

(1977) 09 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 75 of 1977

Ish Paul Singh Ghai and Another

APPELLANT

Vs

Shrimat Bimla Rawal and Others

RESPONDENT

Date of Decision : 29-09-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(2)
Income Tax Act, 1961 — Section 281(A)

Citation : (1977) 6 ILR HP 571

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : H.S. Thakur, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This is a Defendants' revision petition arising out of a declaratory suit.

2. The Plaintiffs filed a suit for a declaration that they were co-owners in possession to the extent of a half share each in the land. It was alleged that the land had been purchased under a sale deed executed in favour of the first Defendant, that the said Defendant was merely a benamidar and the Plaintiffs were the real owners of the land. A relief for permanent injunction was included. The suit was resisted by the Defendants, who denied the benami nature of the transaction. The trial court framed several issues, and one of the issues was:

Whether the suit for declaration to the effect that Defendant No. 1 is a Benami owner is not maintainable because of the Income Tax Act, as the necessary certificate has not been procured as required under the rules in force as alleged?

O.P.D.

The trial Court then recorded the evidence adduced by the Plaintiffs, and when it had reached the stage for recording the evidence of the Defendants an

application was made by the Defendants praying that in view of Section 281(A) of the Income Tax Act the suit be dismissed without going into the merits of the case. The application has been rejected by the trial court by an order dated July 12, 1977. The Defendants now apply in revision against that order.

3. In rejecting the application, the trial Court has observed that the suit had reached the stage when the evidence of the Plaintiffs had already been closed on all the issues on the merits and the evidence of the Defendants alone remained to be recorded, that the issue framed in the application had already been incorporated in the issues already settled, and it was not possible to decide it without taking evidence of both the parties. It declared that the point would be decided along with the main suit. The question is whether the trial court has committed any jurisdictional error in passing the impugned order.

4. Originally Rule 2 of Order 14 of the CPC provided:

Where issues both of law and of fact arise in the same suit, and that 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.

It would appear that a duty has been cast on the Court under the aforesaid provision to decide issues of law in the first instance, where such issues are of pure law and their decision could result in the case or any part of it being disposed of on their basis alone. Since then, the CPC has been amended by the CPC (Amendment) Act No. 104 of 1976. Rule 2 of Order 14 now reads:

2. Court to pronounce judgment on all issues:

(1) 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.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any

part thereof may be disposed of on an issue of law only,

it may try that issue first if that issue relates to-

(a) the jurisdiction of the court, or (b) a 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.

It will be noticed that the code now insists on a decision of all the issues in the suit, notwithstanding that the case could be disposed of on a preliminary issue, the exception to that course being provided by Sub-rule (2) of Rule 2. Even there, the court has been vested with a discretion. A comparison of the

provisions of Sub-rule (2) of Rule 2 of Order 14 with the original Rule 2 of Order 14 immediately shows the difference. Whereas formerly Rule 2 of Order 14 provided that the court shall try the issues of law first, the matter has now been left to the discretion of the court. Now, the court may try such issue. Again it may try the issue first only if it relates to the jurisdiction of the court or to a statutory bar to the suit. It is not every issue of law which (is now given preference in the matter of adjudication. In passing, it may be noted that the amendment of Rule 2 of Order 14 is procedural in character and therefore applies also to suits pending on the date of the amendment.

5. It is possible to say that the point raised in the application falls within the scope of Sub-rule (2) of Rule 2 of Order 14. But inasmuch as the matter is one for the court to decide in its discretion, it is open to the court to say that it will not try that issue first but will try it along with the remaining issues in the suit. The court was inclined to that view because it considered that the parties should be allowed to lead evidence in regard to the point involved in that issue. In proceeding on that view and therefore deciding to dispose of the issue along with the remaining issues, it cannot be said that the court has committed any error of jurisdiction.

6. In the circumstances, the revision petition fails and is dismissed. But as the Respondents have not entered appearance there is no order as to costs.

7. The record of the case shall be sent down to the trial court forthwith.