
(1995) 01 GUJ CK 0008
In the Gujarat High Court

Patel Meghajibhai Vithalbhai

APPELLANT

Vs

Khetivadi Utpan Bazar Samiti

RESPONDENT

Date of Decision : 20-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115
Gujarat Agricultural Produce Markets Act, 1963 — Section 58, 58

Citation : (1995) 2 GLR 1497

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by the learned Civil Judge (J.D.) at Upleta on 21st April 1992 below the Application at Exh. 15 in Regular Civil Suit No. 153 of 1986 rejecting the plaint of the petitioner herein is under challenge in this revisional application u/s 115 of the Code of Civil Procedure, 1908 ("the Code" for brief).

2. The facts giving rise to this revisional application may be summarised thus: The petitioner as the plaintiff filed one suit for a decree in the sum of Rs. 5,226 against the respondent herein in the Court of the Civil Judge (J.D.) at Upleta. It came to be registered as Regular Civil Suit No. 153 of 1986. It was the case of the petitioner herein that he deposited Rs. 1,000 on 6th July 1986 and Rs. 4,000 on 8th July 1986 with the defendant towards allotment of one shop in the proposed construction undertaken by the defendant in the marketing yard. The respondent as the defendant without filing its written statement made an application under Order 7 Rule 11(d) of the Code with a prayer that the present petitioner's plaint should be rejected as it was barred by Section 58 of the Gujarat Agricultural Produce Market Act, 1963 ("the Act" for brief) inasmuch as no statutory notice as required to be given thereunder was given by the present petitioner to the respondent herein before institution of the suit in question. That application was taken on record at Exh. 15. After hearing the parties, by his order passed on 21st April 1992 below thereto, the learned trial Judge accepted the application and rejected the plaint. That aggrieved the present petitioner, and

as such the present revisional application has come to be filed questioning the correctness of the impugned order.

3. Order 7 Rule 11(d) of the Code provides for rejection of a plaint on the ground where the suit appears from the statement in the plaint to be barred by any law. It thus becomes clear that the condition precedent for rejection of the plaint under the aforesaid statutory provision is some statement in the plaint showing that the suit is barred by some law. With respect, the learned trial Judge has referred to no statement in the plaint showing under what law the suit is barred. The condition precedent for exercise of the power of rejection of the plaint is thus found not satisfied.

4. It is true that the present respondent made an application inter alia contending that the cognizance of the suit was barred u/s 58 of the Act for want of the required statutory notice. The want of statutory notice can be a ground of defence to the suit. But then, in order to press that ground into service, the respondent as the defendant was required to file its written statement taking such defence in black and white. It could have thereunder prayed to the Court for framing a preliminary issue in that regard by making the necessary application under Order 14 Rule 2 of the Code. The respondent could not have and ought not to have made any application under Order 7 Rule 11(d) of the Code for rejection of the plaint for want of the required statutory notice u/s 58 of the Act. Such an application on the part of the respondent herein was misconceived. The learned trial Judge had no jurisdiction to entertain such misconceived application.

5. In the result, this revisional application is accepted.

6. The impugned order passed by the learned Civil Judge (J.D.) at Upleta on 21st April 1992 below the application at Exh. 15 in Regular Civil Suit No. 153 of 1986 is quashed and set aside. The learned trial Judge is directed to restore the suit to file and to proceed with it according to law. Rule is accordingly made absolute with no order as to costs.