

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE**

**APOT/279/2023
with
CS/129C/1996
CS/100022/1996
IA NO: GA/1/2023**

MESSERS BINAGURI INVESTMENTS PVT. LTD.

VS.

GOUTAM ROY & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE M. V. MURALIDARAN

For appellant	: Mr. Anindya Kumar Mitra, Sr. Adv. Mr. Soumya Roy Chowdhury, Adv. Mr. Samriddha Sen, Adv. Ms. Neelina Chatterjee, Adv. Mr. Suvodeep Chakraborty, Adv. Mr. Rohit Chatterjee, Adv.
For KMC	: Mr. Achinta Kumar Banerjee, Adv. Ms. Era Ghosh, Adv. Mr. Gopal Chandra Das, Adv. Mr. Dwijadas Chakraborty, Adv.
For respondent No.1	: Mr. Ranjan Bachawat, Sr. Adv. Mr. Dhruva Ghosh, Sr. Adv. Mr. Biswanath Chatterjee, Adv. Mr. Rohit Banerjee, Adv. Mr. Subhankar Charaborty, Adv. Mr. Saptarshi Bhattacharjee, Adv.
Judgment on	: 15.04.2024

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated July 11, 2023, passed by a learned Judge of this Court in IA no. GA 13 of 2022 filed

by the plaintiff in C.S. 100022 of 1996. The appellant is the defendant no. 3 in the suit.

2. The plaintiff in the suit is the respondent no. 1 herein (hereinafter referred to as 'Goutam'). Several interlocutory applications were filed in the suit from time to time at the instance of the present appellant (hereinafter referred to as "Binaguri") as also Goutam. I shall only refer to some of such applications as would be relevant for the present purpose.

3. In paragraph 1 of the plaint of the suit, it is stated that premises no. 4 Alipore Park, subsequently renumbered as 24/2 Alipore Road is the subject matter of the suit (in short "the suit premises"). The prayers in the plaint read as follows:-

"(a) For declaration that the Deed of Transfer dated 18.06.1971 executed by Sailendra Nath Roy, since deceased, as trustee to the Trust Estate of Amarendra Nath Roy is illegal and void and the same has not affected the trust property created by the said Amarendra Roy.

(ii) For declaration that the Trust created by Amarendra Nath Roy came to an end only on 23.11.1990 when the said Sailendra Nath Roy died and on his death the suit property along with other residue properties covered by the said Deed of Trust vested in the plaintiff as one of the beneficiaries in terms of the said Deed of Trust.

(iiA) Order dated 12th February, 1980 and decree dated 22nd May 1980 are illegal void and not binding on the plaintiff and liable to be set aside;

(iii) For further declaration that the Deed of Conveyance executed by the defendant no. 2 dated 14.02.1981 in favour of the defendant no. 3 is void and inoperative and the same has not affected either the Trust property or the interest of the plaintiff as beneficiary thereof.

(iiiA) Decree be passed directing the purported Deed of Conveyance dated 14th February, 1981 be presented before the Court and be delivered back to the plaintiff and be cancelled.

(iv) For recovery of possession of the suit property evicting the defendant No. 1 or 3 or anybody claiming through them.”

4. It is not in dispute that the deed of transfer dated 18/6/1971 referred to in prayer (a) and the Trust referred to in prayer (ii) as well as the deed of conveyance dated 14.2.1981 referred to in prayers (iii) and (iiiA), all pertain to the suit premises.

5. It appears that the plaintiff in the present suit, i.e. Goutam, had earlier filed a suit in the Court of the Assistant District Judge at Alipore being Title Suit No. 1977 of 1992 with prayers similar to the prayers in the present suit. Goutam subsequently filed an application before the Alipore Court under Order 7 Rule 10 of the Code of Civil Procedure seeking return of the plaint for presentation of the same before the Calcutta High Court since he had challenged the validity of a decree passed by the High Court as also the validity of a Deed of Conveyance executed by the defendant no. 2 in favour of Binaguri under direction of the High Court. By an order dated April 16, 1996, the learned Alipore Court allowed such application and

directed the plaint to be returned for presentation before the appropriate forum.

6. Goutam then filed the present suit which was then registered as Suit No. 129(C) of 1996.

7. In the suit, Binaguri took out a demurer application being GA No. 914 of 1998 for dismissal of the suit on the ground that the leave granted under Clause 12 of the Letters Patent should be revoked and also on the ground that the suit is barred by the laws of limitation. The application was disposed of by a learned Single Judge by an order dated July 16, 1998, observing that such point may be taken by the plaintiff (sic) to be read as petitioner as a preliminary point at the time of hearing of the suit.

8. Challenging such order Binaguri filed an appeal being APOT no. 545 of 1998 and filed an application therein being G.A. no. 2720 of 1998. By a judgment and order dated August 11, 1998, a Coordinate Bench dismissed the appeal as being not maintainable, holding “that the order dated 16/07/1998 did not finally decide either of the issues raised by the appellant on the maintainability of the suit but has only deferred the decision for being dealt with under Order 14 Rule 2 of the Code.”

9. Goutam had filed an application for amendment of the plaint being GA no. 298 of 1998. By an order dated December 22, 1998, a learned Single Judge dismissed that application. Challenging such order, Goutam preferred an appeal. By a judgment and order dated July 29, 2008, a coordinate bench allowed the appeal observing: “*we allow the prayer for an amendment, however, the point of limitation is kept open. If on receipt of the evidence the*

proposed claim made herein is found to be barred, obviously this has to be decided as a preliminary issue before the Court decides the matter on merits.”

Binaguri filed a Special Leave Petition being SLP (C) No. 193 of 2009 before the Hon’ble Supreme Court, challenging the order of the Division Bench allowing amendment of the plaint. By an order dated January 16, 2009, the Hon’ble Supreme Court confirmed the order of the Division Bench with the observation that *“these Special Leave Petitions are disposed of with the observation that the High Court’s order relating to the question of limitation being kept open would mean that the question of limitation has to be considered from the date of making the application for amendment.”*

10. In 2010, Binaguri filed another application being GA No. 102 of 2010 for dismissal of the suit on three grounds i.e., the claim in the suit is barred by limitation; the suit is filed in abuse of the process of law; and the plaintiff is guilty of suppression of material facts. By an order dated January 25, 2012, a learned Single Judge dismissed such application by observing “I do not think that on examination of the plaint any of these grounds are apparent so as to warrant dismissal of the suit. Evidence is called for. I am of the opinion that abuse of the process of Court or suppression of facts cannot be tried as preliminary issues. The Court usually comes to findings regarding these points at the end of the trial. But in the facts and circumstances of the instant case, the Hon’ble Judge taking up suits may consider framing the issue of limitation as a preliminary issue. Any issue ancillary to the above issue may also be framed if it so commends to his Lordship”.

11. Binaguri carried the aforesaid order in appeal by filing A.P.O. no. 135 of 2012. By an order dated February 21, 2014, the Division Bench disposed of such appeal, without interfering with the impugned order.

12. On May 13, 2014, issues were framed in the suit. On July 16, 2014 witness action commenced. On January 27, 2015, the learned Judge hearing suits, suggested fresh issues.

13. Goutam had filed an application for injunction being GA no. 929 of 1997 wherein, a learned Judge had passed an order dated May 11, 2001, to the effect that *“the defendant nos. 1 and 3 are restrained by an order of injunction from dealing with or disposing of or encumbering or dealing in any manner whatsoever or to create any further third party right in respect of premises no. 24/2 Alipore Road, Calcutta- 700 027 till disposal of the suit”*.

14. Alleging that in violation of such order of injunction, Binaguri was carrying out construction activities and thereby trying to change the nature and character of the suit premises, Goutam approached a learned Single Judge by filing GA no. 3835 of 2015. The learned Judge on December 17, 2015, passed a further order restraining Binaguri from carrying out any work on the roof of the suit premises save and except the work of repairing to keep the roof in good shape and condition. Binaguri had opposed such application, inter alia, on the ground that this Court has no jurisdiction to entertain the suit since the same is a suit for land. On this issue, the learned Judge observed in the order: “first, I will deal with the point of jurisdiction. This point of territorial jurisdiction has been taken by the said defendant in the written statement. It is subject to a decision at the time of trial. Appreciating the prima facie case made out by the plaintiff as recorded

in the order dated 11th May, 2001, Mr. Justice Banerjee passed the said order of injunction. In my opinion, appreciation of the prima facie case included prima facie appreciation of the territorial jurisdiction objection as well as the merits of the matter. Above all the said order is still in operation and must be enforced”.

15. Thereafter the suit was fixed for hearing on diverse dates. However, no appreciable progress was made. In July 2019, Goutam, upon coming to know of the death of the original defendant no. 1 in the suit, filed an application for substitution of the legal heirs of the deceased defendants. In November 2021, such application was allowed.

16. In the mean time Covid had set in. Upon resumption of regular functioning of the Courts, Goutam took out an application under Order 26 of the Code of Civil Procedure praying for appointment of a Commissioner for recording his evidence in the suit. The defendants contested such application, contending, inter alia, that this Court lacked territorial jurisdiction and therefore there could be no question of evidence being adduced in the suit.

17. By the judgment and order dated July 11, 2023, which is impugned in this appeal, the learned Single Judge disposed of Goutam’s application being IA no. GA 13 of 2022 holding that “the issue of territorial jurisdiction, at this stage, cannot be decided without taking any evidence or without any aid of evidence. Issue of territorial jurisdiction can be decided after taking of evidence and at the time of final hearing of the suit or at the time of passing of the judgment. It cannot be decided at this stage”. The learned Judge noted the submission made on behalf of Goutam that Goutam was fit and

ready to attend Court for getting himself examined and cross examined. The learned Judge observed that in view of such submission, the application had become redundant. The learned Judge disposed of the application reserving liberty to the petitioner to approach the Court with similar prayer as and when it may be necessary.

18. Binaguri has come up in appeal being aggrieved by the conclusion of the learned Single Judge that the issue of territorial jurisdiction can be decided only at the final trial.

19. Appearing for the appellant Binaguri, Mr. Aninda Kumar Mitra, learned Senior Counsel, took us through the averments in the plaint and the prayers. He submitted that the suit is manifestly a suit for land. It involves determination of title and recovery of possession of the suit premises which is admittedly situated outside the ordinary original civil jurisdiction of this Court. Interest in land has been claimed. If any relief claimed in the plaint has any impact on land, the suit would be 'a suit for land'.

20. Mr. Mitra relied on the following decisions:-

(i) ***Eden Infrastructure Pvt. Ltd. & Anr. v. Eden Realty Ventures Pvt. Ltd. & Ors., reported at AIR 2015 Cal page 18. Page 335.***

(ii) ***Tridandeeswami Bhakti Kusum Sraman Maharaj and Ors. v. Mayapore Sree Chaitanya Math and Ors., reported at AIR 1983 CAL 420.***

(iii) ***Sumer Builders Pvt. Ltd. v. Narendra Gorani, reported at (2016) 2 SCS 582.***

(iv) ***Maharaja Probirendra Mohun Tagore v. State of Bihar & Ors., reported at AIR 1959 CAL 767.***

- (v) ***Hindusthan Gas & Industries Ltd. and Anr. v. Adhish Chandra Sinha, reported at AIR 1981 CAL 307.***
- (vi) ***Steel Authority of India Ltd. v. Amiya Steel Private Limited., reported at AIR 2017 CAL 148.***
- (vii) ***Excel Dealcomm Private Ltd. v. Asset Reconstruction Company (India) Pvt. Ltd., reported at (2015) 8 SCC 219.***
- (viii) ***Dominion of India. v. Jagadish Prosad Pannalal, reported at AIR 1949 CAL 622.***
- (ix) ***Adcon Electronics (p) Ltd. v. Daulat, reported at (2001) 7 SCC 698 para 15.***
- (x) ***Sri. Athmanathaswami Devasthanam v. K. Gopalaswami Ayyangar, reported at, AIR 1965 SC 338 paras 13,14.***
- (xi) ***Hindusthan Zinc Ltd. v. Gujarat NRE Coke Ltd., reported at AIR 1999 SCC OnLine Cal 27 Para 15.***

21. Relying on the aforesaid authorities learned Senior Counsel argued that since the present suit is a suit for land, this Court lacks inherent jurisdiction to entertain, try or determine the suit. Such an issue must be decided at the threshold before the Court applies its mind to the merits of the case. If this issue is taken up by the Court along with the other issues pertaining to the merits, and finally the Court finds that indeed, the suit is one for land, the entire effort will be wasted. Further, no evidence need be recorded before deciding that issue since the established law is that the question whether or not a suit is a suit for land has to be decided on the basis of the averments made in the plaint of the suit. Mr. Mitra submitted

that since witness action has started, trial of the suit has begun. This is the appropriate stage for deciding the issue of suit for land.

22. Appearing for the plaintiff Goutam, Mr. Ranjan Bachawat and Mr. Dhruba Ghosh, senior Advocates, submitted that the application on which the learned single Judge passed the impugned order was an application made by Goutam for appointment of Commissioner to record Goutam's evidence. There was no scope for the learned Judge to decide the issue of territorial jurisdiction on such application. He could not do so. In fact he has not done so. He has merely deferred decision on that issue. Hence, the appeal is not maintainable since the impugned order has decided nothing.

23. The point of suit for land was raised initially in Binaguri's application being G.A. no. 914 of 1998. The learned Single Judge did not allow the application. The learned Judge permitted Binaguri to take such point as a preliminary point at the time of hearing of the suit. The Division Bench affirmed such order. Hence that issue cannot be raised again. The issue will be decided only after recording of evidence is complete.

24. Learned Senior Advocates for Goutam further submitted that after the amendment of the Code of Civil Procedure in 1976, Order 14 Rule 2 of the Code gives a discretion to the Court whether or not to decide the issue of jurisdiction as a preliminary issue even prior to recording of evidence. It is not mandatory upon the Court to decide an issue of jurisdiction as a preliminary issue.

25. Learned Senior Advocates further submitted that time and again Binaguri has taken out frivolous applications just to stall the hearing of the suit. The present appeal is yet another attempt of Binaguri to that end.

26. Learned Senior Advocates for Goutam relied on the following decisions:-

- (i) ***Shah Babulal Khimji v. Jayaben D. Kania, reported at AIR 1981 SC 1786. Para 114.***
- (ii) ***Shyam Sel & Power Ltd. v. Shyam Steel Industries Limited., reported at (2023) 1 SCC 634. Para 17.***
- (iii) ***Isha Distribution House Pvt. Ltd. v. Aditya Birla Nuvo. Ltd., reported at (2019) 12 SCC 205 paras 14, 19.***
- (iv) ***Ramesh B. Desai v. Bipin Vadilal Mehta., reported at (2006) 5 SCC 638.***
- (v) ***Usha Sales Ltd. v. Malcolm Gomes and Ors., reported at AIR 1984 BOM 60.***
- (vi) ***Sunni Central Waqf Board and others v. Gopal Singh Vishrad and others., reported at AIR 1991 All 89.***
- (vii) ***Sathyanath v. Sarojamani., reported at (2022) 7 SCC 644.***
- (viii) ***Smt. Madhabilata Dutta & Ors. v. Rameswar Prasad Gupta & Ors., reported at (1995) 1 Cal LJ 231 para 10.***

27. It was submitted that since December 17, 2015, when an order was passed on the injunction application of Goutam, this Court has been prima facie satisfied that it has territorial jurisdiction to entertain the suit. Binaguri earlier failed in its application for revocation of leave under Clause 12 of the Letters Patent. Presently there is no such application before the Court.

28. In reply, learned Senior Counsel representing the appellant submitted that the law regarding appealability has changed since the decision was

rendered in ***Shah Babulal Khimji's*** case. The Learned Single Judge has found that this Court has jurisdiction to hear the suit. Such order is appealable. Any decision touching the question of jurisdiction is appealable.

29. Mr. Mitra further submitted that as per the order dated August 11, 1998, passed by a Division Bench, the point of jurisdiction can be taken at the hearing stage. The suit is presently at the hearing stage. Therefore, under Order 14, Rule 2 of the Code of Civil Procedure, the point of jurisdiction could be and should be decided as a preliminary issue.

30. Mr. Mitra then submitted that the impugned order decides finally that the appellant cannot urge the point of jurisdiction as a preliminary issue. Such point is to be considered along with all other issues. This is in the nature of a preliminary judgment which is appealable going by the observations of the Hon'ble Supreme Court in paragraph 113 of the reported judgment in ***Shah Babulal Khimji's case***.

31. Learned Senior Counsel further submitted that the plaintiff, in reply to the second question in examination-in-chief, has categorically stated that the preliminary object of the suit is to recover possession of the suit premises. Therefore, clearly the suit is a suit for land.

32. Mr. Mitra submitted that whether or not a suit is a 'suit for land' is to be decided on the basis of averments made in the plaint only. Further, if a point of jurisdiction is raised, the same should be decided first by the Court before entering into the merits of the case. In this connection learned Senior Counsel relied on the following decisions:-

(i) ***Adcon Electronics Pvt. Ltd. v. Daulat & Anr., reported at (2001) 7 SCC 698 para 15.***

(ii) ***Eden Infrastructure Pvt. Ltd. & Anr. v. Eden Reality Ventures Pvt. Ltd. & Ors.***, reported at AIR 2015 Cal page 18.

(iii) ***Dominion of India v. Jagadish Prosad Pannalal***, reported at AIR 1949 CAL 622 para 11.

(iv) ***Sri. Athmanathaswami Devasthanam v. K. Gopalaswami Ayyangar***, reported at, AIR 1965 SC 338, paras 13, 14. (Volume 3, page 383).

(v) ***Hindusthan Zinc Ltd. v. Gujarat NRE Coke Ltd.***, reported at AIR 1999 SCC OnLine Cal 27 Para 15 (Volume 3, page 395).

33. Learned Senior Counsel then submitted that the concept of ‘suit for land’ within the meaning of Clause 12 of the Letters Patent, is different from the question of territorial jurisdiction of the Court. If a suit is a ‘suit for land’ and the land in question is situated outside the ordinary original civil jurisdiction of this Court, then this Court would lack jurisdiction over the subject matter of the suit.

34. Mr. Mitra then referred to the decision of the Hon’ble Supreme Court in the case of ***Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I and Anr.***, reported at (2004) 9 SCC 512 para 114 and submitted that the said decision widened the principles regarding appealability enunciated in ***Shah Babulal Khimji’s*** case.

35. Learned Senior Counsel submitted that an order involving jurisdiction of the Court is a judgment within the meaning of Clause 15 of the Letters Patent. In support of such submission, he relied on the decisions in the case of ***National Textiles v. Premraj Ganpatraj***, reported at (1957-58) 62

CWN 418 at 421, LHC and Steel & Allied Products Ltd v. Gerbueder Bohlar & Co., reported at 75 CWN 416 para 13, 17, 18.

36. In response to the argument of the respondent/plaintiff that the point of jurisdiction was not even involved in the application that was under consideration before the learned Single Judge, learned Senior Counsel argued that the point of jurisdiction was decided by the learned Judge independent of the application for appointment of Commissioner.

37. In rejoinder, learned Senior Advocates for the respondent/plaintiff submitted that in course of hearing of the application for appointment of Commissioner, the point of suit for land could not have been argued by the appellant. The appellant's application under Order 7 Rule 11 of the Code of Civil Procedure was dismissed in 1998. This implied that the point of 'suit for land' cannot be decided at the interlocutory stage. In other words, this Court, at an earlier stage held that only on the basis of the pleadings in the plaint, the issue of 'suit for land' cannot be decided. Evidence is necessary for such decision.

38. Learned Senior Counsel then submitted that the impugned order is not perverse in any manner. The learned Single judge has only fixed a date for hearing of the suit. The learned Judge did not decide any right of any of the parties by the impugned order.

39. It was then submitted that after its amendment, Order 14 Rule 2 of the Code of Civil Procedure mandates that the Court decides all the issues involved in a suit. The principle relief claimed in the suit is for setting aside of a collusive decree obtained by the appellant from this Court. Without such relief being granted, the other reliefs cannot be granted. Therefore, the

other reliefs are ancillary in nature. The decree under challenge in the suit being a decree of this Court, only this Court would have jurisdiction to entertain try and determine the suit. The appellant itself obtained the collusive compromise decree from this Court in respect of property situate outside the territorial jurisdiction of this Court.

Court's View

40. The respondent/plaintiff has questioned the maintainability of this appeal. Learned Advocate for the plaintiff argued that the learned Single Judge, by passing the impugned order, has decided nothing. No right of any of the parties to the suit has been decided, this way or that way. Hence, the order of the learned Judge does not qualify as a judgment within the meaning of Clause 15 of the Letters Patent and no appeal is maintainable under that provision of law. Since the order is also not appealable under Order 43 Rule 1 of the Code of Civil Procedure, the present appeal does not lie.

41. We are not inclined to agree with learned Advocate for the plaintiff. It is true that when Binaguri had filed an appeal being APOT no. 545 of 1998 against the judgment and order dated July 16, 1998, whereby a learned Single Judge did not allow its application for dismissal of the suit upon revocation of leave under Clause 12 of the Letter Patent and on the ground of limitation, the appeal Court had held the appeal to be not maintainable. A Coordinate Bench had held that the learned Single Judge had not decided any right of any of the parties but merely deferred consideration of the points of jurisdiction and limitation till the hearing stage.

42. However, the coordinate bench did not have the occasion to discuss the principles of law enunciated in **Liverpool's** case since that decision was not there at that time. Further, in **Shah Babulal Khimji's** case, the Hon'ble Supreme Court observed that judgments may be of three kinds – final, preliminary and interlocutory. It is not that only an order which puts an end to a legal proceeding is a judgment within the meaning of Clause 15. Even an interlocutory order passed by a learned Single Judge in a suit, may finally decide valuable rights of a party in so far as that forum is concerned. Any order which has the trappings of finality and which decides any right of a party would qualify as a judgment within the meaning of Clause 15.

43. An order refusing to allow the defendant's application for rejection of the plaint on any one of the grounds mentioned in Order 7 Rule 11 of the Code of Civil Procedure, has been held to be a preliminary judgment and, therefore, appealable under Clause 15 of the Letters Patent. In this connection one may refer to the decision of the Hon'ble Supreme Court in the case of **Liverpool & London S.P. & I Association Ltd. V. M. v. Sea Success I & Another, reported at (2004) 9 SCC 512.**

44. In the present case, the appellant/defendant no. 3 argued before the learned Single Judge that no order should be passed on the application for appointment of Commissioner since the suit itself is not maintainable in this Court. The suit is one for land and such land being situate outside the ordinary original jurisdiction of this Court, the suit itself should be dismissed since this Court lacks jurisdiction to entertain, try or determine the suit. In other words, the appellant argued a point of demurer before the learned Single Judge. Whether or not the appellant was entitled to or within

its right to argue such a point in the said application, is a different matter altogether. The fact is that the appellant did advance such argument. The learned Judge did not accede to the prayer made by the appellant for dismissal of the suit at that stage. The learned Judge held that the issue of territorial jurisdiction cannot be decided without recording evidence. His Lordship observed that:- “issue of territorial jurisdiction can be decided after taking of evidence and at the time of final hearing of the suit or at the time of passing of the judgment. It can be decided at this stage”. This was thus an order akin to an order refusing to reject the plaint on an application under Order 7 Rule 11 of the Code of Civil Procedure. Therefore, the principle of law laid down by the Hon’ble Supreme Court in the aforesaid case of **Liverpool & London S.P. & I Association Ltd. V. M. v. Sea Success I & Another, Supra**, would be attracted to the instant case thereby making the appeal maintainable.

45. Looking from another angle, the appellant/defendant no. 3 contended before the learned Single Judge that it had a right to have the issue of jurisdiction of this Court decided before any order was passed by the learned Judge on the plaintiff’s application for appointment of Commissioner to record evidence. The learned Judge negated such contention and held that the issue of jurisdiction can be decided only at the final hearing, after evidence is adduced by the parties. In other words, a right claimed by the appellant/defendant no. 3 was denied by the learned Judge, in effect holding that the appellant has no such right. Following the principles discussed in the case of **Shah Babulal Khimji**, this order, in our opinion, would qualify as a judgment, may be a preliminary judgment,

against which an intra Court appeal would be maintainable under Clause 15 of the Letters Patent.

46. The issue of maintainability of the appeal is therefore decided in favour of the appellant.

47. In so far as the merit of the appeal is concerned, we have recorded above that the appellant/defendant no. 3 had filed an application being GA No. 914 of 1998 for rejection of the plaint or for dismissal of the suit on the ground that it was a suit for land situate outside the ordinary original Civil Jurisdiction of this Court and also on the ground of the claim in the suit being barred by limitation. The learned Single Judge by a judgment and order dated July 16, 1998, opined that the points raised by the appellant/defendant no. 3 may be taken by it as preliminary points at the time of hearing of the suit. This order was upheld by the Division Bench in APOT no. 545 of 1998, by its judgment and order dated August 11, 1998. In other words, the Division Bench upheld the learned Single Judge's view that the points of jurisdiction of the Court and limitation should be decided at the final hearing of the suit. The Division Bench order was not challenged before the Hon'ble Supreme Court and therefore it attained finality. It would therefore not be open to the appellant/defendant no. 3 to insist that the point of jurisdiction be decided forthwith by the learned Single Judge without waiting till the stage of hearing. This point is *res judicata* by reason of the order of the learned Single Judge in the GA no. 914 of 1998 as upheld by the Division Bench Judgment and order in APOT no. 545 of 1998. It is no more *res integra* that the principles of *res judicata* apply also to different stages of the same suit.

48. Further, Order XIV Rule 2 of the Code of Civil Procedure after amendment by the Code of Civil Procedure (Amendment) Act, 1976, with effect from February 1, 1977, reads as follows:-

“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, any may deal with the suit in accordance with the decision on that issue.”

49. The provision of Rule 2(1) makes it mandatory for the Court, subject to the provision of Rule 2(2), to decide all issues framed in the suit. However, if it appears to the court that an issue of law is involved, which, if disposed of first, may result in disposal of the case or any part thereof, the Court **may** try the issue first and as a preliminary issue if that issue of law relates to the jurisdiction of the Court, or a bar to the suit created by any law for the time being in force. In other words, it has been left to the discretion of the Court as to whether or not an issue of law involving the jurisdiction of the

Court or a legal bar to the maintainability of the suit should be decided as a preliminary issue notwithstanding that a decision on that issue may dispose of the entire case or part thereof.

50. Therefore, there is no obligation on the Court to decide an issue of law of the kind mentioned in Order 2 Rule 2, as a preliminary issue or any corresponding right on a defendant to a suit to have such an issue decided as a preliminary issue.

51. The learned Single Judge was of the view that the issue of jurisdiction should be decided at the final hearing of the suit after evidence is recorded. We do not find such an opinion to be perverse so as to warrant interference by the appellate Court. However, since an issue of jurisdiction has been raised by the appellant/defendant no. 3, in our view, it may be sound exercise of discretion by the learned Suit Court to decide such issue as a preliminary issue before addressing the other issues at the hearing of the suit.

52. Several decisions have been cited by the parties. Eleven decisions have been cited by the appellant in support of its argument that this suit is one for land and the proposition that an issue of jurisdiction should be decided first before entering into the merits of a case and that whether or not a suit is one for land has to be decided on the basis of averments made in the plaint alone. There is no quarrel with such propositions of law. However, this does not mean and there is no law to the effect, that the question of jurisdiction must necessarily be decided as a preliminary issue even prior to recording of evidence.

53. We cannot also lose sight of the fact that the application before the learned Single Judge which was disposed of by the Judgment and order impugned in this appeal, was one for appointment of commissioner for the purpose of recording the plaintiff's evidence. The defendant no. 3 however agitated the point of lack of jurisdiction of this Court over the subject matter of the suit. In our view, it was proper for the learned Judge not to decide such issue on an application of the plaintiff, the scope of which was very limited. The issue of jurisdiction was completely beyond the scope of the application that was under consideration before the learned Single Judge.

54. In conclusion, we do not find any grave error or procedural irregularity or any other impropriety in the order under appeal so as to warrant interference by us.

55. We cannot say that the discretion exercised by the learned Single Judge in passing the impugned order is unreasonable or arbitrary or injudicious or that the order is perverse. If the view taken by the learned first Court is a plausible one, the appeal Court will not interfere only because it may have a different opinion. This appeal therefore fails and is dismissed along with the connected application being GA 1 of 2023. However, at whatever stage the learned Suit Court takes up for consideration the issues framed, i.e., whether before or after recording of evidence, in our opinion, the issue as to whether or not the instant suit is one for land, and any other issue of law falling within the scope of Order 14 Rule 2(2) of the Code of Civil procedure should be decided as preliminary issues.

56. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities

Arijit Banerjee, J.)

I agree.

(M.V. Muralidaran, J.)