
(1974) 01 MP CK 0006
In the Madhya Pradesh High Court
Case No : C.R. No. 833 of 1972

Ramsharandas Motiram and another	APPELLANT
Vs	
Motilal Gopikisan	RESPONDENT

Date of Decision : 19-01-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1978) ILR (MP) 893 : (1975) JLJ 37

Hon'ble Judges : S.M.N. Raina, J

Bench : Single Bench

Advocate : R.K. Pandey, for the Appellant; S.P. Hakim, for the Respondent

Final Decision : Dismissed

Judgement

S.M.N. Raina, J.—This is a revision petition u/s 115 of the Code of Civil Procedure.

2. The plaintiff non-applicant filed a suit against the applicants for the recovery of a sum of Rs. 2,789-00. The suit was resisted by the applicants and preliminary issues regarding jurisdiction and maintainability of the suit etc. were framed on 6-1-1970. Subsequently on an application dated 10-8-1972 filed by the plaintiff-non-applicant the trial Court directed that issue No. 1 alone will be tried as preliminary issue while the rest of the issues will be tried and decided along with the other issues vide order dated 30-9-1972. Being aggrieved thereby the applicants have filed this revision-petition.

3. Rule 2 of Order 14 lays down that if the Court is of the 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 is, therefore, clear that only question of law can be tried as preliminary issue. In Major S.S. Khanna Vs. Brig. F.J. Dillon, , their Lordships observed as under in paragraph 18 while considering the scope of Order 14, Rule 2 of the Code of Civil Procedure.

The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court; not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact, would result in a lop-sided trial of the suit.

In the instant case it would appear that issues 2 (a), (b) and (c) were issues of fact and issue No. 3 relating to jurisdiction mainly depended on the findings on the issues of fact. The Court, therefore, decided to try these issues with the rest of the issues on merits in view of the aforesaid decision of the Supreme Court.

4. Learned counsel for the applicants relied on the Full Bench decision of this Court in *Santoshchandra and Others Vs. Smt. Gyansundarbai and Others*, . It was held in that case that where questions of court-fee, limitation and untenability are raised in a suit, it is always desirable to try them as preliminary issues. Following this decision it was held by this Court in *Shrikrishna v. Gopal Krishna* 1972 M P L J 116 that issues relating to court-fee and jurisdiction should be tried as preliminary issues before proceeding to try the suit on merits. A similar view was expressed by this Court in *Balchand Meghraj Pamnani and Another Vs. Basantidewi Ramswaroop and Another*, .

5. We must, however, make a distinction between cases where issues relating to jurisdiction, court-fees, maintainability of the suit etc. can be decided as pure questions of law on basis of the pleadings of the parties and such cases where certain disputed questions of fact have to be determined before such issues can be decided. In cases of the former type such issues ought to be tried as preliminary issues in accordance with the aforesaid decisions of this Court while in cases of the latter type the matter is within the discretion of the Court which should be judiciously exercised with due regard to the provisions of Rule 3 of Order 15 of the CPC and the observations of their Lordships in *S.S. Khanna v. Brig. F.J. Dillon*.

6. There can be no doubt that much inconvenience is caused to the parties if they are required to examine the same witnesses twice; once on preliminary issues and then again on the other issues where such witnesses are common. The course adopted by the learned trial Judge, therefore, appears to be fair and proper inasmuch as it would save the parties inconvenience and expenditure involved in examining the same witnesses on different points twice.

7. Shri R.K. Pandey, learned counsel for the applicant pointed out that preliminary issues were agreed to by the non-applicant as would appear from the order-sheet dated 6-1-1970 and, therefore, it was not open to the Court to direct that some of the preliminary issues shall be tried along with rest of the issues. I do not, however, find any merit in this contention because the agreement recorded in the order-sheet pertained to the form and contents of the issues and

not to their being tried as preliminary issues. Moreover the Court has an over-riding discretion in the matter. It may, however, be observed that the case has been handled by the trial Court with great laxity inasmuch as the case was adjourned from time to time for one reason or the other for decision of the issues and it was at a late stage that the Court realised that some of the preliminary issues framed by it should be tried along with the rest of the issues on merits. But on this ground alone no interference is justified with the decision of the Court to try some of the preliminary issues together with other issues. The Court must, however, record a finding on the question of jurisdiction before proceeding to decide other issues on merits.

8. Subject to the aforesaid directions the petition is hereby dismissed. I do not, however, make any order as to costs in the circumstances of this case.