

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.420 of 2019

Ashutosh Khatri, S/o late Dr. M.L. Khatri, Caste Kshatriya, aged about 49 years, Occupation Business, R/o Imlipara, Near Municipal Corporation Complex, Nagar, Ambikapur, District Surguja (C.G.)

(Defendant No.1)

---- Petitioner

Versus

1. Pankaj Khatri, S/o late M.L. Khatri, Caste Kshatriya, aged about 44 years, Occupation Agent of Indian Life Insurance, R/o Imlipara, Near Municipal Corporation Complex, Nagar, Ambikapur, District Surguja (C.G.)

(Plaintiff)

2. State of Chhattisgarh, through the Collector, Ambikapur, District Surguja (C.G.)

(Defendant No.2)

---- Respondents

For Petitioner: Miss Sharmila Singhai, Advocate.

For Respondent No.1: Mr. Dev Ashish Biswas, Advocate.

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/07/2019

1. This writ petition is directed against the order dated 22-4-2019 by which the trial Court has rejected the application filed by defendant No.1 / petitioner declining to try issue Nos.3 & 4 regarding valuation of suit and regarding the pecuniary jurisdiction of the court as preliminary issues holding that they will be decided after recording evidence of parties.
2. Miss Sharmila Singhai, learned counsel appearing for the petitioner / defendant No.1, would submit that the trial Court is absolutely unjustified in rejecting the application to try those issues as preliminary issues that goes to the root of the matter and therefore it ought to

have tried the said issues as preliminary issues, as such, the impugned order deserves to be set-aside.

3. Mr. Dev Ashish Biswas, learned counsel appearing for respondent No.1 / plaintiff, would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
5. Respondent No.1 herein / plaintiff and the petitioner herein / defendant No.1, both, are real brothers. Respondent No.1 / plaintiff has filed suit for partition and valued the suit house as ₹ 55,800/- and paid the court fees accordingly which defendant No.1 disputed by filing written statement and held the valuation of suit as to be ₹ 1 crore, therefore the Court has no pecuniary jurisdiction. The trial Court has framed issue Nos.3 & 4 with regard to whether the suit is properly valued and the court fees has been paid and whether the suit is beyond the pecuniary jurisdiction of the Court.
6. The question to be considered is, whether under Order 14 Rule 2 of the CPC, it is obligatory upon a Court to decide the issues relating to jurisdiction of the Court or bar to the suit created by any law for the time being in force as preliminary issues before the settlement of other issues or trial of the entire case as a whole?
7. Order 14 Rules 1 and 2 of the CPC provides as under: -

“1. Framing of issues.—(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and

denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

2. Court to pronounce judgment on all issues.—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) 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 an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

8. Order 14 Rule 2 of the CPC has been amended and brought in force with effect from 1-2-1977.

9. A careful perusal of the aforesaid provision would show that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases and there is a mandate to the Court that notwithstanding that a case may be disposed of on a preliminary issue, the Court has to pronounce

judgment on all the issues. The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring a discretion upon the Court that if it is of opinion that the case or any part thereof may be disposed of “on an issue of law only,” it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force. An objection in regard to the jurisdiction of the Court may pertain either to the inherent lack of jurisdiction of the Court or the lack of jurisdiction on account of certain factual allegations. In the former case, where it is not necessary to go into any controversial facts, the question may be treated as an issue of law, but if it is necessary to decide a factual controversy before arriving at a conclusion on the challenge to jurisdiction, such a question cannot be treated as a pure question of law. The use of the words “an issue of law only” in the first part of sub-rule (2) has to be given its due meaning and import in the context. If every controversy pertaining to the jurisdiction of the Court whether dependent upon consideration of facts or otherwise, was to be deemed as an issue of law, the use of the words noticed above would be without purpose and this cannot obviously be the intention of the Legislature. Where the issue of determination of suit requires a probe into the market value of the property, the suit need not be tried as a preliminary issue. As such, discretion has been given to the Court, rather it is the duty and the Court is not bound to try any issue despite the provision contained in Order 14 Rule 2, sub-rule (2), of the CPC.

10. Reverting to the facts of the case, in the present case, the plaintiff has valued the suit as ₹ 55,800/-, whereas, defendant No.1 – his brother

has pleaded the valuation of suit as ₹ 1 crore and thereby claimed that the suit is not properly valued and it is beyond the pecuniary jurisdiction of the Court, as such, the determination of issue No.3 regarding proper valuation of suit and whether it is beyond the pecuniary jurisdiction of the Court, require probe into the market value of the property in the suit. Therefore, in case, where it requires probe or evidence to be recorded before deciding the issue as a preliminary issue, the order refusing to try the issue of valuation and pecuniary jurisdiction of the Court cannot be held to be illegal warranting interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma