

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO:2564/2024

ORDER:

Heard Sri Prabhala Raja Sekhar, learned counsel for the petitioners.

2. The petitioners are the defendants 6 to 9 in O.S.No.28 of 2014 on the file of the X Additional District Judge at Anakapalli.

3. The plaintiffs/respondents 1 to 4 filed O.S.No.12 of 1988, which was renumbered as O.S.No.28 of 2014. The suit is for recovery of possession of the plaint schedule properties along with the structures constructed thereon after eviction of the defendants as also for cancellation of the sale deeds in their favour.

4. The petitioners filed I.A.No.101 of 2022 with the prayer to decide the issue Nos.3 to 8 as preliminary issues, under Order XIV Rule 2 of the Code of Civil Procedure (in short 'C.P.C').

5. By the impugned order, the I.A.No.101 of 2022 has been dismissed on 07.05.2024.

6. Challenging the order dated 07.05.2024, the civil revision petition under Article 227 of the Constitution of India, has been filed.

7. Learned counsel for the petitioners submits that the learned trial Court ought to have decided those issues 3 to 8, as preliminary issues, as the question of legal effect of adoption was involved. He submits that as per Section 12(c) of the Hindu Adoptions and Maintenance Act, 1956(for short 'the Act'), the adopted child shall not divest any person of any estate which vested in him or her before the adoption. He submits that the deceased died on 30.08.1957 and the adoption was made by the deed of adoption on 31.08.1957 by the widow of the deceased.

8. I have considered the aforesaid submission and perused the material on record.

9. On a query made, learned counsel for the petitioner submits that the factum of adoption is also under challenge in the suit.

10. Those issues 3 to 8, sought to be tried as preliminary issues, are as under:

“iii) Whether Kondapali Venkata Ratnam had no right to alienate the schedule property during her life and that she is entitled only to enjoy the schedule property as per the terms of the adoption deed dated 31.08 1957?

iv) Whether the Plaintiffs are entitled for the cancellation of Registered Sale Deed dated 14.02.1985 executed in favour of first Defendant and Registered Sale Deed dated 01.04.1982 executed in favour of second Defendant by late Kondapalli Venkata Ratnam?

v) *Whether the Plaintiffs are entitled for cancellation of Registered Sale Deed dated 18.03.1998 executed in favour of third Defendant by second Defendant and also Registered Sale Deeds dated 12.12.1998 executed by the third Defendant?*

vi) *Whether the Plaintiffs are entitled to challenge the alienation made by late Kondapalli Venkata Ratnam after her demise in view of the findings given in Decree and judgment dated 18.11.2004 in OS 12/1988 on the file of Senior Civil Judge's Court. Anakapalle?*

vii) *Whether the Plaintiffs are entitled for recovery of possession of the Plaint Schedule Property as prayed for?*

viii) *Whether the suit for mere recovery of possession or cancellation of sale deeds is not maintainable without the prayer for declaration of title of the Plaintiffs in respect of the schedule property?*

11. A bare reading of issues 3 to 8 shows that those are not on pure questions of law. Those are either questions of fact or mixed questions of law and fact.

12. Order XIV Rule 2 C.P.C reads as under:

“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 on that issue.”

13. In **Ramesh B.Desai v. Bipin Vadilal Mehta**¹, the Hon'ble Apex Court held that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.

14. Para No.13 of **Ramesh B.Desai** (supra), reads as under:

.. "13. Sub-rule (2) of [Order XIV Rule 2 CPC](#) lays down that 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. The provisions of this Rule came up for consideration before this Court in [Major S.S. Khanna vs. Brig. F.J. Dillon](#) AIR 1964 SC 497, and it was held as under:-

"Under O. 14 R. 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 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. **The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues.** Normally all the issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact, would result in a lop-sided trial of the suit."

Though there has been a slight amendment in the language of [Order XIV Rule 2 CPC](#) by the Amending Act, 1976, **but the principle enunciated in the above quoted decision still holds good** and there can be no departure from the principle that the Code confers no jurisdiction upon the Court to try a suit

¹ (2006) 5 Superme Court Cases 638

on mixed issue of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.

15. In **Sathyanath v. Sarojamani**², the Hon'ble Apex Court observed and held as under:

*21. The provisions of Order 14 Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order 14 Rule 2. **If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint** or the applicable law, if the jurisdiction of the court of the bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision. I Thus, if the court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext*

*23. The different judgments of the High Court referred to above are in consonance with the principles laid down by this Court in Ramesh B. Desai(2006(5) SCC 638) that **not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit of clause (a) relating to the "jurisdiction of the Court" and (b) which deal with the bar to the suit created by any law for the time being in force".** The reason to substitute Rule 2 is to avoid piecemeal trial, protracted litigation and possibility of remand of the case, where the appellate court differs with the decision of the trial court on the preliminary issues upon which the trial court had decided."*

16. In **Mongia Realty and Buildwell Private Limited v. Manik Sethi**³, the Hon'ble Apex Court observed that when issues in both

² (2022) 7 SCC 644

law and facts arise in the same suit, the court may dispose of the suit by trying the issue of law first. For this purpose, the provision specifies two questions of law, which are 1) jurisdiction of the court; and 2) a bar to the suit created by any law for the time being in force. The Hon'ble Apex Court observed that the issue of limitation can also be determined as a preliminary issue under Order XIV Rule 2 CPC, if the issue of limitation is based on admitted fact. However, if the facts surrounding the issue of limitation are disputed, it cannot be decided as a preliminary issue.

17. Para Nos.14 and 15 of ***Mongia Realty and Buildwell Private Limited*** (supra) read as under:

“14. [Order XIV Rule 2 of the CPC](#) stipulates that when issues of both law and facts arise in the same suit, the Court may dispose the suit by trying the issue of law first. For this purpose, the provision specifies two questions of law, which are (i) jurisdiction of the Court; and (ii) a bar to the suit created by any law for the time being in force. The provision is extracted below:

*2. **Court to pronounce judgment 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 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 the 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*

³ (2022) 11 SCC 572

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.]

15. Before this Court in [Nusli Neville Wadia v. Ivory Properties²](#), the issue was whether the issue of limitation can be determined as a preliminary issue under Order XIV Rule 2. The three-judge bench of this court observed that if the issue of limitation is based on an admitted fact, it can be decided as a preliminary issue under Order XIV Rule(2)(b). However, if the facts surrounding the issue of limitation are disputed, it cannot be decided as a preliminary issue. This Court observed as follows:

51. [...] As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. **In case specific facts are admitted, and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2.** In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the [Limitation Act](#).

52. In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). **Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a 2 (2020) 6 SCC 557 question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment [of CPC](#) and post amendment in the year 1976.”**

18. It is thus well settled in law that it is only the pure questions of law, that can be decided as preliminary issues and not the questions of fact or mixed questions of law and fact. Those require the determination on the basis of the evidence adduced during trial.

19. It is also settled in law that in case of dispute as to facts, it is necessary to be determined, to give a finding on a question of law, such question cannot be decided as a preliminary issue. In a case, where the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question would not be a pure question of law and cannot be decided as preliminary issue.

20. The submission of the learned counsel for the petitioners is that the legal effect of adoption in view of Section 12(c) of the Act is a question, which can be decided as preliminary issue.

21. I am not convinced. The reason is that the very adoption is disputed and is under challenge.

22. At this stage, I may refer that in ***Lubna v. Beevi***⁴, the Hon'ble Apex Court, though in a different context observed that, a pure question of law can be examined at any stage. If the factual

⁴ (2020) 2 SCC 524

foundation for a case has been laid and the legal consequences of the same have not been examined, the examination of such legal consequences would be a pure question of law. Para No.10 reads as under:

“10. On the legal principle, it is trite to say that a pure question of law can be examined at any stage, including before this Court. If the factual foundation for a case has been laid and the legal consequences of the same have not been examined, the examination of such legal consequences would be a pure question of law.”

23. However, in the present case, the legal consequences of a valid adoption can be said as pure question of law. But, the petitioner has challenged the adoption. Whether the adoption is valid or not, requires determination of many factors, including the questions of fact, for which the evidence is required. So, unless, there is a finding on the validity of the adoption, the question of considering or examining the consequences under Section 12(c) does not arise.

24. In ***Pandurang Shankar Shivankar v. Muktabai w/o Govindrao Mate***⁵, the High Court of Bombay observed that the fact of adoption is a mixed question of law and fact. First, the factum of giving and taking is to be proved and then the law is to be applied to see whether it can be treated as valid adoption.

⁵ 2014 SCC Online Bombay 5092

25. Para No.14 of **Pandurang Shankar Shivankar** (supra)

reads as under:

*“14) The defendant No.3 has not proved the so called Will allegedly executed by Shankarrao. In view of this circumstance the entire dispute revolves around the so called adoption of defendant No.3 by Shankarrao on 2-4-1984. Person who seeks to displace the natural succession of property by alleging adoption is expected to discharge the burden that lies upon him. He is expected to prove that there was valid adoption. Fact of adoption is mixed question of law and fact. **First the factum of giving and taking is required to be proved and then the law needs to be applied to see whether it can be treated as valid adoption.** As per the Shastric Hindu Law contained in Hindu text no writing is required to prove adoption.”*

26. So unless the foundation of fact was laid down with respect to the adoption and a finding was arrived with respect to the adoption, the question of law with respect to the legal consequences flowing from a valid adoption under Section 12(c) would not arise for consideration.

27. Further, the issues 3 to 8 do not relate to the effect of the adoption.

28. The learned trial court has rightly dismissed the application observing that all issues 3 to 8 were mixed questions of law and fact, which required determination during trial, based on evidence.

29. I do not find any illegality in the order of the learned trial court so as to invoke supervisory jurisdiction under Article 227 of the Constitution of India.

30. The Civil Revision Petition is dismissed.

31. However, it is clarified that any observation made by the learned trial court in its order, would not affect the trial of the suit on merits.

32. No order as to costs.

As a sequel thereto, interlocutory applications, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

Date: 05.11.2024

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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO:2564/2024

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*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
+ CIVIL REVISION PETITION NO: 2564/2024

%Dated: 05.11.2024

Kandregula Rama Babu and 3 others Petitioners

and

\$ Kondapalli Venkata Lakshmi and 3 others Respondents

! Counsel for the Petitioners: Sri Prabhala Raja Sekhar

^ Counsel for the Respondents : -

< GIST :

> HEAD NOTE :

? Cases referred :

1. (2006) 5 Superme Court Cases 638
2. (2022) 7 SCC 644
3. (2022) 11 SCC 572
4. (2020) 2 SCC 524
5. 2014 SCC Online Bombay 5092

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO: 2564/2024

Kandregula Rama Babu and 3 others Petitioners

and

Kondapalli Venkata Lakshmi and 3 others Respondents

DATE OF ORDER PRONOUNCED: 05.11.2024

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be Yes/No

Marked to Law Reporters/Journals.

3. Whether Their Lordship wishes Yes/No
to see the fair copy of the Judgment?

RAVI NATH TILHARI, J