Praduman Kumar Vs. Girdhari Singh and ors.

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Court : Rajasthan

Decided On : Mar-13-1969

Reported in : AIR1970Raj131; 1969()WLN139

Judge : C.B. Bhargava, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 14, Rule 2

Appeal No. : Civil Revn. No. 554 of 1968

Appellant : Praduman Kumar

Respondent : Girdhari Singh and ors.

Advocate for Def. : R.S. Purohit, Adv.

Advocate for Pet/Ap. : N.M. Kasliwal, Adv.

Disposition : Revision dismissed

Judgement :

C.B. Bhargava, J.

1. This is a defendant's revision application against an order of the Additional Civil Judge, Jaipur City whereby he decided to dispose of issues Nos. 4, 7, 8 and 10 along with other issues framed in the case after the evidence had been recorded.

2. It appears that plaintiff Girdhari-singh instituted the present suit on 29th August, 1967, for specific performance of contract of sale of a house, in the alternative, damages to the extent of Rs. 2500 and for cancellation of the sale deed executed in favour of non-petitioner No. 2 on the basis of an agreement of sale entered into between him and the petitioner on 5-10-1963. The petitioner denied the plaint allegations as also the agreement set up by the plaintiff. The learned Additional Civil Judge framed eleven issues in the suit and ordered that arguments will be heard on issues Nos. 4, 5, 7, 8 and 10 which in his opinion were preliminary issues. However, on the date on which arguments were to be heard, the learned Judge changed his opinion because the decision of this Court in Chhinga Ram v. Nihal Singh, 1963 Raj LW 101 = (AIR 1963 Raj 100) was brought to his notice. On behalf of the petitioner another decision of this Court in Prithvi Raj v. Munnalal, AIR 1957 Raj 112, was shown to the learned Judge, but he preferred to follow the decision relied upon by the plaintiff for the reason that it was a later decision. Accordingly, he passed the order against which the present revision application has been preferred.

3. It is contended on behalf of the petitioner that once the learned Additional Civil Judge had decided to determine the aforesaid issues as preliminary issues, he ought not to have reconsidered his previous order. It is also contended that the learned Additional Civil Judge ought to have followed the Division Bench decision in preference to the decision of a Single Judge even though it happened to be later in time. Learned counsel has

invited my attention to Order 14, Rule2 of the Code of Civil Procedure which according to the learned counsel is of mandatory nature and lays down that in a case where the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it will postpone the settlement of issues of fact until after the issues of law have been determined. Reliance is placed on AIR 1957 Raj 112, Gulabchand v. Kishanlal, (1951) 2 Raj LW 119 and Premier Automobiles Ltd, Bombay v. Laxmi Motors Co., Jodhpur, AIR 1960 Raj 208. The learned Additional Civil Judge has relied upon Chhinga Ram's case, 1963 Raj LW 101 = (AIR 1963 Raj 100) in which following observations were made by the learned Judge:

'This Court has pointed out on numerous occasions that, in appealable cases, the trial Court and the Court of first appeal must decide the case on all the issues, and that principle must, as a rule, be followed even though some of the issues arising in the case may be of law and may go to the very root of it, the reason being that there is always a possibility of the decision of the Courts below on the preliminary issues being reversed when the matter comes up to this Court, and then the appeal before it cannot be finally disposed of and the case has to be remanded because some issue or issues relating to fact have not been tried and decided by the Courts below. This short circuiting of procedure, more often than not, leads to considerable delay which is entirely avoidable and subjects the parties to unnecessary expense and harassment and is strongly to be deprecated.'

These observations were made in a case which was instituted by the plaintiff for recovery of money on the basis of an agreement which according to the defendant was a mortgage deed and being unregistered was inadmissible in evidence. The trial Court amongst others framed the following two issues:

1. Whether Ex. 1 was admissible In evidence.

2. Was the plaintiff's suit not maintainable on the footing of Ex. 1 and not supported by consideration, and determined these issues as preliminary issues. The trial Court as well as the first appellate Court came to the conclusion that Ex. 1 was inadmissible in evidence and that it did not contain any personal covenant to pay and thus dismissed the plaintiff's suit without deciding the other issue relating to consideration because the defendant had raised the plea that he had not received consideration for the document Ex. 1. In second appeal the learned Judge did not agree with the conclusion arrived at by the lower Courts and held that the document was a simple mortgage wherein there was an express promise to pay and, therefore, the plaintiff was not debarred in law for filing a suit for simple money claim based on personal covenant to pay. As the issue about consideration for the document had not been decided by the lower Court the case had to be sent back to the trial Court and It is in these circumstances that the above observations were made. The other earlier decisions of this Court to which reference has been made by the learned counsel for the petitioner were not brought to the notice of the learned Judge and if I may say so with great respect, the observations quoted above run counter to the decisions given in those cases.

In Prithvi Rai's case, AIR 1957 Raj 112 while discussing the scope of Order 14, Rule 2, the learned Chief Justice observed that:

'Order 14, Rule 2 provides for disposal of certain issues as preliminary issues. But there are two conditions which, in our opinion, must be fulfilled before it can be applied. The first condition is that the issue must be an issue of law, i.e., it should not be an issue either of fact or mixed fact and law, but an issue of law pure and simple. The second condition is that the Court should be of opinion that the case or any part thereof may be disposed of on that issue. This does not, In our opinion, mean that the issue is of such a nature that its decision may result in the disposal of the suit. What Order 14, Rule 2 requires, in our opinion, is that the Court should look at the issue of law, & if it is of opinion that prima facie the decision will go one way, namely, that the case or part of the case would come to an end, it should proceed to decide the issue as a preliminary issue.'

In Gulabchand's case, 1951-2 Raj LW 119 it was held that:

'The use of the word 'shall' in the above Rule shows that it is obligatory for the court to try the issues of law first if it is of opinion that the case or any part thereof may be disposed of on those issues only. It is, therefore, necessary for the trial Court to determine whether a case or part thereof can be disposed of only on the issue of law and unless it thinks that it cannot be so disposed of, it should not refuse to adopt this procedure simply to avoid piecemeal decision. This view finds support in AIR 1936 Pat 250. This Rule has been provided by law in order that the party at whose instance the issue of law is framed may not be put to unnecessary harassment and be compelled to produce evidence and wait till the completion of the whole trial, only to find later on that it was all unnecessary,'

4. The observations made by the learned Judge in Chhinga Ram's case, 1963 Raj LW 101 = (AIR 1963 Raj 100) should, in my opinion, be read in the context of that case. But if the learned Judge meant to lay down the above quoted principle for general application then I may say with the greatest respect, that the observations are too wide and are directly in conflict with the Division Bench decision of this Court In Prithvi Raj's case, AIR 1957 Raj 112 and would have the effect of rendering the provisions of Order 14, Rule 2 absolutely nugatory. The language of Order 14, 2 is quite clear and in a case where issues are purely of law which do not require any investigation into facts and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it is incumbent upon the court to determine the issues of law first. If this course is not adopted by the courts and the determination of the issues of law is postponed to be determined along with the issues of fact It will mean unnecessary inconvenience and expense to the parties and waste of time and labour of the court as well. In many cases if issues of law such as on a point of limitation, res judicata, jurisdiction or the suit being barred on the face of it by any law, arise and the court having regard to the facts and circumstances of the case, is of opinion, that the case or any part thereof will be disposed of on such issues, the court has no option having regard to the provisions of Order 14, Rule 2, but to determine those issues first. If on the other hand the court is of opinion that the issue of law cannot be determined without investigation into facts or the point of law raised is not clear or that the case or any part of it cannot be disposed of, the court may decline to determine the issues of law first. Therefore, the court, should address itself to these vital points and then decide whether the issues of law should be decided first or they should be decided along with the issues of fact.

5. In the present case the learned Additional Civil Judge did not applv his mind to the above questions whether the aforesaid issues were issues purely of law and whether the whole or any part of the case could be disposed of on the determination of those issues. He simply decided the matter on the basis of the decision in Chhinga Ram's case, 1963 Raj LW 101 = (AIR 1963 Raj 100).

6. It may however, be pointed out for the guidance of the subordinate courts that whenever conflicting judgments of this Court are produced before them, it is their duty to follow the judgments of the Division Bench in preference to the judgment of a single Judge unless the correctness of the former has been doubted by the Supreme Court. The reason is that even a Single Judge of this Court is bound to follow the decision of the Division Bench and in case he feels that the judgment of the Division Bench requires reconsideration, he has to refer the mat-ter to a larger Bench. Therefore the subordinate courts cannot give preference to a judgment of Single Judge over the decision of a Division Bench. The learned Additional Civil Judge in this case was quite in error when he preferred to follow the judgment of the Single Judge and disregarded the decision of the Division Bench of this Court merely on the ground that it was a later decision.

7. In this view of the matter the order passed by the learned Additional Civil Judge cannot be said to be correct. But the question is whether any interference is called for in the circumstances of the case. Having heard learned counsel for the parties, I am of the view that in the facts and circumstances of the case, no interference is called for.

8. The revision application is accordingly rejected. But in the circumstances of the case I make no order as to costs.