
Before Sat Pal, J

HARINDER KUMAR,—*Petitioner*

versus

M/S COROMANDAL FERTILIZERS LTD. & ANTOHER,—
Respondents

C.R. No. 363 of 1997

13th May, 1998

Code of Civil Procedure, 1908—0.14, Rl. 2(2)—Objection regarding territorial jurisdiction of Court raised—Trial of such objection as preliminary issue.

Held, that sub rule (2) of Rule 2 of order 14 carves out an exception to sub-rule (1) of Rule 2 of order 14 which lays down that 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. Sub-rule (2) of Rule 2 of order 14 clearly shows that the case or a part thereof may be disposed of on an issue of law only and that issue of law may be tried as a preliminary issue if it relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force.

(Paras 8 & 9)

Further held, that the issue with regard to territorial jurisdiction of the Court is an issue of law. It cannot also be disputed that in case the said issue of territorial jurisdiction is decided in favour of the defendants, the suit itself will be dismissed and the defendants then will not be required to undergo the ordeal of trial. Issue with regard to territorial jurisdiction should be decided as a preliminary issue.

(Para 10)

P.K. Gupta, *Advocate for the Petitioner.*

Kanwaljit Singh, *Advocate for the Respondents.*

SAT PAL, J

(1) This petition has been directed against the order dated 10th December, 1996 passed by Additional Civil Judge (SD) Rajpura. By this order, the learned trial court has allowed the application filed by respondent-defendants under order 14 Rule 2 (2) read with sections 20

and 151 CPC for treating issue regarding the territorial jurisdiction as preliminary issue. Notice of this petition was issued to the respondent.

(2) In this case, the petitioner-plaintiff has filed a suit against the respondent-defendant for recovery of Rs. 9,63,528-94 P along with interest at the rate of 18% per annum. In the written statement filed on behalf of the respondents-defendants, preliminary objection has been raised that the court has no jurisdiction to try, entertain and to adjudicate upon the suit filed by the petitioner. On the basis of the pleadings of the parties, the issues were framed by the learned trial court and one of the issues framed is with regard to the territorial jurisdiction of the learned trial court.

(3) After framing of the issues, the respondents-defendants filed an application under order 14 Rule 2(2) read with section 20 and section 151 CPC for treating the issues regarding territorial jurisdiction of the court as a preliminary issue. The said application has been allowed by the learned trial court,—*vide* impugned order dated 10th December, 1996.

(4) Mr. Gupta, the learned counsel appearing on behalf of the petitioner submitted that issue with regard to territorial jurisdiction involves disputed questions of facts and law in the present case and as such this issue could not be treated as preliminary issue. In support of his submission, the learned counsel has placed reliance on a Division Bench judgment of this Court in *Bhag Singh vs. Nek Singh* (1) and a single Bench judgment of this court in *M/s Saraswati Spinning Mills vs. M/s Gheru Lal Bal Chand* (2).

(5) Mr. Kanwaljit Singh, the learned counsel appearing on behalf of the respondents, however, submitted that trial court can treat an issue as a preliminary issue if it is of the opinion that the case or any part thereof can be disposed of on that issue and further the said issue relates to the jurisdiction of the court. He, therefore, contended that in the present case the learned trial court after examining the pleadings of the case has come to the conclusion that the issue of jurisdiction should be tried as a preliminary issue and as such this court in its jurisdiction under section 115 CPC should not interfere with such an order. In support of his submission the learned counsel has placed reliance on a judgment of this court in *Gurbaksh Singh vs. Gurbakshish Singh* (3). As regards the case of *Bhag Singh* (supra), the learned

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- (1) 1994 (3) Recent Revenue Report 271
(2) 1995 PLJ 572
(3) 1980 PLJ 572

counsel submitted that the facts in that case were different to the facts of the present case as in that case it was held that the issue of jurisdiction could not have been decided without affording the parties opportunity to lead evidence and as such the learned Single Judge was not justified deciding the said issue without affording the other party an opportunity to lead evidence in support of their contention.

(6) I have given my thoughtful consideration to the submissions made by the learned counsel of the parties and have perused the records of the case.

(7) Before dealing with the rival contention of the learned counsel of the parties it will be relevant to refer to Sub-rule (2) of Rule 2 of order 14 CPC which reads as under :—

“Order 14 Rule 2(1) xxx xxx xxx

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to :—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose, may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

(8) From the above, it is clear that sub rule (2) of Rule 2 of order 14 carves out an exception to sub rule (1) of Rule 2 of order 14 which lays down that 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.

(9) Sub rule (2) of Rule 2 of order 14 clearly shows that the case or a part thereof may be disposed of on an issue of law only and that issue of law may be tried as a preliminary issue if it relates to the jurisdiction of the court or bar to the suit created by any law for the time being in force and postpone the settlement of other issues until after that issue has been determined and may deal with the suit in accordance with the decision on that issue.

(10) It is not disputed that in the present case issue with regard to the territorial jurisdiction of the court is an issue of law. It can not also be disputed that in case the said issue of territorial jurisdiction is decided in favour of the defendants, the suit itself will be dismissed and the defendants then will not be required to undergo the ordeal of trial. No doubt, it may be a mixed question of facts and law, nevertheless where in the event of defendants succeeding on this issue, it could avoid the ordeal of trial. It will be, therefore, just and proper that this issue be treated as a preliminary issue. Keeping in view the facts and circumstances of the present case, under sub Rule (2) of Rule 2 of order 14, the learned trial court has come to the conclusion that the issue with regard to territorial jurisdiction should be decided as a preliminary issue. It can not be said that the said opinion is based on extraneous or irrelevant material. I am, therefore, of the opinion that such an opinion does not call for interference by this court in its jurisdiction under section 115 CPC. The view I have taken finds support from a Division Bench judgment of Madras High Court in *Mitsubishi France vs. Neyveli Lignite Corporation Ltd. and another* (4) and two decisions of this court in *Uggarsain vs. Massu and another* CR 3719 of 1996 (5) and *Meharban and another vs. Punjab Wakf Board and another* CR 2372 of 1997(6). Here reference may also be made to a judgment of the Supreme Court in *Tayabhai M. Bagasarwalla vs. Hind Rubber Industries Pvt. Ltd.* (7). In this case it was observed by the Hon'ble Supreme Court that the Court should decide the question of jurisdiction in the first instance. It is, however, made clear that the learned trial court shall afford the parties opportunity to lead evidence. if they so desire, before deciding the said issue.

(11) As regards the case of *Bhag Singh* relied upon by the learned counsel of the petitioner, I find that this case was decided on its own facts as in that case the parties were not afforded opportunity to lead evidence before deciding the preliminary issue.

(12) In view of the above discussion, the petition is dismissed with no order as to costs. The learned trial court shall, however, afford the opportunity to the parties to lead evidence if they so desire before deciding the preliminary issue with regard to territorial jurisdiction.

S.C.K.

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- (4) AIR 1985 Madras 300
(5) CR 3719 of 1996 decided on 22-4-97
(6) CR 2372 OF 97 decided on 30.3.98
(7) 1997 (2) R.C.R. Civil 473