

(1963) 04 GUJ CK 0013

In the Gujarat High Court

Case No : Civil Revision Application No. 744 of 1961

Shah Hiralal Himatlal and Others

APPELLANT

Vs

M.G. Pathak and Others

RESPONDENT

Date of Decision : 01-04-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 2(2)

Citation : AIR 1964 Guj 26 : (1964) 5 GLR 327

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Advocate : N.R. Oza and B.R. Shah, for the Appellant;

Final Decision : Allowed

Judgement

V.B. Raju, J.—This revision application arises out of insolvency proceedings. After a firm of Gordhandas Bapubhai was declared insolvent, the receivers Rave an application stating that a sale deed executed by the Insolvent firm in favour of two persons, who are opponents Nos. 1 and 2 in those proceedings was nominal and fraudulent. The receivers also contended that opponents Nos. 1 and 2 paid the money 10 the insolvent firm for being paid to the partners of the firm who are opponents Nos. 3 to 6 in those proceedings. It was the case of the receivers that opponents Nos. 3 to 6 in those proceedings were partners of the insolvent firm.

2. After the receivers completed the evidence, the learned Judge passed an order stating that opponents Nos. 3 to 6 should lead their evidence first before opponents Nos. 1 and 2 were asked to lead their evidence. It is this order that is challenged in revision. It is contended in revision that opponents Nos. 1 and 2 should lead their evidence first before opponents Nos. 3 to 6 are asked to lead their evidence.

3. On the question of right to begin and the question of leading evidence, we have provisions in Order 18, Rule 1, C. P. Cods, which reads as follows:

"The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the plaintiff the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin."

Sub-rule (2) of Rule 2 of Order 18, C. P. Code, reads thus:

"The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case"

4. So far as the defendants go, the question which of the defendants should begin has not been dealt with in Order 18, C. P. Code. But on general principle, if any of the defendants supports the plaintiff in whole or in part, then he should address the Court and lead his evidence first before the other defendants who do not support wholly or in part the plaintiff's case. The order in which defendants lead evidence becomes important only when some of them support the case of the plaintiffs in whole or in part while the others do not. If all the defendants completely oppose the plaintiff's case, then the question of order of leading evidence amongst the defendants is immaterial. It is only when the defendants are divided into two groups, one group consisting of the defendants supporting the plaintiff's case in part and the other group consisting of defendants, who do not support the plaintiff's case in any part that the question of order of leading evidence becomes important. In such cases among defendants the order of leading evidence should be as follows:

- (1) Those defendants who fully support the case of the plaintiff.
- (2) Those defendants who partly support the case of the plaintiff.
- (3) Those defendants who do not support the case of the plaintiff in any part.

5. Now, the receivers stand in the position of the plaintiff, because they have made an application which is being inquired into by the Court. Their case, so far as opponents Nos. 1 and 2 in the insolvency proceedings go, is that the sale deed is fraudulent. So far as the case of the receivers goes, against opponents Nos. 3 to 6 in the insolvency proceedings, the case is that the consideration of the sale deed has gone into the hands of opponents Nos. 3 to 6 as partners of the insolvent firm.

6. Now, opponents Nos. 1 and 2 no doubt contest the case of the receivers regarding the fraudulent nature of the sale deed, but regarding the payment of the consideration to opponents Nos. 3 to 6 they support the receivers.

7. Now, If we turn to opponents Nos. 3 to 6, they do not support the case of the receivers in any manner. They contest the case of the receivers that they received the consideration. They say that they do not know anything about the nature of the sale deed. In these circumstances, opponents Nos. 1 and 2 support the case of the plaintiffs in so far as the payment of the consideration goes, but opponents Nos. 3 to 6 do not support the case of the receivers in any manner

whatsoever. Therefore, opponents Nos. 1 and 2 in the insolvency proceedings should lead their evidence first before opponents Nos. 3 to 6 in those proceedings are asked to lead the evidence.

8. The orders of the lower Court are, therefore, set aside, and it is directed to ask opponents Nos. 1 and 2 in the insolvency proceedings to lead their evidence first before calling opponents 3 to 6 in those proceedings to lead their evidence. The revision application is allowed. No order as to costs.