

(1967) 07 BOM CK 0011

Bombay High Court

Case No: O.C.J. Suit No. 96 of 1961

Sharanappa alias
Sharanabasappa Tipama

APPELLANT

Vs

Veerappa R. Maranbassari

RESPONDENT

Date of Decision: July 18, 1967

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 2

Citation: (1968) 70 BOMLR 397 : (1968) MhLj 629

Hon'ble Judges: Vimadalal, J

Bench: Single Bench

Judgement

Vimadalal, J.

This is a suit in which the plaintiff bases his claim on a partnership which is denied by defendant No. 1, or, in the alternative, on co-ownership of certain property, which is also denied by defendant No. 1 who claims the same as his own.

2. The suit reached hearing before me at about 1 p.m. yesterday, and after pleadings were read, issues were settled some time after the luncheon recess. Thereafter, Mr. M.H. Shah, who appears for the plaintiff, stated that he desired to open the plaintiff's case, which he is entitled to do under Order XVIII, Rule 2 of the Code of Civil Procedure. He handed in four compilations containing in the aggregate about 544 pages of correspondence and other documents and, after stating a few dates, he started taking me through relevant portions of various letters, copies of which were to be found in those compilations. Mr. Shah has contended that he is entitled to take me through the documentary evidence on which he relies for proving the plaintiff's case in the course of his opening.

3. When Mr. Shah continued to do so this morning, I asked him whether he was going to refer to the correspondence, to which he was now drawing my attention, again in the course of his concluding address, to which he answered in the

affirmative. I also asked Mr. Shah to satisfy me that, in the course of the opening of the plaintiff's case, he was entitled not merely to give me a broad outline of his client's case and indicate the evidence by which he proposed to prove the same, but also to take me through substantial portions of the evidence which would be a matter of proof. Mr. Shah's contention is that he is entitled to do so, first, under the provisions of Order XVIII, Rule 2 of the Code of Civil Procedure, secondly, on the ground that it is the general practice that has been followed in this Court and, thirdly, on the ground that it is in accordance with the prevailing practice in England which is set out by Halsbury (3rd edn., Vol. 3, para. 103, pp. 68-69).

4. I will proceed to deal with each of these grounds urged by Mr. Shah in support of his contention on the point, as I feel that it is necessary to lay down some limit to the right of the plaintiff's counsel to open his case. It may be mentioned that there is nothing unusual in the present case which would necessitate a very long opening of the case. It may be that the mass of evidence that is sought to be led by one or the other of the parties is considerable, but the case as such presents no unusual or important features.

5. The application of Order XVIII, Rule 2, to Chartered High Courts is not excluded by Order XLIX, Rule 3, of the Code of Civil Procedure, and the scope of the right to open the plaintiff's case must be found from the terms of Order XVIII, Rule 2, itself. Order XVIII, Rule 2, Code of Civil Procedure, lays down that, on the day fixed for the hearing of the suit, or any other day to which the hearing is adjourned, the party having the right to begin "shall state his case and produce his evidence" in support of the issues which he is bound to prove. The expression "state his case" cannot, in my opinion, mean, as a matter of plain language, anything more than giving a general outline of the plaintiff's case and perhaps indicating in a general manner the evidence by which that case is sought to be proved. The passage from Halsbury (3rd edn., Vol. 3, para. 103, pp. 68-69), on which Mr. Shah has relied, far from supporting the contention of Mr. Shah, supports me in the conclusion at which I have arrived on a plain reading of Order XVIII, Rule 2, of the Code of Civil Procedure. It is stated in the said passage in Halsbury that the object of an opening is to give to the Court a general notion of what will be given in evidence, and that counsel in opening states the facts of the case, the substance of the evidence he is to adduce and its effect on proving his case, and remarks upon any point of law involved in the case. Nothing that is stated by Halsbury in the said passage would justify counsel in taking the Court through relevant portions of hundreds of pages of correspondence in the course of opening his client's case, as Mr. Shah has claimed he is entitled to do. Mr. Shah has also relied upon what he states is the prevailing practice on the Original Side of this Court, but, I am afraid, if there was any practice of the plaintiff's counsel reading through relevant portions of the entire correspondence between the parties, it would be contrary to the plain terms of Order XVIII, Rule 2 of the Code of Civil Procedure. To my knowledge, no such practice exists. The mere fact that, in some cases which are of unusual complexity or importance, such a course might be

permitted by the Court as a matter of convenience, cannot establish any such practice. There is good reason why Order XVIII, Rule 2, of the CPC does not permit the plaintiff's counsel to read through the correspondence. To permit him to do so would mean that the correspondence would have to be read twice over, once in the opening of the plaintiff's counsel and again in his concluding address, or perhaps four times, inasmuch as the defendant's counsel, in that event, would also be entitled to read over the correspondence in his opening as well as in his address. Such a course would involve an enormous waste of the Court's time. It has, no doubt, been the practice of counsel to refer in opening the case to some important documents on which particular reliance may be placed, and even to read them, but that might be permissible as a convenient and even an expeditious mode of stating the substance of the evidence which counsel proposes to lead on behalf of his client, which he is entitled to do, as stated in the passage from Halsbury set out above. In my opinion, what Mr. Shah has proposed to do, however, goes far beyond that.

6. I, therefore, hold that, in opening the case of his client, Mr. Shah is not entitled to do anything more than to state the broad outline of his client's case, to indicate in a general manner the evidence by which he proposes to prove the same, and to read relevant portions of some important documents on which particular reliance is placed by him for the purpose of proving his client's case.