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Thanda Bala Choudhury and Another Vs Birendra Kumar Choudhury

Civil Revision Petition No. 319 of 2000

Court: Gauhati High Court

Date of Decision: May 23, 2002

Acts Referred:
Assam Land and Revenue Regulation, 1886 â€" Section 154, 154(1), 62#Civil Procedure Code, 1908 (CPC) â€" Order 14 Rule 2(2)

Citation: AIR 2003 Guw 32 : (2002) 3 GLR 473 : (2002) 2 GLT 712

Hon'ble Judges: A.H. Saikia, J

Bench: Single Bench

Advocate: B.P. Kataki, M.K. Misra and P.P. Baruah, for the Appellant; K. Sarma, P.K. Aloke and H. Deka, for the Respondent

Judgement

A.H. Saikia, J.
Upon consideration of an application under Order 14, Rule 2, Sub-rule 2(a) & (b) C.P.C., preferred by the

defendant/respondent in T.S. No. 207/98 seeking the issues relating to cause of action as well as maintainability of the suit, being framed as Issues

No. 1 and 5, to be decided as preliminary issues before taking up other issues the learned Civil Judge (Sr. Division) by his order dated 11.7.2000

accepted the prayer of the Defendant/Respondent and those issues Nos. 1 and 5 were considered to be heard as preliminary issues before going

to decide the other issues. More so, the said learned Judge by his another Order dated 1.9.2000, while dealing with a seperate Petition under

order 14, Rule 5 read with Section 151 C.P.C filed by the Plaintiffs/Petitioners praying for framing two additional issues, i.e. Issue No. l (A) and

1(B), i.e., whether the Plaintiffs are entitled to get a decree for declaration of their right, title and interest over the property, left by late Hem

Chandra Choudhury as shown in Schedule "B" of the Plaint and whether the Plaintiffs are entitled to get a decree for recovery of khas possession

of the land as shown in Schedule "C" of the plaint, respectively deferred the prayer so made holding that it would be convenient to consider such

prayer for framing the additional issues only after the final decision of the preliminary issues so framed by the said Court by its order dated

11.7.2000 as already noted.

2. Both these orders dated 11.7.2000 and 1.9.2000 are the subject-matter of challenge in this Civil Revision.

3. The Petitioners as the plaintiffs have instituted the Title Suit No. 207/98 before the learned Civil Judge (Sr. Division) No. 2, Guwahati against

the Defendant/Respondent for declaration of right, title and interest over the suit land with a prayer inter alia for recovery of the possession. The

Respondent has contested the suit by filing written statement, Initially the Petitioners moved the Revenue Court for perfect partition of the suit land

claiming their respective shares thereon. Having failed to get their grievances well redressed, the instant Civil Suit has been preferred by the

Petitioners. The learned Civil Judge (Sr. Division) upon hearing the learned counsel for the parties has framed the following 8 issues :

(1) Whether there is any cause of action in the plaintiffs" suit ?

(2) Whether the suit is bad for non-joinder of necessary parties ?

(3) Whether the suit is correctly valued and the proper Court fee has been paid ?

(4) Whether law of limitation bars the suit ?

(5) Whether the suit is maintainable in the present form ?

(6) Whether after the death of Hem Chandra Choudhury the predecessor in interest of the parties in this suit there was any amicable partition

between the parties and whether the parties acted upon said partition and revenue authority thereafter made partition on the prayer of the plaintiffs

of their respective shares to the suit land ?

(7) Whether the Plaintiffs are entitled to get the relief as prayed for ?

(8) To what relief if any the parties are entitled ?

4. The only question that needs to be answered here is whether the learned Civil Judge has committed any illegality or irregularity in holding that in

view of provision u/s 154 of the Assam Land Revenue Regulation (for short, the Regulation), the issue of cause of action and maintainability of the

suit as mentioned in Issues No. 1 and 5 above can be decided as preliminary issues where only material proposition of law is involved.

5. I have heard Mr. B.K. Katakey, learned sr. counsel for the Petitioners and also heard Mr. K. Sarma, learned counsel appearing on behalf of

the Respondents.

6. Challenging the impugned orders, Mr. Katakey the learned sr. counsel has contended that both the impugned orders ex-facie suffers from gross

illegality and jurisdi ctional error. He has put forward his arguments to dislodge these impugned orders mainly on two grounds - firstly, it is argued

that the learned Civil Judge has committed a grave error of law in observing that since two perfect partition cases between the parties in respect of

the suit land have already been disposed of by the learned Deputy Commissioner and as per defendants/respondents, both the plaintiffs and

defendants are possessing their land separately as per partition, in view of Section 154 of the Regulation, the jurisdiction of the Civil Court from

taking congnizance of the allegation made in the present Suit by the Plaintiffs/Petitioners is barred and as such, not maintainable having no cause of

action and accordingly such issues of cause of action and maintainability of the suit have been taken to be decided as preliminiary issues, Mr.

Katakey has contended that the application of provision of Section 154 of the Regulation has, on the face of the material available on record, no

applicability, in the present case inasmuch as, the instant suit has not been filed for any perfect partition but only for declaration of right, title and

interest over the suit land. Though earlier, the Petitioners approached the Revenue Court, having failed to get any relief therein the instant Title Suit

has been instituted against the Respondents. According to him, once a suit is filed for declaration of right, title and interest, the bar imposed u/s 154

of the Regulation does not come into play.

7. A catena of judicial decisions has been referred by Mr. Katakey to drive home his submission. In Dandiram Nath and Anr. v. Mihiram Nath

Chamua decided on 13.11.1953 reported in 1 Unreported cases (Assam) 255 this Court speaking through Justice Sarjoo Prasad, C.J,

categorically ruled that Section 154 cannot deprive a man of his title to the land. The mere fact that the lands have been distributed or revenue

allotted will not confer any title on them and it would be always to the Civil Court to adjudicate upon the question of title irrespective of the

provisions of Section 154. Dealing with a case where the Plaintiffs instituted suit for declaration of title and confirmation of possession or in the

alternative recovery of possession, the Court in paragraph-3 of the said ruling observed as follows :-

3. On behalf of the appellants, however, it has been argued that Section 154(1)(f) of the Assam Land and Revenue Regulation is a bar to the

institution of the suit. Section 154 says that except where otherwise expressly provided in this Regulation or in Rules framed thereunder, no Civil

Court shall exercise jurisdiction in any of the matters enumerated in the various clauses of the section, one of them being Clause (f) which relates to

the distribution of land or the allotment of the revenue on partition. The distribution of land or the allotment of the revenue may very well stand, but

I do not see how Section 154 can deprive a man of his title to the land. If the defendants had no title thereto, then the mere fact that the lands have

been distributed or revenue alloted, will not confer any title on them, and it would be always open to the Civil Court to adjudicate upon the

question of title irrespective of the provisions of Section 154, A reference in this connection may be made to a decision of the Calcutta High Court

in ""Mt. Rukeya Banu and Ors. v. Mt. Nazira Banu and Ors. (1928 Cal. 130) where it was pointed out that a partition, whether perfect or

imperfect, of revenue-paying properties must be made by the Revenue authorities. This follows from a perusal of Section 96 with Section 154(1)

(e) of the Assam Land and Revenue Regulation. But the jurisdiction of the Civil Court to determine the right of the parties to the property in dispute

as well as shares to which they are entitled has not been taken away by the Regulation in question, and it is for the Civil Court to decide whether

the property is or is not liable to partition. The same view applies to other clauses of Section 154. In the circumstances, I find no substance in the

point urged by the learned counsel for the appellant. In my opinion, the appeal is without any merit and must be dismissed with costs and the

decision of the Court of Appeal below should be maintained.

8. In the case of ""the State of Assam v. Sifat Ali and Ors."" reported in AIR 1967 gau 3 a Division Bench of this Court also held that Section

154(1) (a) of the Regulation does not debar the civil court from entertaining the suit based on title to property.

9. In another case reported in (1984) 2 G.L.R. 8 (Ka Trily Tariang v. U. Resdrikson Lyngdoh and Ors.) it was held by this Court that Section

154(1) does not preclude the Civil Court to entertain a suit based on title to the property. It was observed that matters within the jurisdiction of the

Revenue authority or Courts could be decided by them but no such decision can take away the jurisdiction of the Civil Court when a person having

a right to an asset claimed entitlement to it and sought a declaration of his right in the Civil Court notwithstanding the provisions contained in

Section 154(1) of the Regulation.

10. A Special Bench of this Court in "Daulatram Lakhani v. State of Assam and Ors." reported in 1989 (1) G.L.J. 37 speaking through Hon"ble

Hansaria J. in paragraph 22 of the judgement held that Civil Court"s jurisdiction would not be barred where the plaintiff seeks declaration of his

right over the land from which he is sought to be evicted.

11. Again in Sukumari Dev and Ors. v. On the death of Manindra Ch. Dev his legal heirs Madan Dev and Ors., reported in (1991) 1 G.L.R. 236,

our High Court had the occasion to deal with both Sections 62 and 154 of the Regulation wherein the question of jurisdiction of the Civil Court

came up in deciding a dispute regarding title of her property and cancellation of mutation in the Revenue record. On careful perusal of both

Sections 62 and 154 it was clearly observed that the Civil Court is the best authority to decide the title of the property.

12. In a recent decision in Urmila Bala Das v. Bhubaneswar Das and Ors. reported in (2002) 1 G.L.T. 176 this Court observed that suit for

declaration of title and injunction is never barred by Section 154(1) of the Assam Land and Revenue Regulation.

13. Advancing his second ground of attack, the learned Sr. counsel has urged that Issues No. 1 and 5 cannot be framed as preliminary issues as

both the issues relating to mixed question of facts and law and as such, framing of such issues as preliminary issues shall be totally contrary to

Order 14 Rule 2 (2), C.P.C. It is submitted that it is the requirement of law that all the issues being framed should be decided at a time. To

substantiate his such submissions, Mr. Katakey has drawn attention of this Court to the judicial authorities rendered in " Lufthansa German Airlines

Vs. Vij Sales Corporation, and "National Air Port Authority v. Paradise Hotel & Restaurant" reported in 2000 (2) GLT 87.

14. In Lufthansa"s case (supra) where the question of limitation was decided as a preliminary issue, the Supreme Court disapproved the decision

of a suit on a preliminary issue under Order 14, Rule 2 C.P.C. and insisted that normally all the issues should be decided while disposing of the

suit. It was held that Sub-Rule (2) of Rule 2 of the Order 14 is an exception where a suit can be disposed of on the question of law only.

15. In National Air Port Authority"s case (supra) this Court held that issue relating to jurisdiction cannot be decided as preliminary issue because

such an issue involves not only question of law but also question of fact.

16. The learned counsel appearing for the Respondent, Mr. K. Sarma justifying the passing of the impugned orders, has categorically stated that

since the matter involved in the instant case basically relates to perfect partition which has been duly effected between the parties by virtue of the

order of the Revenue Court, the same issue now cannot be re-agitated before the Civil Court taking a plea that the plaintiffs/Petitioners have

claimed for a decree of right, title and interest over the land in question and as such, the said suit itself is barred in terms of Section 154 of the

Regulation. Drawing attention of this Court to Sub-clause (d) of Section 154 of the Regulation, Mr. Sarma has submitted that the provisions of law

is very clear as regards. the claim of person effecting perfect partition inasmuch as the Civil Court shall not have jurisdiction to take cognizance to

entertain any claim relating to perfect partition. His further contention is that as the Civil Court had no jurisdiction to try the present suit, there is no

illegality in framing Issues No. 1 and 5 as preliminary issues to decide those before taking up the other issues. According to him, if the Court is

prima facie satisfied that its jurisdiction is wanting and there is no cause of action to go to the trial of ths suit. Order 14, Rule 2, Sub-Rule 2(a & b)

C.P.C. does not debar the framing of preliminary issues on the point of cause of action as well as maintainability as is done in the present case.

17. I have gone through the impugned orders passed by the learned Civil Judge. On perusal of the same I am satisfied that the issue involved in the

present case has arisen out of a mixed question of facts and law and accordingly both the orders suffers, from infirmity and illegality. In order to

discuss the reasonings on my such findings, I would like to refer the relevant provisions of law laid down under the Regulation as well as C. P. C.

18. The Sections 154 & 62 of the Regulation provides as follows :

154. Matters exempted from cognizance of Civil Court - (1) Except when other wise expressly provided in this Regulation, or in rules issued

under this Regulation, no Civil Court shall exercise jurisdiction in any of the following :

(a) .....

(b) .....

(c) .....

(d) claims of persons to perfect partition :

(e) .....

(n) .....

62. Saving clause. - Nothing contained in this Chapter and nothing done in accordance therewith shall be deemed to -

(a) preclude any person from bringing a suit in the Civil Court for possessing of, or for declaration to his right to any immovable property to which

he may deem himself entitled, or

(b) render the entry of any land in any register under this Chapter as revenue-free an admission on the part of the Government of the right of the

person in whose name the land may be entered, or an admission of the validity of the title under which the said land is held revenue-free.

Order 14 Rule (2) reacts as follows :

Court to pronounce judgement 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 judgement on all issues.

(2) Where issues both of law and 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.

19. Keeping in view the above cited authorities relating to the jurisdiction of Civil Court u/s 154 of the Regulation and also on ordinary reading of

the provisions of Section 154 as well as Section 62 which is also a saving clause as noted above, it can be safely said that the legal position is well

settled that Civil Court has the jurisdiction to agitate upon the matter relating to title over the property. It is correct that if any claim is made as

regards perfect partition, no Civil Court shall exercise its jurisdiction as envisaged u/s 154(1)(d) of the Regulation. Section 154 of the Regulation

provides that except where otherwise expressly provided in this Regulation or in Rule framed thereunder, no civil court shall exercise the

jurisdiction in any matter mentioned in the various clauses under the Section including Clause (d) which relates to claim of person to perfect

partition. Revenue Court has been vested with the power to effect the partition whether perfect or imperfect, of the revenue paying properties. But

at the same time, jurisdiction of the Civil Court to determine the right of the parties to the properties in dispute as well as the shares of which they

are entitled to has not been taken away by the Regulation. In the instant case though the matter was earlier agitated before the Revenue Court for

effecting perfect partition, the Petitioners, having failed to get adequate relief, approached the Civil Court by filing suit in question for declaration of

right, title and interest over the suit land. In such premises I do not find any reason how this Section 154 can debar the Petitioners claiming to the

title of the land in question from approaching the Civil Court. Section 62 also clearly vests a right upon the person to prefer a suit to the Civil Court

for declaration of his right to any property. Therefore, I find sufficient force in the submission of the learned counsel for the Petitioner and

accordingly, I am disinclined to approve the views expressed by the learned Civil Judge in the Impugned orders, I am of the considered view that

the Civil Court is the absolute authority to adjudicate a dispute relating to the title and interest over the immovable property.

20. Now coming to the question of framing of preliminary issues, this Court in view of the clear and unambiguous language of Sub-Clause (2) Rule

(2) of Order 14 CPC and having regard to the authorities cited herein above, unhesitatingly holds that a issue can be considered and decided as a

preliminary issue if it is an issue of law only and on the case or part of it can be disposed of. But mixed question of fact and law do not permit

framing of preliminary issues requiring the same to be decided before the decision of all other issues. Issues relating to jurisdiction and bar of Suit,

only which have been permitted to be tried as preliminary issues, must be pure question of law as distinguished from mixed question of law and

facts Under Rule (2) the Court is bound to try all the issues at a time in the suit subject to specific exception relating to jurisdiction and bar of the

suit, in which two cases only the Court may try those issues in its discretion first as preliminary issues of law. In the instant case, the learned Civil

Judge might have lost sight of this settled position of law.

21. Since this Court has dis-approved the question of framing of preliminary issues vide impugned order dated 11.7.2000, it is observed that there

is no bar for framing of additional issues, prayer for which has been deferred by the impugned order dated 1.9.2000 and accordingly this Court

feels that those issues as indicated in the impugned order dated 1.9.2000 needs be framed for proper adjudication of the case in hand.

22. Consequently, this Revision Petition succeeds. Both the impugned orders are hereby set aside and quashed.

23. The learned Civil Judge is directed to frame those additional issues namely (A). "Whether the Plaintiffs are entitled to get a decree for

declaration of right, title and interest and claims over the property left by late Hem Chandra Choudhury as shown in schedule "B" of the plaint ?"

and (B) "whether the Plaintiffs are entitled to get a decree for recovery of khas possession of the land as shown in Schedule "C" of the plaint ? as

reflected in his order dated 1.9.2000 and thereafter to decide all the issues so framed in the suit. Considering the request of the learned counsel for

the parties for early hearing of the matter the learned Judge is also directed to make an endeavour to dispose of the entire suit at an earliest

possible in accordance with law. Since this order has been-passed in presence of the learned counsel for the parties, both the Plaintiffs/Petitioners

and defendant/respondent are directed to appear before the learned Civil Judge (Sr. Division) No. 2, Kamrup, Guwahati on or before 5.8.2002 to

obtain further orders.

LCR be sent forthwith.