



A.No.781 of 2020
in C.S.No.600 of 2011

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Reserved on : 19.01.2023

Pronounced on : 10.07.2023

CORAM : JUSTICE N.SESHASAYEE

Application No.781 of 2020
in C.S. No.600 of 2011

1.C.S.Balakrishnan
2.K.Muthu
3.S.P.Muthukumarasami
4.Anusaya

.... Applicants / Plaintiffs

Vs

1.T.Amudan Antony (Deceased)
2.K.Devi
3.A.A.Kumaran
4.A.A.Sastha Prabhu
5.A.A.Dayasankar
6.A.A.Annaprabhu
7.A.A.Kala
8.A.A.Varalakshmi

.... Respondents / Defendants

[7th and 8th defendants impleaded as LR's of the deceased
1st defendant as per order in I.A.No.1590 of 2015 dated 10.02.2015



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Prayer : Application filed under Order XIV Rule 8 of the High Court Original Side Rules 1956 read with Order 15 Rule 3 of the Code of Civil Procedure, 1908, praying to hear and dispose of the present suit without any evidence being led by the parties.

For Applicants : Mr.Thiyambak Kannan

For Respondents : Mrs.Chitra Sampath, Senior Counsel
Assisted by Mr.M.Azhagu Raman

ORDER

1.1 The suit is laid for recovery of possession of the suit property from the defendants. The plaintiffs have taken out an application under Order XV Rule 3 CPC to decree the suit without trial in view of the fact that title of the first plaintiff over the property in lis had been conclusively decided against the defendants in the earlier rounds of litigation.

2. The brief facts are:

- The suit property is described as Plot No.2155, measuring 5,390 sq.ft., comprised in S.F.No.207 part, correlated to T.Sy.No.61, Block No.19, L - Block, Anna Nagar Colony West, Chennai.



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- According to the plaintiffs, this property originally belonged to a certain Lalithambal. Sometime in the mid 1960s, this property along with others were acquired for the benefit of the Tamil Nadu Housing Board (TNHB), and that on 17.11.1965, declaration under Sec. 6 of the Land Acquisition Act, 1894, came to be published. On 21.03.1991 a provisional allotment of the aforesaid plot was made to the first plaintiff (hereinafter would be referred to by his name Balakrishnan), that it was followed by a regular allotment on 03.05.1991, and on 13.03.1992, the TNHB had formally handed over the possession of the property to Balakrishnan.
- In terms of the allotment, Balakrishnan too had paid the price of the plot in instalments to the TNHB, pursuant to which on 15.5.1996, the TNHB had executed a sale deed in favour of the former.
- In the same year (1996), the first defendant herein (will be referred to by his name Amudan) had laid a suit in O.S.No.188 of 1996 on the file of VI Assistant City Civil Court, for mandatory injunction against TNHB to cancel the allotment made by it to Balakrishnan, who was arrayed as the second defendant in the said suit.
- During the pendency of the suit, Amudan also instituted a second suit in



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O.S.No.4141 of 1997 before the City Civil Court for bare injunction against Balakrishnan, in which Amudan described the plot in question as a vacant site. On 15.03.1999, this suit came to be dismissed as not pressed.

- Even as O.S.No.4141 of 1997 was pending, Amudan had approached this Court in WP.No.4190 of 1997, *inter alia* against the TNHB and Balakrishnan for a writ of mandamus to forbear them from interfering with his alleged possession of the plot involved. On 04.02.2000, this writ petition was dismissed as withdrawn but without any liberty to the first defendant herein to file any fresh proceedings on the same cause of action.
- Amudan then filed WP.No.11624 of 1997, wherein he had challenged the allotment made by TNHB to Balakrishnan. This petition was dismissed on 12.04.2002. And, in his Order, the learned Single Judge had gone to investigate the title of the property, and had found that at no point of time either the writ petitioner Amudan or his ancestors were the owners of the plot in question, and that at the time when the acquisition proceedings had commenced, a certain Lalithambal was the registered



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owner of the property. The Court also has held that the petition is not entertainable due to the petitioner's laches. The writ petition was, accordingly dismissed.

- Soon after the dismissal of W.P.11624 of 1997, Amudan had instituted another suit in O.S.No.2350 of 2002 against Balakrishnan for bare injunction to protect his possession alleging that the cause of action for this suit had arisen on 15-03-1997, contending yet another time that the suit property was a vacant site.
- Both O.S.No.188 of 1996 and O.S.No.2350 of 2002 came to be tried jointly. It may be reiterated that, while in O.S.188/1996, the TNHB, the requisitioning body, was a defendant along with Balakrishnan, in O.S.2350 of 2002, Balakrishnan was the sole defendant.
- By a decree dated 28.04.2006, the trial Court decreed both the suits, notwithstanding the fact that in O.S.No.188/1996, the TNHB had taken a defence that the said suit was barred under Section 138 of the Tamil Nadu Housing Board Act, 1961.
- The TNHB did not appeal, but Balakrishnan who was a defendant in both the suits preferred A.S.No.379 of 2006 against the decree in



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O.S.188 of 1996, and A.S.380 of 2006 against O.S.2350 of 2002. In A.S.379 of 2006, TNHB was arrayed as one of the respondents. The appellate court dealt with both the appeals and disposed them by a common judgement dated 29-09-2010. Its verdict in both the appeals are:

- (i) A.S.379/2006 (filed against the decree in O.S.188/1996) was allowed, and it was held that the suit was not maintainable in view of the statutory bar under Sec.138 of the TNHB Act, 1961.
 - (ii) A.S.No.380 of 2006 (arising from O.S.No.2350 of 2002) was dismissed, since the Court found that Amudan, the plaintiff, was found to be in settled possession.
- Both the sides preferred separate appeals to this court in S.A Nos. 640 and 641 of 2008. This Court by its judgement dated 23.12.2008 set aside the judgement and the decree passed in A.S No. 379 and 380 of 2006 and remanded the matter to the first appellate Court. On remand, vide its judgement dated 29.09.2010, the first appellate court dismissed A.S.No.380 of 2006 and confirmed the decree for injunction granted in O.S No.2350 of 2002 and had held that the



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plaintiff was in settled possession of the property. So far as A.S No. 379 of 2006 is concerned, it was allowed, and the first appellate court held that the suit was not maintainable as it was barred under Sec.138 of the Tamil Nadu Housing Board Act, 1961.

- Amudan, thereafter preferred S.A No. 396 of 2011. By a judgement, dated 05-11-2014, this Hon'ble Court held that the suit as framed was not maintainable. The appeal was, therefore, dismissed, and it was later confirmed by the Supreme Court in SLP (c) 15720 of 2015, vide order dated 26.11.2019.

3. Even though Balakrishnan was successful in establishing that Amudan did not have title, still he could not obtain the entire benefit as he was still required to obtain vacant possession from Amudan on the strength of his vested title. Almost immediately after the disposal of A.S.380 of 2006 in 2010, he along with other plaintiffs, laid the present suit, for recovery of possession of the property from Amudan.

4. Amudan has filed the written statement disputing the right of the plaintiffs to



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recover possession principally on the following grounds: (a) The valuation of the suit is incorrect; (b) That there should have been a prayer for declaration of plaintiff's title to the suit property, and a suit without a prayer for declaration of title is not maintainable; (c) That the description of the property in the present suit is at variance with the property mentioned in the earlier proceedings; and (d) that the defendant has been in settled possession, and has perfected title by adverse possession. Amudan has since passed away, and his legal representatives have been impleaded as defendants 7 and 8.

5. It is in these circumstances, the plaintiffs have taken out the present application under Order XV Rule 3 CPC, for passing a decree in the suit without a trial, since his suit for recovery of possession is based on his title, which according to him, has been declared in the earlier round of litigation in O.S.No.2350 of 2002.

6. The learned counsel for the plaintiffs/applicants submissions are focused on the above narration of facts. He argued that Amudan's claim of title has been negated in the order in WP.No.11624 of 1997, dated 12.04.2002, again in



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O.S.No.2350 of 2002 and confirmed by the first appellate court in A.S.380 of 2006. In the writ petition referred to above, this Court had categorically held that neither Amudan nor any of his ancestors were ever the title holders of the plot in question, and that the acquisition proceedings had become conclusive. When the title is conclusively found in favour of the plaintiffs, there is no need to prove the same again in this suit, and since A.S.380 of 2006 was lost only because Amudan was found to be in settled possession, a formal suit to obtain possession has become necessary. He placed reliance on the authorities in *Anathula Sudhakar Vs P.Buchi Reddy (Dead) by LRs and Others* [(2008) 4 SCC 594]; *Direct Recruit Class II Engineering Officers' Association Vs State of Maharashtra and Others* [(1990) 2 SCC 715]; *Dr.Subramanian Swamy Vs State of Tamil Nadu and others* [(2014) 5 SCC 75]; *Monikantan Nair Vs Sarojini Amma* [2020 (2) CTC 681]; *Mutha Associates and Others Vs State of Maharashtra and Others* [(2013) 14 SCC 304]; *Union of India and Others Vs Vasavi Cooperative Housing Society Limited and Others* [(2014) 2 SCC 269]; *Ram Daan (Dead) Through LRs Vs Urban Improvement Trust* [(2014) 8 SCC 902]; *T.Ravi and Another Vs B.Chinna Narasimha and Others* [(2017) 7 SCC 342]; *Kanwar Singh Saini Vs High Court of Delhi* [(2012) 4



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SCC 307]; *Simplex Hosiery Factory and Another Vs Chanchal Kumari etc.*, [(1980) 1 I.L.R. Punjab and Haryana 197]; *Madan Lal and Another Vs State of Punjab and Another* [2002 (2) Mh.L.J.203]; *R.C.Sundaravalli Vs T.D.Shakila* [2002 (1) CTC 33]; *Veershaiv Co-operative Bank Ltd Vs Arvind Daulu Patil* [2005 (4) Mh.L.J.268]; *Gaiv Dinshaw Irani and Others Vs. Tehmtan Irani and Others* [(2014) 8 SCC 294]; *Shiromani Gurdwara Parbandhak Committee Vs Mahant Harnam Singh C.(Dead), M.N.Singh and Others* [(2003) 11 SCC 277]; *Bhanu Kumar Jain Vs Archana Kumar and Another* [(2005) 1 SCC 787]; *Satyendra Kumar and Others Vs Raj Nath Dubey and Others* [(2016) 14 SCC 49] and *P.Lakshmanian and Another Vs P.Jeyalakshmi and Others* [2014 (2) CTC 630].

7. Per contra, Mrs.Chitra Sampath, the learned senior counsel appearing for the defendants argued:

- a) It is submitted that Order XV Rule 3 CPC will apply only at the first hearing of the suit and not subsequently. Reliance was placed on the dictum in *M/s.Estrela Batteries Ltd., Vs M/s.Modi Industries Ltd.*, [AIR 1976 Allahabad 201]. As far as the present suit is concerned, the issues were



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framed on 09.01.2017, and the matter had been listed for trial for few times, and in between this Court has also passed few other orders in the suit. Reliance was placed on the ratio in *Alka Gupta Vs Narender Kumar Gupta* [(2010) 10 SCC 141].

- b) The defendant in O.S No. 2350 of 2002, namely the 1st Plaintiff in the present suit did not choose to challenge the correctness of the judgment passed in A.S No.380 of 2006, but has filed the present suit accepting the findings therein.
- c) The present suit is not maintainable as it was not properly valued and hence the correct court fee has not been paid. This is an aspect raised in defence and the burden is on the plaintiff to establish it, and it requires evidence, which implies that the trial cannot be avoided. Reliance was placed on *S.N.S. Sukumaran Vs. C. Thangamuthu* [2012 (5) CTC 705].
- d) The title to the suit property was not decided in the earlier proceedings. In O.S. No. 188 of 1996 title to the suit property was not in dispute, and the suit was dismissed on the grounds of maintainability, and no issue on the title to the suit property was finally decided. This apart, if the issues



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involved in S.A. 396 of 2011 are carefully appreciated and so also those involved in the subsequent Order in S.L.P. (C) No. 15720 of 2015, it will be seen that what was in dispute and what came to be decided was about the acquisition proceedings of a larger extent, but the plaintiffs herein claim right to only a portion thereof. The plaintiffs themselves have stated that they are filing the present suit for possession in accordance with the directions given in A.S. No. 379 and 380 of 2006, but this Court vide its judgement in S.A.396 of 2011, dated 05-11-2014, has altered the findings and modified the decree dated 28.04.2006 passed in O.S.No.188 of 1996. The issue on plaintiffs' title has not been decided finally. Where a cloud is cast on the first plaintiff's title, he is required to establish his title before he establishes his entitlement to obtain possession, but he has not sought any relief for declaration of his title to the suit property. Reliance was placed on the ratio in ***Anathula Sudhakar v. P.Buchi Reddy (dead) by L.Rs.and others*** [(2008) 4 SCC 594]. Plaintiffs 2, 3 and 4 were not parties to the proceedings in the Apex Court.

e) Even though the plot in question was allotted to the first plaintiff, he has



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never been in possession since the date of allotment and had lost his title to seek recovery of possession under Article 65 of the Limitation Act as per which, the suit has to be laid within 12 years. Here in this case, when it is an admitted case of the first plaintiff that the first defendant has been in settled possession at all times, he has lost title and no right remains in him for seeking possession and the former cannot rely on the earlier proceedings to obtain a decree in his favour. The earlier suits were not filed by the present plaintiff and hence there was no decision in the earlier proceedings regarding the right of the plaintiff to recover possession. Hence the present application which aims to foreclose the evidence of the parties cannot be entertained. In this regard, it is required to be noted that the TNHB has not initiated any legal proceedings to evict these defendants at any point of time, which shows that the Board is aware that it has no right in respect of the suit property.

- f) The first plaintiff has since conveyed the suit property to plaintiffs 2,3 and 4 who in turn have mortgaged it with M/s Indian Overseas Bank, Pollachi Branch on 24-8-2005. The first plaintiff, therefore, lack *locus standi* to file the present application.



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- g) Whereas the plaintiffs describes the suit property as vacant site in plot No: 2155, measuring 5,390 sq.ft. comprised in Survey No. 207/13 part, T.S. No. 61, Block No. 19, Anna Nagar Colony West “L” Block, the defendants claim right over a vacant site measuring in plot No:2155 measuring in all 7,200 sq.ft. in T.Sy. No. 207/13 Part under Patta No. 176 in Thirumangalam Village, West Anna Nagar, bounded on the four sides by Tamil Nadu Housing Board Quarters. Indeed, the issue of identity of the property has been raised before this Court in W.P.No. 11624 of 1997, and in its order, this Court has left the issue open for the defendants to raise it before a civil court. When both the properties apparently show variance, then for identifying the suit property, the trial of the suit cannot be avoided.
- h) Substantial number of documents produced by the plaintiffs are photocopies and unless the originals are introduced, it cannot be said that the plaintiffs have discharged their burden. This makes the trial imperative.
- i) Earlier, Amudan had filed O.S.No.8859 of 1995, against one Arjunan and Murali for injunction and that suit was decreed on 17.04.1996. The



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said decree would show that he had been in possession of different extent of the property.

8. In response, the counsel for the applicants/plaintiffs submitted:

- a) So far as the issue on the alleged undervaluation of the suit and payment of lesser court fee is concerned, while the defendants rely on Sec.12 of the T.N.Court Fee and Suit Valuation Act, 1955, as per the statute only Sec.11 will apply and not Sec.12, and the objection raised cannot be countenanced. At any rate, it is a curable defect in law, and it does not call for a trial of the core issues involved in the suit.
- b) In the earlier round of litigation, title to the suit property indeed has been found in favour of the first plaintiff, since the acquisition proceedings had been upheld by this Court both in W.P.Nos.4190 of 1997 and W.P.No.11624 of 1997 and also in the suits referred to above. Balakrishnan, the first plaintiff was a beneficiary of the acquisition, and hence the advantage which the TNHB had obtained in the earlier rounds of litigation, necessarily will get passed on to the plaintiffs. And, because Amudan was found to be in settled possession, that was secured



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- c) As regards the allegation that the defendants had prescribed title by adverse possession is concerned, it is a fallacious misconception of the defendants as the plaintiffs have instituted the suit on title within 12 years within the meaning of Article 65 of the Limitation Act.
- d) The contention that the application cannot be maintained as the suit has crossed the first hearing stage is concerned, in ***Kanwar Singh Saini v. High Court of Delhi*** [(2012) 4 SCC 307], the Hon'ble Supreme Court had interpreted first hearing as a stage when the Court applies its mind to the case when either the issues are determined, or evidence is taken. This has also been the view of this Court in ***R.C. Sundaravalli v. T.D.Shakila*** [2002 (1) CTC 33] which this Court has referred to in ***S.N.S. Sukumaran v. Thangamuthu*** [2012 (5) CTC 705] which the defendants rely on. So far as the present case is concerned, the recording of evidence has not begun yet. In other words, this Court is yet to apply its mind to the dispute.



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Discussion and Decision:

9. Given the nature of pleas exchanged and the arguments advanced, the discussion necessarily gets layered. In this suit, pleadings are complete and issues have been framed. It is at this stage the plaintiffs have taken out the present application under Order XV Rule 3 CPC seeking dispensation of the trial, as according to them the first plaintiff's title has been declared in the earlier rounds of litigation, that it operates as *res judicata* and that the defendants do not have a right in them to dispute the first plaintiff's title and to resist delivery of possession of the suit property.

Understanding Order XV CPC

10.1 This provision does not seem to have seen frequent court-hall debates, as there are only very few authorities on it. Order XV CPC is titled '*Disposal of Suits at the First hearing*'. The relevant provisions reads:

1. Parties not at issue: *Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.*

2. One of several defendants not at issue:



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[(1)] Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

[(2)] Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.

3. Parties at issue - *(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:*

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the



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production of such further evidence, or for such further argument as the case requires.

4. Failure to produce evidence - *Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.*

10.2 The expression '*first hearing*' finds a place in Order X Rule 1 of the Code besides Order XV CPC. “*At **the first hearing** of the suit*”, mandates Order X Rule 1, the Court “*shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are **made in the plaint or written statement** (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made*”, and the courts are required to record the admissions and denials made. But nowhere in Order X CPC, the Code enables the Courts to pass a decree on the admissions and denials that it has recorded.

11. After Order X Rule 1 stage, two courses are open to the Court. If the



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12. The point is, can the Court resort to Order XV course after the issues are framed, and if so, can it be on any day after the framing of the issues. While the plaintiffs argue that the Courts can, the defendants contend otherwise since according to them the suit has crossed the '*first hearing*' stage.

13. A significant difference between Rule 1 and Rule 3 is that, while Rule 1 pointedly refers to '*first hearing*', Rule 3 does not make any such reference, notwithstanding the fact both are provided under the caption "*Disposal of Suits at the First Hearing*". What then constitutes first hearing?

14. The expression '*First Hearing*' is not defined in the Code. The learned counsel for the defendants relies on the following passage in *Alka Gupta Vs*



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“The observation of the learned Single Judge that “the facts of this case do not require any opportunity for leading evidence to be given to the plaintiff” violates Order 15 Rule 3 of the Code. Where summons have been issued for settlement of issues and where issues have been settled, unless the parties agree, the court cannot deny the right of parties to lead evidence. To render a final decision by denying such opportunity would be highhanded, arbitrary and illegal.”

On facts in **Alka Gupta Vs Narender Kumar Gupta** [(2010) 10 SCC 141], the Hon'ble Supreme Court has not defined what constitutes '*first hearing*', of a suit, as it delves more on the facts as well as on the correctness of the decision of the trial court, which the High Court had later approved, to dismiss the suit on a preliminary consideration of the defence of the defendant to the suit, such as *res judicata*, impact of Order II Rule 2 CPC, or abuse of judicial process, without granting the opportunity to the plaintiff to lead in evidence. In **Kanwar Singh Saini v. High Court of Delhi** [(2012) 4 SCC 307], the Supreme Court has provided a definition for the expression '*first hearing*' and the relevant passage reads:



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*"13.The date of "first hearing of a suit" under CPC is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the "first hearing of the suit" prior to determining the points in controversy between the parties i.e. framing of issues does not arise. The words "first day of hearing" do not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken. (Vide **Ved Prakash Wadhwa v. Vishwa Mohan** [(1981) 3 SCC 667 : AIR 1982 SC 816], **Sham Lal v. Atme Nand Jain Sabha** [(1987) 1 SCC 222 : AIR 1987 SC 197], **Siraj Ahmad Siddiqui v. Prem Nath Kapoor** [(1993) 4 SCC 406 : AIR 1993 SC 2525]; and **Mangat Singh Trilochan Singh v. Satpal** [(2003) 8 SCC 357 : AIR 2003 SC 4300]."*

"4. Rule 3 of Order 15 therefore, on a plain reading of the said rule, contemplates decision on the date of first hearing, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required. It has further to be satisfied that as a result of proceeding with the suit forthwith no injustice will result. The words 'at once' and 'forthwith' indicate that the said rule contemplates decision on



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the date of issues of the suit on the basis of the material available on that date and when no further evidence is needed. The clause "whether summons has been issued for the settlement of issues only or for the final disposal of the suit" further supports the view which I am taking. If rule 3 of Order 15 is to be applied even on a date fixed for final hearing, the question whether summons had been issued for the settlement of issues only will lose its significance. It is well known that there are certain types of suits in which no separate date is fixed for issues, for example, suits in the Court of Judge, Small Cause Court, where only one date is fixed when issues are framed, and the suit is decided. In other Courts, however, a date is fixed for issues and if the parties are at issue, issues are framed. Normally the documentary evidence which the parties want to produce is also invariably filed on that date and thereafter a date is fixed for final hearing. Since Rule 3 of Order 15 contemplates a decision on the date of issues itself, it became necessary to provide "whether summons has been issued for the settlement of issues only or for the final disposal of the suit". That provision had to be applied equally in both these types of suits. The proviso to Sub-rule (1) of Rule 3 of Order 15 makes it clear that in those cases where summons had been issued for the settlement of issues only a decision under Rule 3 can be given only if the parties or their pleaders are present and none of them objects. If the provisions of Rule 3 were to be applied even on the date of final hearing no



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*question of no objection being raised by the parties to the determination of a particular issue could arise because on that date whether the parties agreed or not the case could be decided. For all these reasons I am of opinion that **Rule 3 of Order 15 applies only to the disposal of a suit on the date of first hearing namely on the date when issues are framed.***

The above dictum of the Hon'ble Supreme Court defines the '*first hearing*' date as the date on which the Court applies its mind for framing issues. So far as the present suit is concerned, issues have been framed. Is it now open to the plaintiffs to require the Court to invoke Order XV Rule 3 CPC on a day subsequent to the date on which issues were framed?

15. In understanding it, it is necessary not to ignore a subtle distinction. Issues are framed on aspects where parties are found to be in variance on any material proposition of law or fact. But whether a particular issue needs to be proved through any oral or documentary evidence, or in other words, should go for trial, is another aspect. Framing of issues is an effort to fix the contours for forensic probe, and trial will be required only if any oral or documentary evidence is required to decide an issue.



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16. In *M/s. Estrela Batteries Ltd., Vs M/s.Modi Industries Ltd.*, [AIR 1976 Allahabad 201], the Court seems to suggest that Order XV may not be invoked after the first hearing date is crossed, but this Court finds it difficult to subscribe to that view wholly, for this interpretation appears far too straight jacketed for a procedural provision. It throws open few points to ponder over the role of the procedure and the role of the Court with a view to understand the former in the context of the latter.

A case of missing the wood for the trees?

17. What is the purpose of establishing the Courts, and enacting the Code? For appreciating this ordinary question, it is first essential to keep aside the social conditioning ('temples of justice') about the Courts, or its equivalent since antiquity, and to remove the fairytale- hyperbole that the Courts as an institution are accustomed to enjoy. In terms of their sheer functionality, the role of the Courts in a democracy, and perhaps everywhere, is to solve a problem which the litigants either create as between themselves, or with the State, and no more. Set in that context, it can be broadly stated that the Civil



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Procedure Code can be termed as a body of rules that enables the Court to dispense justice with fairness and with a reasonable degree of certainty and expeditiously. The Code, therefore, is only a means through which the Courts achieve their ends. And, the role of the Code stops there. (The social engineering by courts is not considered here, as it is contextually irrelevant.) Hence, the Code, despite its functional utility and indispensability, does not deserve to be hyper-glorified. An understanding of the Code is therefore, required to be navigated through an understanding of its core purpose, but often its interpretation enjoys an approach at par with the substantive law. That the '*procedure is a mere handmaid of justice*', has more often been reduced to a popular catch phrase, as it is spoken more but realised less.

18. If the scheme of the Code is carefully analysed, what gets instantly noticeable is that the Court retains absolute control over the entire procedure-driven proceedings at all stages of a litigation – from its entry to and exit from the legal system, and from granting an adjournment to admitting an evidence during the journey. The power which the Code has vested in the Court is a reflection of a well calibrated idea that the court and its process is not intended



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for patronising litigants and litigations, but for providing a solution to a problem before it, both factual and legal, as expeditiously as possible and within the framework of law. What an individual litigant may not easily appreciate, but that which still remains indispensable for the Court is to conserve its time for efficient allocation. This is imperative, given the backlog and the ever burgeoning line of litigants waiting in the queue for justice. This idea has now found firm roots in other jurisdictions as well. Prof.A.A.S Zuckerman, quotes Lord Harry Woolf in his paper '*The Second Great English Reform of Civil Justice*,' 2000 *Hiberian LJ* 178, who adverts to this as an idea of distributive justice. The passage reads:

*“This new philosophy has a number of components. First, it accepts that the resources of the administration of civil justice are finite, just as are the resources of all other public services. Accordingly, the new philosophy holds that these resources must be justly distributed amongst all those seeking or needing justice. Second, **a just distribution of these resources must take into account the character of individual cases, so that individual cases get no more than a reasonable allocation of court time and attention. The notion of proportionality is invoked here. The allocation of court resources, and the investment of time and money, must bear a reasonable relation to the difficulty, complexity, value and importance of the case in hand.** Third, time and cost are relevant considerations in the allocation of resources; justice*



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The fourth and last component of the new philosophy is judicial responsibility. The courts' responsibility extends beyond doing justice in individual cases. They are responsible for the administration of civil justice as a whole, for the resources of the system and for their fair and just distribution” (emphasis supplied)

19. Thus, wherever there is a space for shortening the litigation, the Code has not hesitated to encourage it, such as for instance under Order VII Rule 11(a) or (d), or, to resort to Order XIV Rule 2 which provide for deciding certain issues preliminarily, or Order XII Rule 6 where decrees can be passed on admission. Nor does it spare the cane as it has granted power to the Court for dismissing a suit for default, or to proceed ex parte, or even to strike off pleadings in appropriate circumstances. The rule of *res judicata* under Sec.11, or bar under Order II Rule 2, or bar on re-litigation on the same cause of action under Order IX Rule 9, or stay of suit under Sec.10 are part of this scheme. These apart, where the Court finds any ambitious attempt to abuse its process, it draws strength from its inherent powers to deal with it. The bottom line is that where the Court is not required to spare or waste its time on a case, it is then a crime for it to stay on it. The Code must be understood as a carrier of



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WEB COPY this idea. To this court, Order XV of the Code falls precisely in this category.

Indeed in *Kanwar Singh Saini case* [(2012) 4 SCC 307], the Supreme Court has laid considerable emphasis on the expressions as found in Rule 3(1) 'at once' and 'forthwith', which only spotlights the impatience of the Code in retaining a case if it is not required to be retained - not a second more. This gets more pronounced in Rule 2, which provides that if a case can be disposed of without a trial against few among the many defendants, the Code requires the Court to go for it.

Can't the Courts invoke Order XV after the first hearing?

20. In this setting, what if the Court, on any date subsequent to the date of framing of issues, chooses to re-apply its mind to the dispute before it? Are not the Courts without any authority to do it? If it is answered in the negative, then that will be a wholesome negation of the idea of Courts itself. Even the Code does not bar it. For instance, Order XIV Rule 5 CPC, provides for amending and striking of issues. Could it be achieved without the court re-applying its mind? Another situation can arise where after framing the issues, when a notice to admit is served under Order XII Rule 1, or when



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interrogatories are served under Order XI Rule 1, the parties to whom interrogatories were served make an admission vis-a-vis a material proposition of fact, the Court has the power to pass a decree on admission under Order XII Rule 6 CPC. Now, even if this decree is not under Order XV, yet the consequence is the same – dispose of the suit, if it can be without the ordeal of a trial. But the Court re-applies its mind at all times. The point is why stretch a litigation to trial, if it can be disposed of without it?

21. What it in essence signifies is that, no provision of the Code can be read in isolation, nor must be let to operate independent of each other, and that every provision thereof must be considered as part of the whole, intended for a conjoint and an integrated understanding. Wherever justice can be delivered expeditiously and without trial with uncompromising allegiance to fairness, it is obligatory for the Court to do it, for expeditious dispensation of justice is not just a part of its duty to the litigants before it, but also an aspect of its accountability to the public. Viewed thus, there is no rationale in restricting or confining the operation of Order XV to the first hearing date, and not thereafter. The first hearing may provide the earliest opportunity to dispose a



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case, if it can be, but it should not be understood as limiting the power of the Court not to invoke it once the first hearing date is crossed. To state it differently, Order XV can only be construed as an enabling provision for an expeditious disposal of a suit, an instance merely, and it is not exhaustive of the powers of the Court to speed up the disposal otherwise.

22.1 And moving forward to the specifics, even the Code does not limit the disposal without trial to the first hearing, and this is found in Rule (3)(2) of Order XV. It says “*where the finding is not sufficient for the decision, the court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence*”. It can now be derived that under Order XV, the Court may dispose of the suit if it can, or enter a finding on any issue, at any stage after the first hearing, and leave the other issues which may require evidence to a later date. As mentioned earlier even de hors Rule 3, the Code has investing the Court with powers to dispose of the suit without a trial, if in its perception there is no need for a trial for deciding any of the issues. This fortifies the earlier statement that there is no need that all the issues should go for trial, merely because the first hearing stage is crossed (See: paragraph 15



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above). It will also now enable reading of Order XV Rule 3 conjointly with Order XIV Rule 2, and the Court may either dispose of the suit, or at least enter a finding on some issues, and shorten the trial.

22.2 Here, this court is required to negotiate the Proviso to Rule 3(1). It stipulates that, “*where the summons has been issued for the settlement of issues only, the court can dispose of the suit without a trial, only if “the parties or their pleaders are present and none of them objects”*”. *Summons for settlement of issues* has a technical meaning to it and it must be understood in the context in which CPC presents it. Order V Rule 1 and 5 CPC are relevant here. Rule 1 provides that on the institution of the suit, summons may be issued for the defendant to appear and answer the claim and to file the written statement of his defence, and Rule 5 provides that this summons can be either for settlement of issues or for final disposal of the suit. Appendix B Form 1 of the Code deals with summons for final disposal of the suit, and Form 2 thereof relates to summons for settlement of issues. If Form 2 is perused, it directs the defendant to appear, file written statement and to produce documents etc., whereas in Form 1, the direction to file written statement is absent. Ordinarily, summons



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for final disposal are issued in summary suits, and in other category of suits, summons prescribed in Form 2 is provided. Form 2 summons when issued, the defendant will appear to inform the court about the contest he intends to offer to the plaintiff's claim, both on facts and on law, through his written statement, and hence the Court cannot rush to dispose of the suit in the first hearing unless the parties or their pleaders consent. The proviso, therefore, does not affect the Court's power to dispose of the case without a trial under Rule 3. There is a discussion on the point in ***Kanwar Singh Saini case*** [(2012) 4 SCC 307], referred to supra. But, the said passage nowhere indicates that the Court cannot decide any issues *de hors* Rule 3 after the first hearing date was crossed.

22.3 The duty to shorten the course of a litigious journey is inherent in the very purpose and the duty of the Court, and no interpretation of the Code can afford to forsake this idea. And, if it were to be considered otherwise, that would take away the Court's control over the proceedings, and would glorify the procedure in preference to glorifying the utility of the courts as an institution. In that sense Rule 3 is an ancillary rule to Order XIV Rule 2 situations.



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22.4 So far as this case is concerned, Order XV may not be applicable as CPC with all its vigour may not apply to the Original side of this Court, but the principles that it provides are still relevant, for the idea is to decide a case without a trial wherever there is space for it, unless there is an express bar to it.

On facts:

23. Turning to the facts of this case, the reasons, which according to the defendants warrant a trial of the suit are:(a) that the plaintiffs have undervalued the suit and paid a lower court fee; (b) that the suit without a declaratory relief is not maintainable; (c) that the defendants have prescribed title by adverse possession; and (d) the property which was allotted to the first plaintiff by TNHB is different from the one the defendants own. On the other hand, the reason the plaintiffs insist why the suit need not go for trial is that the title of the first plaintiff has been upheld in the earlier round of litigations and it constitutes *res judicata*.



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24. The findings in the earlier round of litigations, the details whereof are already detailed in paragraph 2 above, are to the effect that the allotment made to the first plaintiff by TNHB can no more be disputed, and since the Amudan was a party to it, it binds him and now the other defendants, who claim under him. And given the fact that the acquisition by TNHB of the block of land in Sy.No:207/13 part was not challenged at any time, the title of the first plaintiff obtained in terms of the allotment made by the TNHB stands confirmed vide the order in W.P.11624 of 1997, and since that order has become final, it necessarily binds the defendants. Does it not operate *res judicata*? And does it require an elaborate trial to decide?

25.1 The doctrine of *res judicata* has always been understood as a mixed question of law and fact, and ordinarily when it is pleaded, trial is advised as an ideal option. The doctrine of *res judicata* is governed by five components: (a) that the second suit must be between the same parties as in the first suit, or between those who claim under them; (b) that it must be litigated under the same title as was in the earlier suit; (c) that the issue in the second suit must



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have been directly and substantially in issue in the earlier suit, or to state it differently, indispensable for a decision in the former suit; (d) that the said issue must have been decided by a court of competent jurisdiction in the former suit; and (e) that such decision must have attained finality. Each of these aspects are rooted in facts, and they are tested on a plane of law on *res judicata*. Of these five factors, (a), (b), (d) and (e) can be ascertained by a mere reading of the pleadings and the judgement in the former suit and the pleadings of the present suit, and this precisely what the Court does, with or without trial, when it enquires whether *res judicata* applies. And, where there is a dispute as to whether an issue in the present suit was directly and substantially in issue in a former suit, or, was it incidental and ancillary in issue, there may be a need for arguments, still what gets subjected to scrutiny again are the pleadings in the former suit, the decision on the issue in the former suit, and the pleadings and the reliefs sought in the second suit. When the pleadings and the judgements in the former suit and the pleadings of the present suit are made available, mere arguments on them is adequate to decide the issue. The trial, therefore, will involve no more than a formal admission of indisputable documents namely the pleadings and the final judgement in the earlier suit in



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WEB COPY evidence, and there is no need for an elaborate oral evidence, for an input of a witness on the legal effect of a finding in a former case is of the least consequence to the court. This can apply in equal force even if *constructive res judicata* is pleaded, since all that is required to be probed then will be, whether the plea taken in the second suit was available to a party in the first suit.

25.2 Are the Courts forbidden to ascertain from the parties or their counsel about the pleadings and the judgement in the former suit and read them alongside the pleadings in the subsequent suit under Order XV Rule 3(2)? Is there a bar anywhere? This Court does not find anything that prescribes to the contrary. And, if resorted to, it at least will give full effect to the expression that '*No court shall try any suit*' with which Sec.11 CPC opens. If it is ignored and the suit is tried elaborately, does it not then render otiose the opening phrase in Sec.11 CPC that, "*No Court shall try a suit*"? Trying a suit barred by *res judicata* amounts to re-litigation and may well constitute an abuse of judicial process besides wastage of courts time. The Supreme Court has pointed out in ***K.K. Modi v. K.N. Modi*** [(1998) 3 SCC 573]:



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“44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.” (emphasis supplied).

The above passage highlights that to go for an elaborate trial for deciding whether a suit is barred by *res judicata* will amount to encouraging re-litigation and patronising abuse of judicial process. It is time that all the stakeholders, who were hitherto have been told, and perhaps have been conditioned to



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believe that a plea of *res judicata* should go for trial, requires a re-orientation, if only we are keen to deliver quality justice expeditiously and to prevent abuse of judicial process.

26. Moving next to the second point, whether the suit is bad owing to the plaintiffs' failure to seek a declaratory relief, it is also a matter for argument, and not for serious trial.

27. Barring these aspects of objections, others may have to be tried. More particularly the case of the defendants, that the property allotted to the first plaintiff by TNHB is different from the one for which patta was granted to Amudan's father. In fact he had raised this in his pleadings in O.S.188 of 1996, wherein he had pleaded that while under Sec.4(1) preliminary notification issued under the Land Acquisition Act, 1894, the proposal was to acquire 9.65 acres in Sy.No: 207/13 part, under Sec.6 declaration that followed, it was limited to 8.56 acres. This requires an investigation to ascertain whether the property allotted by TNHB to the first plaintiff and the one claimed by the defendants are same. In its order in W.P.11624/1997, this Court has left that



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issue open to be agitated before the civil court.

28. Then so far as the allegation of undervaluation of the suit is concerned, the burden is on the defendants to establish it, and it requires some evidence from their side, and hence trial cannot be dispensed with. So is the defendants' plea of adverse possession.

29. From the foregoing it emerges that the present application cannot be entertained, not because it is not maintainable, but because there are at least three major triable issues in the suit. Hence, this application is dismissed. No costs.

10.07.2023

Index : Yes / No
Speaking Order : Yes / No
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N.SESHASAYEE.J.,

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