
(1953) 09 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Revision No's. 196 of 1951, 23 and 136 of 1952

Nagori Ibrahim and Others

APPELLANT

Vs

Shahji Babumal and Others

RESPONDENT

Date of Decision : 09-09-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 105, 115

Citation : AIR 1954 Raj 83 : (1954) RLW 331

Hon'ble Judges : Wanchoo, C.J.;Modi, J;Dave, J

Bench : Full Bench

Advocate : D.P. Surana, Bheru Narain and Hastimal, for the Appellant; Shivalal Porwal and Chandmal for Opposite Party in Nos. 196 and 136, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—These are connected revisions against orders of trial Court framing certain issues in a form in which the burden of proof has been placed on the applicants. The applicants contend that the burden of proof has been wrongly placed on them and should have been placed on the opposite parties. They have, therefore, come in revisions to this Court.

2. These cases were referred to a Full Bench on the point whether revision lies in such a matter, particularly because there were conflicting decisions of this Court on this question.

3. The first of such decisions is -- Shanker Lal Vs. Deena Nath, in which a learned Single Judge held that wrong allocation of burden of proof was a material irregularity and would justify interference in revision.

4. Then followed -- "Harji v. Hasti Singh" AIR 1961 Raj 82, in which another learned Judge held that it would be after the final decision of the case that wrong allocation of burden of proof would alford a good ground for interference by the High Court in revision.

5. The last case in this series is -- "Bharat Singh v. Raj Singh" R. L. W. 1951 SC 507 . This was decided by a Division Bench and the learned Judges approved the decision in "Snankarlal's case, (A)" and overruled the decision in Harji's case.

6. A preliminary point has been raised on behalf of the opposite parties. Their contention is that in view of the decision of this Court in --"Swarup Naram v. Gopinath" AIR1953 Raj 137 , no revision lies on the question of wrong allocation of burden of proof as the matter can be raised in appeal u/s 105, C. P. C., from the decree that may be finally passed in the suit. Learned counsel for the applicants, however, contend that the matter cannot be raised in appeal from the decree, u/s 105, and the decision in "Swarup Narain's case, (D)", therefore, would not bar the revision,

7. We are of opinion that wrong allocation of burden of proof is likely to result in prejudice to the party on whom the burden is wrongly put and, is, therefore, likely to affect the decision of the suit on the merits. This is a proposition which cannot, in our opinion, be gainsaid. Once, therefore, it is clear that wrong allocation of, burden of proof is likely to result in prejudice to the person on whom the burden is wrongly put and is likely to affect the decision of the case on the merits. "Swarup Narain's case, (D)", will fully apply, as the applicants can take a ground u/s 105, C. P. C., from the decree that may be finally passed. No revision would therefore lie to the High Court merely because burden of proof was wrongly allocated in the sense that a wrong person was required to begin leading evidence on the particular issue on which, the burden was wrongly allocated.

The argument for the applicants is that by placing the burden wrongly on them they have been required to lead their evidence first with, the result that their right of leading evidence after knowing the evidence of the other side has been lost. It is urged that this right of leading evidence after knowing the evidence of the other side is a valuable right and the damage done cannot be set right on appeal from the decree that may be finally passed. Our attention was invited to certain observations in -- Bir Babu Vs. Raghubar Babu and Others, where it was said that

"the correct placing of onus of proof is a vital point of procedure and an Incorrect placing of the onus may, therefore, amount to material irregularity. The effect of requiring the defendant to lead evidence seriously prejudices him by assuming without proof that Hindu Law governs the family of the parties and deprives him of the very valuable right of adducing evidence in rebuttal of that adduced by the plaintiff."

It was further observed that

"the prejudicial effect of the procedure is not capable of remedy and the High Court ought to Interfere in revision."

8. These observations were relied upon in --"Bharat Singh's case (C)". It may,

however, be pointed out that "Bharat Singh's case (C)" did not consider the question from that point of view from which it has been considered in -- "Swarupnarain's case (D)" and the question whether revision lies on a matter of wrong allocation of burden of proof will have to be dealt with in the light of -- "Swarup Narain's case (D)".

9. Learned counsel for the applicants contend that it is well settled that when both parties have led the entire evidence, burden of proof is immaterial and, therefore, the appellate Court may not be in a position to grant relief when the appeal from the decree passed finally reaches it. Our attention was invited to -- "Chidambara v. Veerama Reddi" AIR 1922 PC 292 where it was observed that when the entire evidence on both sides is once before the Court the debate as to onus is purely academical.

10. In -- "Mahomed Aslam Khan v. Firoz Shah" AIR 1932 PC 228 their Lordships of the Privy Council observed that it was not necessary to enter upon a discussion of the question of onus where the whole of the evidence in the case is before the Court and it has no difficulty in arriving at a conclusion in respect thereof.

11. Then again in -- AIR 1940 93 (Privy Council) it was observed that the High Court's judgment did not show that the case was decided on the ground of onus, and the question of onus of proof was of no great importance because both sides had entered into evidence.

12. The argument on behalf of the applicants, therefore, is that the appellate Court may come to the conclusion that both sides had produced the entire evidence and burden of proof was immaterial and the applicants would in such a case be seriously prejudiced. It is not contended, however, that the appellate Court cannot interfere in a case where burden of proof has been wrongly placed. If, for example, burden of proof is wrongly placed in a case and the party has, therefore, been misled and has not led sufficient evidence, and the appellate Court comes to the conclusion that burden of proof was wrongly placed, it will always give another chance to the party which was prejudiced to produce more evidence by an order of remand.

Further suppose that the burden of proof was wrongly placed and the Court decided the matter against the party on whom the burden was wrongly placed on the ground of onus. In such a case also the appellate Court would have every right to judge the evidence after placing the burden on the right person and give relief. In this connection, reference may be made to the observations by their Lordships of the Privy Council in -- "Peddi Reddi Jogi Reddi v. Chinnabbi Reddi" AIR 1929 PC 13 where it was held that:

"When the Courts below have thrown the onus upon the defendant of proving that the properties he claimed were his own, instead of placing it as it should be upon the plaintiff, the question of fact found cannot be binding upon an appellate Court on second appeal; and it is necessary for the Privy Council to consider

what is the true position."

13. Then in -- "Jogesh Chandra v. Emdad Meah" AIR 1932 PC 28 it was held by their Lordships that:

"Finding of fact based on the failure of a party to discharge the onus of proof which the first appellate Court wrongly held to be incumbent on him is not a finding on positive evidence and is not binding in second appeal."

14. It seems to us that it is only in a few cases where the entire evidence is there that the appellate Court may not interfere on tile ground that the burden of proof was wrongly allocated; but in such cases we do not see what harm would arise to the party on whom the burden was wrongly put.

15. The question, however, is not what relief the appellate Court will be able to give on appeal from the final decree. The question really is whether the party on whom the burden has been wrongly put can take that as a ground u/s 105 C. P. C. To that, in our opinion, the only answer is that the ground can be taken, for, obviously wrong allocation of burden of proof is likely to prejudice the party on whom it is wrongly placed and affect the decision of the case on the merits. We are, therefore, of opinion that the decision in "Swarupnarain's case (D)" fully applies" to the case of wrong allocation of burden of proof and such wrong allocation can be challenged by taking a ground u/s 105 C. P. C.

16. In this view of the matter, these revisions are not entertainable and they are hereby dismissed.