
(2008) 11 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No. 11105 of 2008

Uttar Gujarat Vij Co. Ltd. and Another

APPELLANT

Vs

Dhulabhai Kodarbhai Vankar and Another

RESPONDENT

Date of Decision : 13-11-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2009) 1 GLH 1

Hon'ble Judges : M. R. Shah, J

Bench : Single Bench

Advocate : Premal R. Joshi, for the Appellant; L.M. Chhablani, for the Respondent

Judgement

Mr. M.R. Shah, J.—By way of this petition under Article 227 of the Constitution of India, the petitioners original defendants have prayed for an appropriate writ, direction and / or order quashing and setting aside the impugned order passed by the learned 3rd Additional Civil Judge, Sabarkantha at Himatnagar dated 29.2.2008 passed below Exh. 10 in Regular Civil Suit No. 156 of 2002. The respondents herein original plaintiffs have instituted the Regular Civil Suit No. 156 of 2002 against the petitioners original defendants in the Court of learned Civil Judge, Sabarkantha at Himatnagar. In the said suit the petitioners submitted application Exh. 157 under Order 14 Rule 5 of the CPC requesting the learned trial Court to frame the issue with respect to the limitation and instead of framing the issue with respect to the limitation, learned trial Court passed the impugned order holding that the suit is within the period of limitation. Being aggrieved and dissatisfied with the impugned order passed by the learned trial Court passed below Exh. 157 in rejecting the said application and not framing the issue with respect to the limitation and on the contrary giving finding that the suit is within the period of limitation, the petitioners original defendants have preferred the Special Civil Application under Article 227 of the Constitution of India.

2. Shri Joshi, learned advocate for the petitioners has submitted that impugned order passed by the learned trial Court is absolutely illegal and without jurisdiction, which deserves to be quashed and set aside. It is submitted by him that unless and until, proper issue is framed with respect to limitation, the learned trial Court ought not to have given any finding that the suit is within the period of limitation. It is also further submitted that in view of the defence raised by the petitioners in the written statement that the suit is barred by limitation, the learned trial Court ought to have framed the issue with respect to limitation. Therefore, it is requested to allow the present Special Civil Application by quashing and setting aside the order passed below Exh. 157 and directing the learned trial Court to frame the issue with respect to limitation.

3. Shri Chhabalani, learned advocate for the respondents while opposing the present Special Civil Application has submitted that the findings of the learned trial Court that the suit is within the period of limitation is based on record and, therefore, the same is not required to be interfered by this Court.

4. Having heard the learned advocates for the respective parties and it appears to the Court that the impugned order passed by the learned trial Court passed below Exh. 157 in dismissing the said application and not framing the issue with respect to limitation, however given the specific finding that the suit is within the period of limitation deserves to be quashed and set aside. It is required to be noted that application Exh. 157 was submitted by the petitioners to frame the issue that whether the suit is within the period of limitation or not and without even framing such issue with respect limitation, the learned trial Court has given specific finding that the suit is within the period of limitation. Unless and until, a proper issue is raised by the learned trial Court with respect to limitation, the learned trial Court could not have given the finding that the suit is within the period of limitation. After proper issue is raised / framed by the learned trial Court with respect to the limitation on appreciation of evidence and on leading the proper evidence any findings given by the Court. Without framing the issue with respect to limitation such a finding should not have been given by the learned trial Court. Under the circumstances, while passing impugned order the learned trial Court has exceeded jurisdiction in giving the finding that the suit is filed within the period of limitation. It appears that even looking to the written statement filed by the petitioners raising the defence that the suit is barred by limitation, the learned trial Court ought to have framed the issue with respect to limitation. For the reasons stated above, the petition succeeds. The impugned order passed by the learned 3rd Additional Civil Judge, Sabarkantha at Himatnagar dated 29.2.2008 passed below Exh. 10 in Regular Civil Suit No. 156 of 2002 is hereby quashed and set aside and the application Exh. 157 is hereby allowed and the learned trial Court is directed to frame the issue with respect to limitation as prayed for in application. Rule is made absolute. There shall be no order as to costs. Registry is directed to return the amount of cost, which is deposited by the petitioners before this Court.