
(1970) 07 PAT CK 0003
In the Patna High Court
Case No : Civil Revision No. 1324 of 1969

Mahabir Sahni	Vs	APPELLANT
Babu Lal Sahni and Others		RESPONDENT

Date of Decision : 01-07-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 80

Citation : AIR 1971 Patna 313

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Advocate : Indu Shekhar Prasad Sinha, for the Appellant; S.P. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Singh, J.—This application u/s 115 of the CPC (hereinafter referred to as "the Code") has been preferred by Mahabir Sahni, who is defendant third party in Title Suit No. 27 of 1968 against the order dated the 23rd of August, 1969, passed by the Subordinate Judge in the said title suit holding that whether notice u/s 80 of the Code would be required or not shall be decided at the time of the hearing of the main suit and shall not be decided as a preliminary point.

2. In order to appreciate the points involved in this application, it will be necessary to state briefly the facts. Babulal Sahni and three others, who are opposite party Nos. 1 to 4 in this application as plaintiffs filed the said title suit for declaration of title over the suit lands measuring about 10 bighas which contain a pond and for restraining the defendant third party, namely, the petitioner and the defendants first and the second parties, who are the State and its officials from interfering with their possession. They are also parties in this application, as opposite parties. It may be noted that the petitioner is the settlee of 8 bighas and odd out of the lands in dispute for three years, the term of which is expiring on the 30th of September, 1970. It is the case of Opposite Party Nos. 1 to 4 that they had purchased on the 25th of January, 1963 the disputed land

and got their names mutated in the Government records, but the petitioner after obtaining the aforesaid settlement from the State of Bihar tried to interfere with the peaceful possession of opposite party Nos. 1 to 4 which led to proceedings under Sections 144 and 145 of the Code of Criminal Procedure. Thereafter, the aforesaid opposite party Nos. 1 to 4 filed the said title suit on the 1st of February, 1968, but the plaintiffs did not send notice to the State of Bihar or its officials, who are defendants first and second parties in the suit prior to the filing of the suit. The reasons for not doing so have been stated by them in paragraph 22 of the plaint. Subsequent to the filing of the suit the plaintiffs also filed an application on the 7th of February, 1968 for restraining defendants first, second and third parties by issuance of injunction from interfering with the peaceful possession of the plaintiffs of the suit land. The trial court on the same date granted ad interim injunction. Subsequently, after hearing both the parties, it made the ad interim injunction absolute by its order dated the 27th of November, 1968. Aggrieved by the said order the defendant third party preferred an appeal before the District Judge, who after hearing the parties affirmed the order of the trial court on the 20th of December, 1968. Aggrieved by the order of the District Judge, the defendant third party appellant preferred a revision in this Court which was registered as Civil Revision No. 139 of 1969. When the civil revision application was placed before Hon'ble Mr. Justice A. Ahmad for hearing the defendant third party petitioner withdrew his application on the 30th of June, 1969, and he was allowed to withdraw his application by his Lordship and at the same time his Lordship passed the following orders:--

".....The Subordinate Judge, Darbhanga is directed to expedite the hearing of Title Suit No. 27 of 1968 as far as possible".

When the record of the case was transmitted to the Court below, the defendant third party petitioner on the 25th of July, 1969 filed an application for deciding as a preliminary issue whether a notice u/s 80 of the Code was required or not. The trial court after hearing both the parties by the impugned order held--

".....As regards hearing of issue relating to service of notice u/s 80, C. P. C. as a preliminary issue, it is better if this issue is heard along with other issues at its proper time. The petition relating to it is accordingly disposed of."

3. Mr. Indu Shekhar Prasad Sinha, learned counsel appearing for the petitioner assailed the above order and contended that the order is not passed under the terms of Order XIV. Rule 2 of the Code which reads as under:--

"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 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 issue of fact until after the issues of law have been determined".

He submitted that no doubt the trial court has discretion in the matter, but in the instant case, it ? has not said in clear words why it considered it better "if this

issue was heard along with the other issues". According to him, it ought to have given reasons. In order to substantiate his contention he relied on a judgment of this Court in the case of Janki Das and Another Vs. Kalu Ram and Another, where Courtney-Terrell, C. J. as he then was observed--

"In deciding the question as to whether the Court should grant or refuse a prayer to try a preliminary issue on a point of law, some harmony is to be observed between the general principle that it is undesirable to try cases piecemeal and the specific and wholesome provisions of Order 14, Rule 2, Civil P. C., which is for the purpose of preventing the injustice of a party being able to force his opponent to go at great length into evidence when the simple decision on a point of law might render the investigation of the facts unnecessary."

3A. Learned counsel further contended that the provision contained u/s 80 of the Code is mandatory and admits of no exception. Therefore, if it is held that the provisions contained u/s 80 were not complied with, the plaint shall be rejected as a whole under Order 7, Rule 11 of the Code. In order to substantiate this point he relied on a judgment of the Madras High Court in a case of Sree Raja Venkata Rangiah Appa Rao Bahadur and Another Vs. The Secretary of State for India in Council and Others, wherein while dealing with the provisions of Order 7, Rule 11 and Section 80 of the Code. Sundaram Chetty, J. observed that

"the plain meaning of Rule 11 is that if any of the defects mentioned therein is found to exist in any case, the plaint shall be rejected as a whole. It does not imply any reservation in the matter of the rejection of the plaint. Non-compliance with the requisites of Section 80 may be a ground covered by Clause (d), Rule 11. Even if it should be taken that that clause does not strictly apply to non-compliance with Section 80, still a suit against all the defendants is liable to dismissal on account of non-compliance with Section 80."

A further reliance was placed on a judgment of this Court in case of P.C. Gangulee Vs. Sm. Kadhuri Devi, where Narayan, J., as he " then was, while dealing with the provisions contained under Order 14, Rule 2 and Section 115 of the Code observed--

"Rule 2 of Order 14. Civil P. C. is mandatory, though before trying an issue of law as a preliminary issue the Court has to be convinced that that is an issue on which the whole case can be dismissed. Once the Court comes to the conclusion that there is a pure question of law to be decided as a preliminary issue in the case, an order refusing to decide the preliminary issue on the mere ground that the Court does not favour disposal of suits on preliminary points is not justified and would be interfered with in revision".

His Lordship relied on Janki Das and Another Vs. Kalu Ram and Another, .

4. On the other hand, Mr. Srivastava, learned counsel appearing on behalf of the plaintiffs Opposite Party Nos. 1 to 4 supported the impugned order and contended that in the circumstances, in the instant case, he has given reasons

why he could not comply with the provisions contained u/s 80 of the Code and that fact has been stated in Paragraph 22 of the plaint. Since the matter is pending before the trial Court, in my opinion, it will not be desirable on my part to express my view one way or the other whether in the instant, case it was mandatory for the plaintiffs to comply with the requirements contained u/s 80 of the Code or not.

5. Learned counsel for the opposite party further contended that why the provisions contained u/s 80 of the Code were not complied with has to be established by the plaintiffs by leading evidence and some facts have to be brought on the record. Therefore, that point in the present case could not have been decided purely on the question of law. He submitted that the learned Subordinate Judge has rightly refused to decide this matter as a preliminary point. Besides, it would cause great hardship and the litigation shall unnecessarily be prolonged if it is decided piecemeal. In order to substantiate this point he relied on a recent Bench decision of this Court in case of Rohtas Industries Ltd. v. Jagarnath Sahai Verma, 1966 BLJR 225 where Narasimham, C. J. and Bahadur J. while dealing with an application under Articles 226 and 227 of the Constitution and Order 14, Rule 2 of the Code observed that the question whether a preliminary issue as regards the maintainability of an application, should be tried separately in the first instance or else, whether it should be tried along with the other issues, will depend on the facts and circumstances of each case and no uniform rule can be laid down. But normally it will not be proper for a court whose orders are subject to appeal or control by a superior court to split up the several issues arising out of a prosecution and try separately a preliminary issue regarding the maintainability of the petition. The danger of trying such a preliminary issue separately is that if the view taken by the trial Court is reversed by superior Court, the whole case will have to be remanded for trial of other issues and there would be much harassment, delay and expense to all concerned. Hence, generally courts of the first instance are required to try all the issues, including the preliminary issue as regards the maintainability of the application, so that whatever issue may be taken by the superior court on the question of maintainability there will be no necessity for remand and the litigation can be finally closed. Even in ordinary civil suits, regulated by the provisions of the Code of Civil Procedure, it is now well settled notwithstanding the provisions of Order 14, Rule 2, that in appealable cases the trial court should pronounce its opinion on all the issues as to avoid a remand if the appellate Court differs from the trial court on the preliminary issue.

Learned counsel for the opposite party submitted that in the instant case also there is right of appeal to the parties aggrieved by the judgment and the decree of the Subordinate Judge passed in the said title suit. Therefore, he submitted that the principle laid down in the above case was equally applicable to the instant case.

6. He also referred to a Bench decision of this Court in the same volume in case

of Rohtas Industries Ltd. Vs. Rohtas Industries Staff Union and Another, where Narasimham, C. J. and G. N. Prasad, J. held a similar view and also referred to the judgment in 1966 BLJR 225 (supra). In my opinion, the learned Judges in 1966 BLJR 225 and (Rohtas Industries Ltd. Vs. Rohtas Industries Staff Union and Another,) have not laid down a general principle of law. It depends on the facts and circumstances of each case as their Lordships have made it clear.

7. In reply to the submissions made on behalf of the learned counsel for the opposite party Nos. 1 to 4, learned counsel for the petitioner has relied on a Bench decision of this Court in the case of Mohan Singh Oberoi Vs. Shah Muhammad Umair and Another, where their Lordships Ramaswami. C. J. as he then was and Untwalia, J. while dealing with the provisions of the Representation of the People Act, 1951, observed that when a preliminary objection is raised that the provision of Section 81 has not been complied with and therefore the election petition is liable to be dismissed u/s 90(3) the Tribunal should hear and decide such objection before proceeding to frame other issues. It cannot postpone the hearing of the preliminary objection and proceed with the settlement of issues. In this connection, their Lordships relied on a judgment of the Supreme Court in case of K. Kamaraja Nadar Vs. Kunju Thevar and Others, where their Lordships of the Supreme Court while dealing with the provisions of the Representation of the People Act, 1951, observed that a preliminary objection with regard to non-compliance of the provisions of Section 117 should be entertained and decided at the initial stage and should not be relegated to the stage of hearing of the petition.

8. In view of judgments referred to above in my opinion, as observed earlier, it depends upon the facts of each case. A court is not under any obligation as to order in which it is to try the issues raised before it. It has the right to dispose of the issues in any way which it considers most likely to be conducive to the ascertainment of the truth. There are, however, two reservations. The first is that in appealable cases, the court should as far as possible decide on all the issues together, inasmuch as a piecemeal trial might lead to a protracted litigation and repeated appeals in the same suit. The second is which is contained in Rule 2 of Order 14 that where issues of law going to the root of the case, and capable of being decided without evidence arise, the Court is bound to try these issues first, and may in its discretion postpone the settlement of issues of facts until after the issues of law have been determined.

In the instant case, it has been submitted on behalf of the plaintiffs opposite party that in paragraph 22 of the plaint they have given reasons why the provisions contained u/s 80 of the Code were not complied with and for those reasons they will have to establish facts by leading evidence. Therefore, in my opinion, it ceases to be a pure question of law. According to me, however, the learned Judge ought to have given reasons for making a refusal to hear the matter as a preliminary issue. I would have remanded the case and directed to give reasons, but that would entail unnecessary expenses and shall prolong the

litigation between the parties. It has been stated on behalf of the defendant third party petitioner that the term of his lease is going to expire on the 30th of September, 1970. According to him, the plaintiffs opposite party are trying to prolong the litigation so that the suit may not be decided within that time. Hon"ble Mr. Justice Ahmad also as mentioned earlier directed the Court below to. dispose of the suit as soon as possible. In that view of the matter, in my opinion, the ends of justice will be met, if the trial court is directed to dispose of the suit containing all the issues together, within two months after the receipt of the records from this Court. Learned counsel appearing on behalf of both the parties have assured me that they will not stand in the way of disposal of the suit within the time as ordered by this Court.

9. In the result, the application is dismissed with the above direction. In the circumstances, however, there will be no order as to costs. Let the entire records of the trial court be sent immediately.