

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1767 of 2018**

1. Om Prakash Lath, Son of Late Tarachand Lath,
2. Ganesh Kumar Lath, Son of Nand Lal Lath,
3. Amar Kumar Lath, Son of Nand Lal Lath,
All Residents of Ranisati Chowk Kasba, Plice Station-Kasba, District-
Purnia.

... .. Petitioner/s

Versus

1. Raj Kumar Lath, Son of Late Tarachand Lath, Resident of Ranisati Kasba,
Police Station Station- Kasba, District-Purnia.
2. Sushil Kumar Lath, Son of Late Tara Chand Lath, Resident of Ranisati
Chowk Kasba, Police Station- Kasba, District- Purnia.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Manoj Kumar, Advocate Mr. Ravi Bhatia, Advocate
For the Respondent/s	:	Mr. Shashank Shekhar Sinha, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 15-03-2024

The instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 17.09.2018 passed in Title Suit No.34 of 2016 by the learned Munsif, Sadar, Purnea whereby and whereunder the petition filed by the petitioners for framing a preliminary issue and deciding the same with regard to pecuniary jurisdiction of the learned trial court has been rejected.

2. Briefly stated the case of the petitioners is that the respondent no.1 filed Title Suit No.34 of 2016 in the court of learned Munsif, Sadar, Purnea for declaration of the title over



the suit land as described in Schedule A of the plaint. The defendants/petitioners appeared in the said suit and filed their written statement denying the contention and claim of the plaintiff/respondent no.1, claiming that the suit property was worth several crores and the plaintiff undervalued it showing its value at Rs.25,000/-only, as such, the petitioner no.1 filed a petition on 28.06.2017 before the learned trial court for framing a preliminary issue regarding suit not being properly valued and challenging the pecuniary jurisdiction of the learned trial court to decide the suit land. The respondent no.1 filed rejoinder to the said petition on 04.09.2017 denying the contention of the petitioner no.1. The learned trial court vide its order dated 17.09.2018 rejected the said petition. Aggrieved by the said order dated 17.09.2018, the petitioners have come before this Court challenging the aforesaid order.

3. Mr. J.S. Arora, learned senior counsel appearing on behalf of the petitioners submitted that the learned trial court while passing the impugned order completely ignored the ambit and scope of Order 14 Rule 2 of the Code of Civil Procedure (hereinafter referred to as 'the Code'). The learned trial court while passing the impugned order has failed to appreciate that even an issue, which involves mixed question of law and fact



can be framed and decided as preliminary issue, when the same goes to the root of the matter, i.e., the jurisdiction of the court in question to try the same. Mr. Arora further submitted that the petitioners in support of their contention have produced the chart for the financial year 2016-17 for Kasba Nagar Panchayat with regard to maximum valuation for registration fixed by the government, but the same was not considered by the learned trial court. If the learned trial court would have considered the same, it could have easily come to the conclusion that the valuation of the suit would run in crores and not in thousands. Mr. Arora further submitted that reliance placed by the learned trial court on the decision of this Court dated 27.04.2016 passed in ***CWJC No.10622 of 2015 (Most. Girija Devi vs. Ratneshwar Rai)*** is misplaced as the said order has been passed *in personem* and it was not *in rem*. Mr. Arora further relied on the decision of Full Bench in the case of ***Md. Alam and etc. Vs. Gopal Singh and Ors.*** reported in ***AIR 1987 Pat 156 (FB)*** wherein it has been held that the estimation of relief by the plaintiff has to be ordinarily accepted and interference therein is permissible only in exceptional and rare cases where such valuation is patently arbitrary and demonstrably undervalued and underestimated deliberately. Mr. Arora next stressed the point



that the procedural laws are handmaids of justice and have been made to advance the cause of justice and not to defeat it. Therefore, Order 14 Rule 2 does not bar framing of preliminary issue if suit has been grossly undervalued. On the scope and ambit of procedural law, Mr. Arora relied on paragraphs 17, 18 and 19 of the decision of the Hon'ble Supreme Court in the case of ***Sathyanath and anr. v. Sarojamani*** reported in (2022) 7 SCC 644 which read as under :

“17. This Court in Ramesh B. Desai [Ramesh B. Desai v. Bipin Vadilal Mehta, (2006) 5 SCC 638] held that the principles enunciated in S.S. Khanna [S.S. Khanna v. F.J. Dillon, AIR 1964 SC 497] still hold good and the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue depends upon the question of fact, it cannot be tried as a preliminary issue. The said finding arises from the provision of Order 14 Rule 2 clauses (a) and (b). After the amendment, discretion has been given to the court by the expression “may” used in sub-rule (2) to try the issue relating to the jurisdiction of the court i.e. territorial and pecuniary jurisdiction, or a bar to the suit created by any law for the time being in force i.e. the bar to file a suit before the civil court such as under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and numerous other laws particularly relating to land reforms. Hence, if Order 14 Rule 2 is



read along with Order 12 Rule 5, the court is expected to decide all the issues together unless the bar of jurisdiction of the court or bar to the suit in terms of sub-rule (2) clauses (a) and (b) arises. The intention to substitute Rule 2 is the speedy disposal of the lis on a question which oust either the jurisdiction of the court or bars the plaintiff to sue before the civil court.

18. We may state that the First Schedule appended to the Code contains the procedure to be applied in respect of the matters coming for adjudication before the civil court. Such procedure is handmaid of justice as laid down by the Constitution Bench judgment of this Court reported as Amarjit Singh Kalra v. Pramod Gupta [Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272] wherein it was observed as under : (SCC p. 300, para 26)

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.”

19. A three-Judge Bench in a subsequent judgment reported as Kailash v. Nanhku [Kailash v. Nanhku, (2005) 4 SCC 480] held that all rules of procedure are handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent but the object of prescribing



procedure is to advance the cause of justice. The Court held as under : (SCC p. 495, paras 28-29)

“28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar [Sushil Kumar Sen v. State of Bihar, (1975) 1 SCC 774] are pertinent : (SCC p. 777, paras 5-6)

‘5. ... The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

6. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive.’



29. In State of Punjab v. Shamlal Murari [State of Punjab v. Shamlal Murari, (1976) 1 SCC 719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that : (SCC p. 720)

‘Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.’

In Ghanshyam Dass v. Dominion of India [Ghanshyam Dass v. Dominion of India, (1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.”

4. Mr. Arora further relied on the decision of the Hon’ble Supreme Court in the case of **Kamaleshwar Kishore Singh Vs. Paras Nath Singh and Ors.** reported in **(2002) 1 SCC 304** on the point that an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fee and fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court.



5. Mr. Arora further submitted that normally valuation of the suit made by the plaintiff according to his own estimation of the relief claimed by him has to be accepted by the court, but court can always interfere if it finds it to be arbitrary, unreasonable and deliberately underestimated. Under such circumstances, the court can examine the valuation and can revise the same and on this aspect of the matter, Mr. Arora relied on the decision of the Hon'ble Supreme Court in the case of ***Tara Devi Vs. Sri Thakur Radha Krishna Maharaj and another*** reported in ***(1987) 4 SCC 69***.

6. Mr. Arora further submitted that it is worth consideration whether the parties can be subjected to rigours of trial ultimately to hold that the court trying the suit has no jurisdiction. It would be patently unjust and wastage of valuable time of the court and litigants. Only because question of valuation of suit and pecuniary jurisdiction of the court are mixed questions of law and facts, the same could not be decided in each and every case at the end of the trial, if such valuation is patently arbitrary and undervalued. Thus, Mr. Arora submitted that the impugned order is not sustainable and the same be set aside.

7. *Per contra*, learned counsel appearing on behalf of



the respondent no.1 vehemently contended that the learned trial court has rightly refused to frame the preliminary issue on the point of its pecuniary jurisdiction. The learned counsel further submitted that preliminary issue can only be an issue of law and not on facts. But, in the present case, it is mixed question of law and fact. After amendment of the Code in 1976, the court has discretionary jurisdiction to decide even the issues of law as a preliminary issue. The learned counsel further submitted that when an issue requires inquiry into facts which cannot be tried as preliminary issue and on this aspect, he relied on the decision of the Hon'ble Supreme Court in the case of ***Satti Paradesi Samadhi and Pillayar Temple Vs. M. Sankuntala (Dead) through Legal representatives and Ors.*** reported in (2015) 5 SCC 675.

8. The learned counsel for the respondent no.1 further submitted that matter of valuation of suit property is between the court and the plaintiff and the defendants have no role. The learned counsel further submitted that market valuation could not be a parameter and decisive factor for valuation of the suit and pecuniary jurisdiction of the court. It is relief which is to be seen. In support of this contention, learned counsel relied on paragraphs 21 & 24 of the decision of the Hon'ble Supreme



Court in the case of ***Bharat Bhushan Gupta v. Pratap Narain Verma & Anr.*** reported in ***(2022) 8 SCC 333*** which read as under :

“21. Having given thoughtful consideration to the rival submissions and having examined the material placed on record with reference to the law applicable, we are clearly of the view that the impugned order dated 18-3-2019 [Pratap Narain Verma v. Bharat Bhushan Gupta, 2019 SCC OnLine Del 7821] , as passed by the High Court with reference to the statement made by the plaintiff in his cross-examination on the value of the suit property, does not stand in conformity with law and cannot be sustained.

24. It remains trite that it is the nature of relief claimed in the plaint which is decisive of the question of suit valuation. As a necessary corollary, the market value does not become decisive of suit valuation merely because an immovable property is the subject-matter of litigation. The market value of the immovable property involved in the litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the relief/reliefs claimed”.

9. Thus, learned counsel for the respondent no.1 submitted that there is no merit in the present petition and the same be dismissed.

10. By way of reply, Mr. Arora, learned senior counsel



appearing on behalf of the petitioners submitted that even if it is mixed question of law and fact, it is to be seen what prejudice would be caused to the other side and relied on paragraph 9 of the decision of the Hon'ble Supreme Court in the case of ***Santosh Kumar v. Ashok Chand*** reported in ***(2021) 3 SCC 385*** which reads as under :

“9. While the counsel for the appellant strenuously submitted that the issues involved mixed questions of fact and law, he was unable to produce any material to substantiate the same. On the other hand, it appears that the appellant's claim is based on documents executed by a power-of-attorney holder, as per his own plaint. Further, he has also admitted that the original owners had taken “Jain Diksha” and become “Sadhvis”. In such a circumstance, the approach of the High Court in directing the above framed issues to be decided as preliminary questions of law cannot be said to be incorrect. The learned counsel for the respondents has rightly pointed out that all the above framed issues relate to maintainability of the suit. Further, on being questioned by the Bench, the learned counsel for the appellant could not point to any prejudice that would be caused if the issues are taken up and decided by the trial court as preliminary questions of law”.

11. I have given my thoughtful consideration to the rival submission of the parties and the facts and circumstances of the case. Order 14 Rule 2 (2) of the Code reads as under :



“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”.

12. Order 14 Rule 2 (2) of the Code confers power upon the court that if in its opinion the case or any part thereof may be disposed of on an issue of law only, it may try that issue first. The use of word ‘may’ makes it amply clear that it is the discretion of the court and the said jurisdiction is only with regard to jurisdiction of the court and a bar to the suit created by any law for the time being in force. On these aspects, the court may postpone the settlement of other issues and frame a



preliminary issued on the aforesaid point and may deal with the suit in accordance with decision on that issue. After amendment of the Order 14 Rule 2 in 1976, it is now discretionary for the court to decide the issue of law as a preliminary issue or to decide it along with other issues. Further, all issues of law cannot be decided as preliminary issues and only those issues of law falling within the ambit of clauses (a) & (b) could be so decided. At the same time, Order 14 Rule 2 mandates the court to pronounce judgment on all issues subject to the provisions of Sub-rule (2).

13. In the present case, the defendants/petitioners have raised an issue over valuation of suit so as to take the case of the plaintiff/respondent no.1 out the jurisdiction of the present trial court. The learned trial court rejected the contention of the defendants/petitioners on the ground that question of valuation of suit and the pecuniary jurisdiction is a mixed question of law and facts and so it refused to frame a preliminary issued on this point. I think the approach of the learned trial court is correct. The Hon'ble Supreme Court in the case of *Sathyanath* (supra) has made it amply clear that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where



the decision on issue also depends upon the question of fact, it cannot be tried as a preliminary issue. There is no denial that valuation of suit can never be a pure question of law. So, the court can always have a discretion as to whether to take up the matter of valuation of suit as a preliminary issue even in extreme cases. As already discussed, the discretion of the learned trial court have been curtailed and it can frame a preliminary issue only on the point of law and not on the mixed question of facts and law, if both are involved. The decision in the case of *Sathyanath* (supra) relied on by Mr. Arora does not support the cause of the petitioners. Further, reliance placed on the decision in the case of *Santosh Kumar* (supra) by Mr. Arora appears to be misplaced since the appellant in that case was unable to substantiate his claim about there being issues involving mixed questions of fact and law. Moreover, the issues related to maintainability of the suit and in the present case, the issue is with regard to jurisdiction of the court which would arise only if valuation as claimed by the defendants/petitioners is accepted. In these circumstances, I am unable to agree with the submission made on behalf of the petitioners. Moreover, I do not think prejudice caused to the defendants/petitioners would be bigger in magnitude than the plaintiff/respondent for the



reasons that if the suit fails on the point of valuation, ultimate sufferer would be the plaintiff/respondent.

14. From the aforesaid discussion, it is obvious that other authorities cited by Mr. Arora do not support the case of the petitioners since the facts are quite different, though there could be no dispute over proposition of law.

15. In the light of discussion made so far, I do not find the impugned order suffers from any infirmity as the same has been passed after due consideration and, therefore, the same is affirmed.

16. Hence, I do not find any merit in the instant petition and, accordingly, the same is dismissed.

17. However, learned trial court is directed to proceed with the trial since it is a matter of 2016 and try to conclude the same preferably within one year from the date of receipt/production of a copy of this judgment while duly taking note of the issue raised by the defendants/petitioners.

(Arun Kumar Jha, J)

V.K.Pandey/-

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