumstances of the case".

Contending that the election to the Managing Committee of the first defendant took place by way of postal ballot. The entire election took place by way of postal ballot by all its members who were on the electoral roll scattered all over the Country postal ballots were opened at Calcutta. After announcement of the result found illegalities and irregularities committed in holding the declaration. Aggrieved by such an illegality which deprived of his chance to get elected, Plaintiff filed a suit for the reliefs mentioned above. Regarding jurisdiction, according to him the Munsiff Court, Bijapur has got jurisdiction since he is practicing there. He also filed an application under Order 39, Rules 1 & 2 of CPC requesting to restrain the defendants from functioning. After service of notice to the defendants injunction was granted. Defendants did not appear on the date of hearing. Its appears subsequently defendants filed an application for vacating the stay. The said application is still pending. Defendants also filed written statement. After filing written statement, trial Court framed issues. Among those, Issues 5 and 6 relate to one regarding jurisdiction and another regarding Court-fee. Those two issues read as follows:

"5. Whether defendant-2 proves that this Court has no territorial jurisdiction to entertain and try this suit as contended in paras 1 and 18(19) of his written statement.

6. Whether the plaintiff has not correctly valued the suit reliefs and has not paid the proper and sufficient Court-fee?."

2) Defendant No. 2 requested that above two issues be decided as preliminary issues. On the request made by the defendant, trial Court heard both sides. Defendant-2 in support of his case contended that the Munsiff Court has no territorial jurisdiction to try the issues. He relied upon some of the authorities of various High Court and the Supreme Court which interpreted scope of Section 20 of CPC.

They are: AIR 1969 Calcutta page 224, Ujjal Talukdar v Netal Chand Koley.

"Everything which, if not proved gives the defendant an immediate right to Judgment must be part of the cause of action. Cause of action does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. Evidence of a fact should not be confused with the fact itself. Even an infinitesimal fraction of a cause of action will be part of the cause of action and confer jurisdiction on the Court within the territorial limits of which that little occurs. Where the entire dispute over a Cricket Match was occasioned, discussed and settled in Calcutta. Mere fact that the decision was conveyed to the plaintiff club by a letter received by the Club of Sealdah will not take the cause of action to Sealdah and give Sealdah Court jurisdiction."

(2) AIR 1974 Himachal Pradesh page 32, S.S. Mittal v Bar Council of India and

Others.

"Advocate"s name removed from roll by Bar Council of India at Delhi and copy of order sent to him at Simla-Cause of action arises at Delhi and not at Simla."

(3) AIR 1975 Delhi page 15, Smt. Kamla Chopra v Life Insurance Corporation of India and Others.

(4) AIR 1985 Supreme Court page 1289, State of Rajasthan and Others v M/s. Swaika Properties and Another.

Thinking that the reasons gives in the above decisions and the law laid down therein are on the same footing. Defendant-2 requested the trial Court to hold Issue Nos. 5 and 6 in his favour.

3) As against this plaintiff submitted, that he is one of the Members also sought election to the governing council by sending his ballot papers by way of post from Bijapur where he is practicing. According to him part of cause of action arose at Eijapur also. Hence, Court situated therein has jurisdiction. He submitted that it is not the place where the ballot papers were opened not the place/office of the governing Council situated which determines the jurisdiction, unless specific rules furnished relating the office of the governing place or place of election etc. If it is shown that a part of cause of action has taken place at a particular place, person interested can seek for remedies in that Court alone. In support of his contentions, he relied upon two decisions of this Court viz., (1)AIR 1978 Karnataka page 113, Manappa Manikappa Sheded and Others v Bhaskharappa A. Bhasana and Others.

Wherein it is held as follows:

"The cause of action is a bundle of essential facts and refers entirely to the media upon which the plaintiffs ask the Court to arrive at the conclusion in their favour.

Where the District Church Council of a Chiristian seet by a resolution compulsorily affiliated the churches of the sect in an area to another sect with which the former sect had absolutely no connection, it could not be said that the members of the former sect in the affected area did not have cause of action to sue this Council in the Court within whose jurisdiction they resided for getting the resolution quashed. The fact that the Council happened to be located outside the jurisdiction of the Court in question was immaterial."

(2) AIR 1983 Karnataka page 43, D.L. Suresh Babu and etc. v Institute of Chartered Accountants of India and Others.

It is held as follows:

"That a part of the cause of action, if not whole, had arisen within the territorial jurisdiction of the Karnataka High Court. If that is so, that Karnataka High Court had jurisdiction to entertain these petitions, notwithstanding the institute and the

panel had their offices at Delhi."

4) After hearing both sides and also applying his mind to the principles laid down therein the trial Court held both the issues against defendant-2.

5) Aggrieved by the same defendant-2 has preferred this revision petition contending (1) Approach of the trial Court in holding Issues 5 and 6 against him as incorrect.

(2) If the trial Court had taken into consideration averments made by him in the written statement including the relevant dates which relate to election, votes polled and proceedings took, particulars of which now furnished in the form of list of dates, it is clear that the cause of action did not take place at Bijapur.

(3) Approach of the trial Court in ignoring the law laid down by the various High Court and the Supreme Court referred to above and relied upon by him, quite incorrect.

(4) He also submits that if it is held that wherever a voter is residing, the Court in whose jurisdiction such a person is residing, that Court alone will have jurisdiction, then it will be practically impossible to decide the case as there will be thousands of voters scattered all over the Country."

Sri Muddahanumegowda submits that trial Court was justified in holding Issue Nos. 5 and 6 against defendant-2. He further submits that if it is held that Munsiff Court, Bijapur has no jurisdiction to try the above Issues, then he will be deprived of to get his right agitated in any Court of law. Thus it amounts to preventing him from approaching the Court.

6) After hearing both sides, I am of the view that this is not a case where this Court can interfere in the order passed by the trial Court holding that defendant-2 has proved that Court has no jurisdiction to try the issues involved so also Court-fee paid as not sufficient. Apart from this it is well settled that preliminary issues relating to jurisdiction and payment of Court-fee of course have to be tried at the preliminary stage itself. As the same would avoid unnecessary hardship to the parties at this stage. To see that hardship is averted, trial Court justified in hearing the preliminary issues in the beginning itself. As the same time the Court has to take into consideration that merely because a party has submitted that such and such an issue be tried as a preliminary issue, that does not mean, it has to be considered immediately. First it has to consider whether the preliminary issue sought to be decided is based on pure question of law or it is based on mixed question of law and facts. This preliminary issue can be decided only when it is possible for the Court to decide it without calling upon the parties to adduce any evidence on it. This point is made clear by various High Courts mainly AIR 1976 Andhra Pradesh page 70, Ghatmal Champalal v Amaravathi Dyeing Private Ltd., wherein it is held as follows:

"An order that a preliminary issue should be taken first for decision, does not

decide any right of parties and is not a "case decided" within the meaning of Section 115 of the Code and cannot be interfered with in revision."

and in AIR 1976 Allahabad page 201, M/s. Estrela Batteries Ltd. v M/s. Modi Industries Ltd., it reads as follows:

"Rule 3 applies only to the disposal of a suit on the date of first hearing namely on the date when issues are framed. The words "at once" and "forthwith" contemplate decision on the data of issue on the basis of material available on the record on that date and when no further evidence is needed. When the question of jurisdiction of the Court to entertain the suit involves mixed question of law and fact it cannot be decided as a preliminary issue under Order 15, Rule 3 when there is no material on record to decide it."

and in AIR 1979 Madhya Pradesh page 153, M/s. Ramadaya Umraomal v M/s. Pannalal Jagannathji it is held as follows:

"The provisions of Order 14, Rule 2 under the old Code was as follows:

"Where the issues both of law and of fact arise under the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues, first and for that purpose may if it thinks fit, postpone the settlement of the issues of fact, until after the issues of law have been determined."

The amended Rule 2 of Order 14, Civil Procedure Code, under the present Code, is as follows:

"Court to pronounce Judgment on all issues: (i) notwithstanding that a case may be disposed of on a preliminary issue, the Court shall subject to the provisions of sub-rule (2) pronounce Judgment on all issues.

(ii) where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case of any part thereof may be disposed of on an issue of law only, it may try the issue first, if that issue relates to:

(a) the jurisdiction of the Court or (b) on bar to the suit created by any law for the time being in force;

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined and may deal with the suit in accordance with the decision on that issue."

This provision makes it clear that the issue as to jurisdiction may be an issue of law or of fact or a mixed issue. The obligation to try the issue of jurisdiction as preliminary arises only when it is an issue of law, issue of jurisdiction depending on question of fact and, or mixed question of law and fact, must be decided on merits at one and the same time, along with the other issues. If the Court finds, on a trial, on merits so far as this issue of jurisdiction goes, that the case is not cognizable by the Court because of want of territorial or pecuniary jurisdiction,

the plaint will be ordered to be returned for presentation to the proper Court, and if, on the other hand, it finds that having regard to the nature of the suit, it is not cognizable by the class of Courts to which the Court belongs, the plaintiffs suit will have to be dismissed in its entirety. Discretion to try preliminary issue of law relating to jurisdiction or bar of suit should be exercised only when it is so clear that the decision will decide the suit finally once and for all without recording of any evidence."

Keeping the principles laid down in the above cases of the pleadings of the parties what will emerge is that the issues to be tried should be decided as preliminary Issue. If they are based on both question of law and of facts, it shall be decided only after regular evidence is led in after giving sufficient opportunity of hearing to both the parties. Hence, I do not think that the trial Court in any way committed a mistake in holding Issue-5 against defendant-2. Regarding Issue No. 6 also findings given by the trial Court a valid one.

Even otherwise, if it is held that trial Court was not justified in holding both the issues against the defendant, even then in case, the plaintiff succeeds in the suit, defendant can as well urge the same points including incorrectness on the part of the trial Court in holding Issues 5 and 6 against him in an appeal to be preferred. Lastly it has to be said that authorities relied upon by the defendant in the trial Court in support of his case, facts they differ. Even the list of dates furnished by the petitioner's counsel and some of the documents, now filed cannot be accepted unless the correctness of the said dates and the documents which he likes to rely upon are confronted to the other side.

7) As far as the authorities relied upon by the plaintiff is concerned, plaintiff submits that the said authorities are very nearer and opt to the points involved. The authorities relied upon by defendant-2 are not applicable to the facts of the case. Now nothing deserves to be said whether these two authorities are against the plaintiff or otherwise, as I have already taken a view that all these points can be taken up for consideration before the appellate Court in case plaintiff succeeds and defendant-2 takes up the matter before the appellate Court.

Hence this Civil Revision Petition is dismissed. All other contentions are left open. The list of event and certain documents now filed by the defendant-2, shall form part of the Memorandum of Revision Petition.

Trial Court is directed to dispose of the main suit within three months from this date. No costs.