

Malkhan vs Mahar Chand And Ors. on 23 September, 1954

Equivalent citations: AIR1955ALL307, AIR 1955 ALLAHABAD 307

JUDGMENT

Malik, C.J.

1. This is a civil revision under Section 115 of the Code. The plaintiff filed a suit for perpetual injunction against the defendants restraining them from interfering in any manner with plaintiff's possession of certain plots detailed in the plaint. The suit was filed in the Court of the Second Civil Judge of Meerut. The defendants filed a written statement in which, among other pleas, a plea was taken that the civil Court had no jurisdiction to try the suit. The learned Judge framed a number of issues and under Order 14, Rule 2 of the Code he decided to try the issue of law first.

2. Order 14, Rule 2 of the Code is as follows : "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 the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined."

On 2-11-1953, the learned Civil Judge held that the civil Court had jurisdiction to try the suit. It is against that decision that this civil revision was filed. .

3. A preliminary objection is raised by the other side that no revision lies and learned counsel has relied on a decision of a Pull Bench of this Court in -- 'Buddhoo Lal v. Mewa Ram', AIR 1921 All 1 (PB) (A). The facts of that case were exactly similar. The jurisdiction of the Court had been challenged. The issue as regards jurisdiction was tried as a preliminary issue and it was held that the Court had jurisdiction. A revision against that decision was dismissed on the ground that it was not a 'case decided'.

4. Learned counsel for the applicant has, however, submitted that the case of -- 'Buddhoo Lal v. Mewa Ram (A) may be reconsidered, as the point has been referred to a Bench of 7 Judges.

5. I do not, however, consider it necessary to postpone the hearing of this case by reason of the fact that a reference has been made in another case to a larger Bench.

6. Section 115 of the Code provides that:

"The High Court may call for the record of any Case which has been decided by any Court subordinate to such High Court an'd in which no appeal lies thereto, and if such subordinate Court appears--

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."

A revision can, therefore, be filed only if any "case has been decided" by a Court subordinate to such High Court. The question here is whether the learned Civil Judge has yet decided any case.

7. What is a 'case decided' was considered at some length in a Jull Bench decision of this Court in -- 'Ramzan All v. Mt. Satul Bibi', AIR 1948 All 244 (FB) (B). That was no doubt a revision against and application under Order 33 of the Code granting permission to file a suit in 'forma pauperis'. It was however, pointed out in that case that for purposes of convenience orders had been classified under two heads -- "an order deciding a case" and "an interlocutory order". It was held that an order deciding a case must be an order affecting the rights of the parties and at the same time an order in a proceeding distinct and separable from the main case.

8. When, however, a Court decides a part of the controversy in a suit and its decision does not terminate the proceedings, it cannot be said to have either decided "a case" or even "part of a case". By trying certain issues first and then the remaining issues, it has merely written its judgment in two parts and both the parts taken together constitute the complete judgment in the case.

9. 'Judgment' has been defined in Section 2, Sub-section (9), Civil P. C., as meaning "the statement given by the judge of, the grounds of a decree or order"; and 'decree' has been defined in Sub-section (2) of Section 2 as meaning :

"the formal expression of an adjudication which so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144, but shall not include :

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation : A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

'Order' has been defined in Sub-section (14) of Section 2 as meaning "the formal expression of any decision of a Civil Court which is not a decree".

10. In my judgment in -- 'Manmohan Lal v. Raj Kumar Lal', AIR 1946 All 89 (FB) (C), I discussed at some length the meaning of the words 'judgment' and 'decree' with reference to the provisions of the Code at pp. 107 and 108 of the Report. I pointed out that these definitions must be read along with Section 33 and Order 20, Rules 1 and 7 of the Code and expressed the opinion that the words 'with regard to all or any of the matters in controversy in the suit' in Sub-section (2) of Section 2, Civil P. C., "do not mean that there can be separate decrees for each matter in controversy in the suit" and that "those words have been introduced to make it clear that no Court is bound to decide all the matters in controversy in the suit if it is not necessary to do so to conclusively determine the rights of the parties."

A decree is a formal document which contains the result of the decision of a suit, the reasons for which are given in the judgment of the Court but it has been extended by the Code to orders under ' Section 47 and Section 144.

11. During the pendency of a suit, before the final adjudication is followed by a decree, there may be various miscellaneous proceedings of varying importance, some being intimately connected with the determination of the matters in controversy between the parties and the progress of the suit. These deal mostly with procedural matters. There may be other 'quasi' independent proceedings which are decided by separate orders and which cannot be said to be mere procedural matters for the final determination of the case.

In connection with these miscellaneous proceedings the Court has to pass orders and the important ones of such orders are appealable under Section 104 and Order 43 of the Code. Section 105 provides that except those orders mentioned in Section 104 and Order 43 no appeal can be filed against other orders, but where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

12. Attempts are frequently made to nave an order, which is not appealable, corrected by this Court under Section 115 of the Code. It was pointed out in Ramzan Ali's case (B) that only some orders may amount to a decision of a case, but before it can be a revisable order it must amount to a formal adjudication disposing of a matter collateral to the determination of the question at issue in the suit.

13. If a Court decides to determine preliminary issues of law under Order 14, Rule 2 and as a result of that decision decides that it is not necessary to go Into other questions, it has to pass a decree, but if as a result of the decision of those issues the other issues of fact have also to be determined, then the decision of the preliminary issues is only a part of the judgment and so long as the judgment has not been completed by the decision of the other issues of fact or of law that had been left undetermined, a decree cannot be passed.

The Court on determination of the preliminary issues, if it comes to the conclusion that the case has to proceed and the other issues have to be decided, has not got to pass any formal order incorporating the result of its decision. In the circumstances, it cannot be said that it has decided a case or even a part of a case. I have already pointed out in Manmohan Lal's case (C) that the words

"conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit"

do not mean that there can be a number of decrees in a suit, nor can the decision of each issue be said to amount to "decision of a case" which has to be embodied in a separate decree or order.

14. In my view, therefore, it cannot be said that by determining certain issues under Order 14, Rule 2 of the Code as preliminary issues, the lower Court can be said to have decided any case the record of which can be sent for by the High Court under Section 115 of the Code and corrected under the provisions of that section.

15. I would, therefore, uphold the preliminary objection and dismiss this Civil Revision.

Gurtu, J.

16. In my view, this case may be said to be covered by the Full Bench case of AIR 1921 All 1 (A) by which I am at present bound. I do not propose to examine the scope of Section 115, Civil Procedure code generally now, as the whole question is before a Full Bench, which will no doubt go into the question more fully.

17. The case being covered by AIR 1921 All 1 (FB) (A) the preliminary objection must be up-held and this civil revision must fail.

18. BY THE COURT: The revision is dismissed with costs.

19. The record may be sent down to the lower Court by an, early date.

20. The stay order is discharged.