

(1952) 08 GUJ CK 0010

In the Gujarat High Court

Case No : Civil Revision Application No. 76 of 1952

Haridas Manekchand Kothari

APPELLANT

Vs

Tulsidas Harakhaji Parekh and Another

RESPONDENT

Date of Decision : 26-08-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 115 , 151

Citation : (1952) 08 GUJ CK 0010

Hon'ble Judges : Chhatpar, J

Bench : Single Bench

Advocate : A.S. Patel, for the Appellant; H.C. Shah, for the Respondent

Judgement

Chhatpar, J.—This revision application is to revise an order of the Civil Judge, Senior Division, Junagadh, refusing to grant an application of

the Defendants to try an issue as to jurisdiction as a preliminary issue. The first opponent filed a suit against the applicant and the 2nd opponent for

rendition of accounts of an agency of the Defendants who were carrying on business in the name of A.S. Kothari at Karachi and were alleged to

have been entrusted with a sum of Rs. 25000/ - for the purchase of hardware and which were sold at Karachi by the Defendants. The agency was

alleged to have ended in about the end of 1948. The Plaintiff filed this suit in the Civil Court of Junagadh in April 1951, alleging that the Court had

jurisdiction as the Defendants belonged to Bilkha and resided there. The Defendants on the other hand alleged that after the partition of India, they

migrated from Karachi and have since been residing at Rajkot where they have purchased a building.

After the issues were framed, the Defendants moved the Court to try the issue as to jurisdiction as a preliminary issue; it could be conveniently tried

as the evidence relating to it had no connection with the merits of the claim relating to the agency accounts. The Court dismissed the application on

the sole ground that the issue as to jurisdiction could not be decided without entering into evidence. Now this is not a correct criterion for the

decision whether a case should be tried piecemeal or as a whole.

As a rule it is improper to split up a case and take evidence on different parts at different stages. But there are exceptions where it would indeed be

very usual, very proper and very convenient course"" as observed by the Privy Council in the case of- AIR 1933 43 (Privy Council) , to postpone

the trial of certain issues after other issues are tried. Order 14, Rule 2 Code of Civil Procedure, contemplates the postponement of the settlement

of issues of fact after the issues of law have been determined but when all the issues are framed the conduct of the case is left to the discretion of

the Court and the Court has inherent jurisdiction u/s 151 to decide one question and to reserve Anr. for investigation at a later stage, as pointed out

by Mulla in his Code of Civil Procedure, 11th Edition, at page 477, citing the Privy Council case of-Muhammad Abdul Majid v. Muhammad

Abdul Aziz 19 All 155 (P.C.) wherein it was observed:

The Subordinate Judge had before him a case consisting of two parts; a question of title, and an incidental question of account depending largely

on the title. It was for the obvious advantage of the parties, and they proposed, that the first part should be decided and the second reserved for

decision. In point of fact the first part has been the subject of successive appeals by the Defendant, who successfully struggled against the trial of

the second part pending these appeals. If the Code forbade the parties, and the Court so to arrange the disposal of a law suit, it would be a very

startling thing. It is not pretended that the Code contains any such prohibition.

The Bombay High Court in the case of- Sowkabai Pandharinath Rajapurkar Vs. Sir Tukojirao Holkar, held that although under Order 14, there is

no power in the Court to frame something in the nature of a preliminary issue of fact, but where the Court has, framed all the issues which properly

arise, the judge may come to the conclusion that one or more of those issues should be tried first and independently, because the evidence on such

issue or issues can be conveniently separated from the rest of the evidence and the finding on that issue or those issues may render the trial of other

issues unnecessary.

In the present case the issue sought to be decided first relates to the very jurisdiction of the Court. The case apparently involves questions which

may require evidence to be recorded at Karachi where the agents entered into transactions and which is now a foreign place. If the whole case is

tried together which may take months or even years and ultimately the Court comes to the conclusion that it had no jurisdiction, the decision of the

Court on other issues would become infructuous and considerable time of the Court will be wasted, apart from the inconvenience and expense to

the parties.

I do not propose to lay down as an inflexible rule that whenever a question of jurisdiction is raised it must necessarily be decided first. There may

be cases where the evidence as to jurisdiction may be interconnected with other evidence on the merits of the case, as for example, when

jurisdiction is sought to be based upon the place where a transaction is entered into and the factum of that transaction itself is questioned in the suit.

In such a case, it may be convenient to try all the issues together in the interest of convenience to the parties. But where an issue about jurisdiction

can be conveniently decided with or without taking evidence it would be proper for the, Court to try it before going into other issues. The question

depends upon the circumstances of each case. In the present case, I am clearly of the opinion that as the issue of jurisdiction was entirely separate

from the rest of the case and could have been very conveniently tried as a preliminary issue, the Court should have taken this course, specially as

the rest of the case may involve taking of evidence in distant places and enquiry into accounts which may take considerable time.

2. It is however urged on behalf of the Plaintiff that the Court having exercised its discretion to hear the case as a whole the High Court should not

interfere in revision, as the decision is not a case decided within the meaning of Section 115, Code of Civil Procedure. Several rulings have been

quoted before me for and against the proposition whether a Court of revision u/s 115 of the CPC can interfere with an order refusing to treat and

decide an issue as a preliminary issue.

But I do not propose to discuss these rulings. Even if technically the case did not fall within the powers of the High Court u/s 115, Code of Civil

Procedure, the High Court has now under the present Constitution of India wide powers of superintendence and I would not hesitate to interfere

where an obvious error in procedure of the present nature comes to my notice and which may involve the parties unnecessarily into considerable

expense and inconvenience. I consequently set aside the order of the lower Court and direct it to try the issue of jurisdiction as a preliminary issue

and to proceed to decide the case in accordance with law. I make no order as to costs of this revision application.