

(1992) 1 OLR 154

Orissa High Court

Case No: Civil Revision No. 64 of 1989

Sri Ainthi Dalabehera
and Others

APPELLANT

Vs

Government of Orissa
and Others

RESPONDENT

Date of Decision: Nov. 11, 1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 14 Rule 2, Order 14 Rule 2(2), Order 7 Rule 11

Citation: (1992) 1 OLR 154

Hon'ble Judges: R.C. Patnaik, J; K.C. Jagadeb Roy, J

Bench: Division Bench

Advocate: K. Patnaik and L. Pradhan, for the Appellant; A.G. and Addl. Standing Counsel for O.Ps. 1 to 4, 6 and 7 and R.K. Rath, B.K. Nayak and B.R. Sarangi for O.P. 5, for the Respondent

Final Decision: Allowed

Judgement

R.C. Patnaik, J.

Aggrieved by an order dated 5-1-1989 passed by the Subordinate Judge, Bhubaneswar, in Title Suit No. 190 of 1985

directing the issue as to whether the suit had been undervalued to be taken up and decided as a preliminary issue, the plaintiffs have invoked the

revisional jurisdiction of this Court u/s 115 of the Code of Civil Procedure.

2. In respect of 5.21 acres of land the plaintiffs sought declaration of their title and for a declaration that the entry of the names of the defendants in

the Record-of-Rights was erroneous and for permanent injunction. They valued the articles for 2 lacs for the purpose of Court-fee and jurisdiction.

The defendants challenged the valuation put by the plaintiffs alleging that the suit had been grossly undervalued. Originally six issues were framed

and parties went to trial. After closure of the plaintiffs evidence, an application was filed on behalf of the defendants stating that an issue as to the

undervaluation of the plant be struck having regard to the plea taken in the written statement and the same be taken up as a preliminary issue. On

the said application, issue No. 7 was framed as hereunder:

7. Is the suit undervalued?

and the learned Subordinate Judge decided that the said issue would be taken up and decided as a preliminary issue.

3. Shri K. Patnaik the learned counsel for the petitioner, has urged that the order is contrary to the provisions contained in Order 14 Rule 2 of the

Code of Civil Procedure, the question being neither a pure question of law nor a question relating to the jurisdiction of the Court or a bar to the suit

created by any law for the time being in force and relied upon two decisions of this Court, namely, Madhabananda Ray and Anr. v. Spencer and

Company Ltd. 1987 (II) OLR 39, 64 (1937) CLT 560, and B.N. Dash and six Ors. v. Bijay Ketan Mohanty 53 (1984) CLT 311.

4. The learned Advocate-General, on the other hand, has contended that the plaint was liable to be rejected under Order 7, Rule 11 of the CPC if

the relief claimed was undervalued and the plaintiffs on being required by the Court to correct the valuation within the time fixed by the Court,

failed to do so. Hence, a question of valuation of the relief can and should be disposed of as a preliminary issue. He has urged that the two

decisions of this Court relied up on by the counsel for the petitioners have not taken into consideration the scope and impact of the provisions

contained in Order 7, Rule 11 since the question did not arise in those cases for consideration.

5. Having regard to the importance of the question involved, this matter has been referred to a Division Bench for decision and this is how it has

come before us.

6. The objects and the reasons for change introduced by the Amendment Act, 1976 and the mischief that was sought to be cured have been

noticed in the cases of Madhabananda Ray (supra) and B. N. Dash (supra). The position of law as regards the scope of Order 14, Rule 2 prior to

its amendment was considered by the Supreme Court in Major S.S. Khanna Vs. Brig. F.J. Dillon, , and it was also the settled position of law prior

to amendment that in appealable cases, the Court should as far as possible decide on all the issues joined since piecemeal trial of some, might lead

to protracted litigation causing harassment to parties. With a view to avoiding the aforesaid mischief, Order 14, Rule 2 was amended as under :

Rule 2. Court to pronounce judgment on all issues :

(1) Notwithstanding that a case may be disposed of on 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, and may deal with the

suit in accordance with the decision of that issue.

Whereas under the law prior to its amendment the Court was mandated try issues of law in the first instance and to postpone trial of issues fact

until after the issues of law were determined, after the amendment the Court has been mandated that notwithstanding that a case might be decided

on a preliminary issue, the Court has to pronounce in Sub-rule (2) of Rule 2 of Order 14 Which relaxes the embargo to a limited extent by

conferring a discretion on the Court to try an issue as a preliminary issue where it is of the opinion that the case or any part thereof might be

decided on an issue of law if the issue of law relates the jurisdiction of the Court or a bar to the suit created by any law the time being in force.

7. It is now, therefore, the settled-law that if the issue is an issue of fact or an issue of fact and law, the same cannot be tried as a preliminary issue.

So also if the issue is a question of law but does not relate to the jurisdiction of the Court or a bar to the suit created by any law for the time being

in force, it cannot be tried as preliminary issue. The issue as to the jurisdiction of the Court involving consider-on of facts would not be purely an

issue of law relating to jurisdiction.

8. What is the scope of Order 7, Rule 11 of the CPC and its impact on Order 14, Rule 2(2) of the CPC ? Order 7, Rule 11 reads as under:

Rule 11. Rejection of plaint.

The plaint shall be rejected in the following cases :

(a) where it does not disclose a cause of action ;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time fixed by the

Court, fails to do so ;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiency stamped, and the plaintiff, on being required by the

Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so ;

(d) where the suit appears from the statement in the plaint to be barred by any law :

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless

the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the

valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would

cause grove injustice to the plaintiff.

We are here concerned with Clause (b) of Rule 11.

9. The contention of the counsel for the petitioners is that Order 7, Rule 11 has no application when the issues have been struck and the plaintiffs

have already closed their evidence. The law is well-settled that the provisions contained in Rule 11 of Order 7 are imperative and can operate at

any stage of the suit. In the decision of the Supreme Court in Samar Singh Vs. Kedar Nath alias K.N. Singh and Others, , it is observed that the

provisions contained in Order 7, Rule 11 can be applied at the threshold of the proceeding and can also be applied ""at any stage of the subsequent

proceeding."" There the plea was, absence of cause of action covered by Clause (a) and a motion was made for rejection of the election petition

after settlement of issues. The decision of the Gujarat High Court in Devnarayan Ramsumar Tewari Vs. State of Bombay now Gujarat and

Another, , taking a view that a motion for rejection of the plaint could not be made after issues had been framed, was overruled. The aforesaid

decision of the Supreme Court, therefore, is an authority for the proposition that on application of Order 7, Rule 11 a plaint can be rejected at any

stage, i.e. in the suit or at any stage of subsequent proceeding. The next question is : Whether or not the plea for rejection of plaint on the ground

that the relief claimed was undervalued should have been tried as a preliminary issue ?

10. The learned Advocate General has contended that the provision contained in Order 7, Rule 11 being an independent provision mandating the

Court to reject the plaint, if the requirements contained in Clause (b) are not satisfied the provisions contained in Order 14, Rule 2 (2) are not

attracted.

11. We cannot agree with the aforesaid submission of the learned Advocate-General. If parties have joined issues on questions of fact or law,

determination thereof has to be in accordance with the provisions contained in Rule 2 of Order 14 and in no other manner. Where on a reading of

the plaint the Court is of the opinion that the suit is undervalued, it shall, as required by Order 7, Rule 11 call upon the plaintiff to correct the

valuation within the time fixed by it and on his failure to do so, shall reject the plaint. This is a case where the plaint itself discloses undervaluation. It

is manifestly clear from the provisions contained in Order 7, Rule 11 (b) that a Court has to come to a finding that the relief claimed has been

undervalued, which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief and after determination

of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be given by the Court and if the plaintiff does not

correct the valuation within the time allowed, the plaint is liable to be rejected.

12. In many types of suits, it is not possible for the Court at a preliminary stage to determine the value of the reliefs, for example in a suit for

accounts. It has been observed in Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal,

...Indeed, in a suit for accounts it is also difficult for the Court to come to a finding even as to the approximate correct valuation of the relief. In

such a case the Court has no other alternative than to accept plaintiff's valuation tentatively.

...to put a valuation on the relief ignoring such objective standard, might be a demonstratively arbitrary and unreasonable valuation and the Court

would be entitled to interfere in the matter.

It has been further observed :

So far as suits coming u/s 7(iv) of the Court-fees Act are concerned, the Legislature has left the question of valuation of the relief sought in the

plaint or memorandum of appeal to the plaintiff. The reason is obvious. The suits, which are mentioned u/s 7(iv) are of such nature that it is difficult

to lay down any standard of valuation.

In Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, through Sebaitis Chandeshwar Prasad and Meshwar Prasad and Another, .

...in a suit for declaration with consequential relief falling u/s 7(iv)(c) of the Court-fees Act, 1870 the plaintiff is free to make his own estimation of

the reliefs sought in the plaint and such valuation both for the purposes of Court-fee and jurisdiction has to be ordinarily accepted, it is only in cases

where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the

plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same...

13. The suit in question is one u/s 7(iv)(c) of the Court-fees Act. Therefore, the plaintiff has the option to value the reliefs both for the purposes of

Court-fee and jurisdiction. Barring very exceptional cases where contradictory in pleadings disclose undervaluation, it is not possible for the Court

at a preliminary stage to determine the value of the reliefs. Where, the defendant has questioned the valuation put as unreasonable, arbitrary and

grossly low and demonstratively undervalued, that raises an issue for decision. Hence, Order 14 of the CPC is attracted. The issue has to be

decided on evidence to be led by the parties. Hence, it is not a pure question of law relating to either jurisdiction of Court or to any bar to the suit

created by law for the time being in force, but it is a pure issue of fact, namely, whether the suit has been grossly undervalued and if the valuation

put by the plaintiff is unreasonable, arbitrary and grossly low.

14. We may now notice new decisions cited at the Bar. Even prior to amendment it was held in *Nanu Ram and Others Vs. Vardichand* and

Another, , that the question whether the Court-fee was sufficient which depended upon the valuation of a wall was a question of fact and could not

be tried as a preliminary issue. The learned Advocate General has relied upon a decision in *Resham Lal and Others Vs. Anand Sarup* and

Another, , wherein it was held that an issue regarding Court-fee and jurisdiction should be decided as a preliminary issue. But, that decision was

examined under the law prior to its amendment and has been held to be not good law in *Hardwari Lal Vs. Pohkar Mal and Others*, . The decision

in *Jagdish Rai and Others Vs. Sant Kaur*, , was also rendered prior to the amendment.

15. We are, therefore, of the view that the issue as to whether a Suit has been undervalued, cannot be tried as a preliminary issue.

16. The trial Court having exercised jurisdiction contrary to the provision of Order 14, Rule 2(2) acted illegally and with material irregularity and

hence the decision is available to be set aside in exercise of our revisional jurisdiction u/s 115 of the Code of Civil Procedure.

17. In the result, the Civil Revision is allowed. But, in facts and circumstances, there would be no order as to costs.

K.C. Jagadeb Roy, J.

18. I agree.