

(1975) 09 MP CK 0007
In the Madhya Pradesh High Court
Case No : C.R. No. 476 of 1975

State of Madhya Pradesh and others	Vs	APPELLANT
Jham Singh Sobharam Lodhi		RESPONDENT

Date of Decision : 29-09-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1976) JLI 693

Hon'ble Judges : Shiv Dayal Shrivastava, J

Bench : Single Bench

Advocate : A.P. Tare, Government for State, for the Appellant; R.C. Rai, for the Respondent

Final Decision : Allowed

Judgement

Shiv Dayal, J.—The only grievance in this revision is that the trial Court has erred in refusing to decide as preliminary issues four additional issues, which were framed on the defendants' application dated December 6, 1974. These issues are:--

- (1) Whether the Court has no jurisdiction to try the suit ?
- (2) Whether the suit is time barred ?
- (3) Whether the suit is not properly valued ? Its effect.
- (4) Whether the plaintiff has failed to comply with the requirements of section 80, CPC ? Its effect.

These issues having been framed by the trial Court, the defendants requested the Court to try them as preliminary issues. By order dated January 13, 1975, the trial Court rejected that request with the observation that these issues would also be determined along with the other issues. The reason stated in the order is that on July 15, 1970, the parties had requested the Court to determine the preliminary issues along with other issues.

2. Shri Tare's contention is that the order of the trial Court is, on the face of it, erroneous inasmuch as the question of the parties' agreement could not arise on July 15, 1970, regarding the issues which were framed subsequently, i.e., on January 13, 1975. It is urged by the learned counsel for the defendants that these issues are preliminary in nature and they would go to the root of the matter. The trial Court could not postpone the determination of these issues, because to decide at the end of the trial, that the Court has no jurisdiction, or to hold that the suit is not properly valued, or to hold that there was no compliance with the provisions of section 80, Civil Procedure Code, would mean waste of time of the Court and the parties. The very nature of these issues requires that they must be determined first, before the other issue's are tried, even if evidence has to be recorded on these preliminary issues. Reliance is placed on Santoshchandra and Others Vs. Smt. Gyansundarbai and Others, and Shri Krishna v. Gopal Krishna 1972 MPLJ 116 (C.R. No. 184/71 decided on 12-1-1972).

3. Shri Rai's contention is that since evidence will have to be recorded on these issues, they cannot be decided without evidence being recorded and they cannot be treated as preliminary issues.

4. Broadly speaking, issues are of four categories:--

(1) Pure questions of law, which are preliminary, i.e. which would go to the root of the case and on their decision, the suit may be disposed of.

(2) Mixed questions of law and fact, which are preliminary in nature and may result in the disposal of the suit.

(3) Pure questions of law which may not be preliminary, i.e., which may not dispose of the entire suit.

(4) Questions of law, which are mixed with facts on which facts there are independent issues of fact to be tried.

I am clearly of the opinion that issues of the first two categories must be disposed of first, and even if it is necessary to record evidence, the Court must record evidence on those issues only, and, postpone the decision of the other issues of facts until after the issues of law have been determined. As regards the issuer of the third and the fourth categories, it is discretionary with the Court whether to decide them first or to postpone their determination along with other issues of fact. In Major S.S. Khanna Vs. Brig. F.J. Dillon, their Lordships have laid down thus :--

Under Order 14, Rule 1. Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of 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 issues of law have been determined. 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.

After these observations, their Lordships say :--

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.

(Italics by me.)

Their Lordships' last-mentioned observations relate to the third and fourth categories of issues above-mentioned.

In *Santoshchandra v. Gyansunderbai* in his order of reference Tare J. (as he then was), observed that where questions of court fee, limitation and untenability of the suit are raised in a suit, it is always desirable to try them as preliminary issues and not postpone them to the stage of the final judgment.

5. I need not repeat what was said in *Balchand Meghraj Pamnani and Another Vs. Basantidewi Ramswaroop and Another*, . Before trying a suit on merits, the trial Court is bound to decide first the preliminary issues; for instance, those which relate to the maintainability of the suit, that is to say, issues which fall within the first or second category, *Mandalal v. M/s. Shri Krishna Lime Co.* 1970 MPLJ 111, supports the view I take. Similarly, *Ramshankar v. Motilal* 1975 MPLJ 43, is also in line with the view I take.

6. Now applying the above tests to the present case I find that issue No. 3 relating to value of the suit, falls within the first category, and the other issues falls within the second category, inasmuch as--

(a) As regards the question of jurisdiction, Shri Rai states that issue No. 6 will also have to be decided and that issue No. 6 relates only to the question of jurisdiction and has, otherwise, nothing to do with the merits of the claim in suit.

(b) The question of limitation will depend on the question of fact whether an appeal was preferred to the Conservator of Forests.

(c) The question regarding section 80, Civil Procedure Code, will also depend on facts inasmuch as Shri Rai's contention is that notice was in fact given under that section.

7. However, even if an enquiry on facts is necessary on issues No. 1, 3 and 4 they are still preliminary issues and they must be determined first, after recording evidence on those issues. The trial of the other issues will have to be postponed until these four preliminary issues are first decided.

8. The revision is allowed. The order of the trial Court dated January 13, 1975, is set aside to the extent that it has refused to try the additional issues as preliminary issues. The trial Court is directed to determine these issues first,

after recording evidence on those issues only, and by postponing the trial of the other issues. Parties shall bear their own costs.