

(1949) 12 AHC CK 0008
In the Allahabad High Court
Case No : Civ. Revision No. 938 of 1948

Ram Kishna

APPELLANT

Vs

Ramjanki Shiva Parbati Maharaj and Others

RESPONDENT

Date of Decision : 20-12-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 1, 115

Citation : AIR 1952 All 355 : (1950) 20 AWR 350

Hon'ble Judges : Malik, C.J.; Bind Basni Prasad, J

Bench : Division Bench

Advocate : J. Swarup, for the Appellant; G.P. Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

Malik, C.J.—This is a revision u/s 115 Civil P. C. against an order of the learned Civil Judge of Allahabad dated 10-12-1848.

2. A suit was tiled in the Court of the learned Civil Judge in 1947 in which the issues that were framed by his predecessor were as follows :

1. Whether Baijnath was the owner of the property in suit ?
2. Whether Baijnath dedicated the property in suit in favour of the plaintiffs ?
Whether the waqf was acted upon ?
3. Whether the suit is barred by Articles 142 and 144, Limitation Act ?
4. Whether the court fee paid is insufficient ?
5. Is the suit barred by Section 42, Specine Relief Act ?
6. Whether the plaintiffs are members of Nawyuwak Mandal and is it a registered body, if so, what is us effect on the suit ?
7. Are the plaintiffs competent to maintain the suit ? Or is the suit as framed not maintainable ?

8. To what relief, if any, are the plaintiffs entitled ?

3. The parties went to trial on these issues. Evidence was recorded, arguments were heard and the judgment was reserved. When the learned Judge came to consider his judgment he passed the order which is the subject-matter of this revision. It is as follows :

"While studying the file for writing judgment I find that some of the pleas which were raised by the defendants have not been properly covered by the issues that were framed in the case by my predecessor-in-office. It, therefore, becomes necessary to frame some fresh issues and while doing so I consider it desirable to re-frame even the existing issues."

He thereupon re-framed the old issues and added the following fresh issues :

I. Is the defendant 2 a transferee in good faith, and for consideration and is, therefore, entitled to a sum of Rs. 4,000 or any other sum before the suit is decreed ?

II. Is the plaintiff 1 a deity in existence ? Was the deity properly installed and is the suit maintainable in its name ?

III. Is the suit barred by estoppel ?

IV. Is the suit bad u/s 42, Specific Relief Act ?

V. Have the defendants 3 to 6 been unnecessarily joined, as, defendants ? Is the suit bad on that account ?

VI. Have plaintiffs 2 to 6 any right to maintain the suit for or on behalf of the plaintiff 1 ?

VII. Is defendant 1 a tenant in one of the shops ?

VIII. Is the plaintiff entitled to claim arrears of rent from him, and if so, at what rate ?

IX. Has the tenancy of the defendant 1 been properly terminated by notice or forfeiture ?

4. The learned Judge fixed 12th January for the hearing of the case afresh and gave parties leave to produce additional evidence, oral and documentary. The result of this extra-ordinary procedure is that the whole of the time and the money spent so far on the trial from the date the issues were framed by the learned Civil Judge's predecessor has been wasted. This waste could have been avoided if, before the evidence was recorded, the case had been properly opened by counsel, and the facts examined by the Court, to see what was really the nature of the dispute, and the points at which the parties were at issue. It is very necessary in these trials that proper use is made of the provisions of the Code to clarify the pleadings under Order 10, Civil P. C., and to ascertain the exact point of difference and to find out how far the parties are prepared to admit each

other's case. This must have the result of not only curtailing the evidence and ruling out what is irrelevant; but also help the Judges to proceed with the trial more intelligently than is done at present in most cases. If the issues were defestive this matter should not have been left to be considered after the arguments had been closed but the issues should have been re-drafted much earlier. We see no reason why the issues that had already been framed should have been re-drafted when neither party seems to have objected to them and the Court might have framed, only such new issues which it thought necessary for a proper decision of the case. In view of the fact that the preliminary objection must prevail that no case has been decided, we must dismiss this revision on the ground that no revision lies u/s 115 Civil P. C., but in view of the great waste of public time and money we are constrained to make the above observations.

5. The parties will bear their own costs of this revision.