2026:AHC:57600

A.F.R.
Reserved On: 13.03.2026
Delivered On: 20.03.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 13103 of 2025

Paras @ Ram Paras

…..Petitioner(s)

Versus

Ram Charitra and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Amit Kumar Pandey, Kali Charan Yadav
Counsel for Respondent(s)	:	

Court No. - 5

HON'BLE MANISH KUMAR NIGAM, J.

1. Heard learned counsel for the petitioner and perused the record.

2. Brief facts of the case are that Original Suit No. 859 of 2006 was instituted by plaintiff-respondents for the cancellation of Will dated 21.05.1988 executed by one Ram Asrey in favour of defendant No. 1. The suit was contested by the defendants by filing written statement. On the basis of pleadings, issues were framed by the trial court on 01.12.2008. Total eight issues were framed. Issue No. 3 relates to limitation "क्या वाद काल बाधित है" and issue No. 6 is to the effect whether the suit in question is barred by Section 331 of U.P.Z.A. & L.R. Act, 1950. Thereafter, the evidence of plaintiff was

recorded and on 02.07.2025 an application was filed by the defendant to decide issue Nos. 3 and 6 as preliminary issue.

3. Learned counsel for the petitioner contended that the trial court i.e. Civil Judge (Junior Division), Basti, be directed to decide issue Nos. 3 and 6 framed in the suit i.e. Original Suit No. 859 of 2006, Ram Charitra Vs. Paras @ Ram Paras and others as preliminary issue before proceeding further with the suit. It has also been contended by learned counsel for the petitioner that he has already moved an application before the trial court for the said relief on 02.07.2025. Learned counsel for the petitioner relied upon the provisions of Rule 2 of Order XIV C.P.C. and submitted that since the issue Nos. 3 and 6 relates to limitation and jurisdiction of the civil court, they ought to be decided by the trial court as preliminary issue. It has also been submitted that no orders have been passed on application moved by the petitioner on 02.07.2025. It has been further contended by learned counsel for the petitioner that in view of Rule 2 of Order XIV C.P.C., it is mandatory for the court below to try the issue relating to jurisdiction or a bar to the suit created by any law has to be decided first as preliminary issue and thereafter, to proceed with the matter.

4. Before considering the submissions made by learned counsel for the petitioner, it would be appropriate to look into the provision as existed initially, i.e., before 1976 Amendment and thereafter. Rule 2 of Order XIV before being substituted by Code of Civil Procedure (Amendment) Act, 1976, read as under:-

> *"Order XIV, Rule 2 --Issues of law and of fact. --Where the 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."*

5. After the amendment in Rule 2 by Code of Civil Procedure (Amendment) Act, 1976, following Rule has been substituted 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.*

6. Unamended Rule 2 of Order XIV C.P.C. was held mandatory, therefore it was obligatory on the court to treat the issues of law as preliminary issues and decide them by postponing other issues. The language of Rule 2 of Order XIV C.P.C was clear and express.

7. The position of law was altered by the Amendment Act of 1976. Sub-rule (1) of Rule 2 starts with non obstante clause and states that notwithstanding that the 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.

8. In case of **Sunni Central Waqf Board and others Vs. Gopal Singh Vishrad and others; AIR 1991 Allahabad 89** Full Bench of this Court has held in paragraph Nos. 11 and 12 of the judgment as under:-

> *"11. The word "shall" used in old 0.14, R. 2 has been replaced in the present Rule by the word "may". Thus now it is discretionary for the Court to decide the issue of law as a preliminary issue or to decide it along with the other issues. It is no longer obligatory for the Court to decide an issue of law as a preliminary issue.*
>
> *12. Another Change brought about by the amended provision is 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 cls. (a) and (b) of sub-r. (2) of R.2 of O. 14.

Cl. (a) mentions "jurisdiction of the Court" and clause (b) deals with "bar to the suit created by any law for the time being in force." ....."

9. In case of **Mithlesh Kumari and others Vs. Gaon Sabha, Kishanpur and others; 1999 AIR Allahabad 304**, this Court has held in paragraph Nos. 8, 9 and 10 as under:-

"8. Sub-rule (2) leaves discretion upon the Court. It is not mandatory on the Court to decide the question of the jurisdiction or other issues relating to the maintainability of the suit. Sub-rule (1) of Rule 2 mandates a Court that 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.

9. The intention of the Legislature is that instead of prolonging the suit by first deciding a preliminary issue and thereafter deciding other issues, be avoided as far as possible. If all the issues are decided, that may avoid unnecessary multiplicity of the proceedings in relation to deciding the preliminary issue. It is open for the Court, however, in some circumstances if it is apparently clear that the suit is not maintainable or barred by jurisdiction, to dispose of such issue, may decide such issues as preliminary issues.

10. In Smt. Fatima Bibi v. Board of Revenue, Allahabad and others 1981 ALJ 812, the Court held that if the trial court had taken decision to consider the question of bar of suits u/s 49 of the Act at the time of the judgment and not as a preliminary issue, the Court could not be said to have patently erred in not deciding the issue as preliminary issue, as it was within the discretion of the Court to try an issue of jurisdiction or bar of maintainability of the suit as a preliminary issue. The Court pointed out that sub-rule (1) of Order XIV of C.P.C. the word 'shall' has been used whereas in sub-rule (2) the word 'may' has been used which clearly indicates that it is discretion of the Court to decide any issue as preliminary issue."

10. In case of **Sidh Nath and others Vs. District Judge, Mirzapur and others; AIR 2002 Allahabad 356,** this Court has held in paragraph Nos. 9 and 11 as under:-

"9. A perusal of sub-rule (2) of Rule 2 of Order 14 shows that an issue of law may be tried as a preliminary issue provided it relates to the jurisdiction of the Court or to a bar to the suit created by law for the time being in force. However, the said provision gives discretion to the Court to try an issue as preliminary issue or not. The Court is not duty bound to decide any issue as preliminary issue. This is evident from the words "it may try" occurring in the said provision.

11. Thus, even if the issue relates to the jurisdiction of the Court or to a bar to the suit created by law for the time being in force, still the Court has discretion under Order 14 Rule 2(2) to try the same as preliminary issue or not."

11. The amended rule is divided into sub-rule (1) and (2), the first incorporating the normal rule recognized even under the unamended rule, that all the issues arising in a suit must ordinarily be tried together notwithstanding that a case can be disposed of on a preliminary issue and the second providing a limited exception to the ordinary rule of trial. Sub-rule (2) furthermore is discretionary and not mandatory, both in respect of formation of opinion that the case or part of it can be disposed of by trial of a preliminary issue and as to its trial first on preliminary issue.

12. The Judicial Committee of the **Privy Council in Tarakant Vs. Puddomoney; (1866) 10 MIA 476** favoured in deciding all issues. Lord Turner stated:-

"The Courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that in appealable cases the Courts below should, as far as may be practicable, pronounce their opinions on all the important points. "

13. In case of **Hardwari Lal Vs. Ponkar Mal; AIR 1978 P& H 230**, the Punjab and Haryana High Court considered amended as well as unamended provision of Rule 2 of Order XIV and said:

"A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases. In the unamended Code, the categorisation was only between issues of law and of fact and it was mandatory for the Court to try the issues of law in the first instance and to postpone the settlement of the issues of fact until after the issues of law had been determined. On the other hand, in the amended provision there is a mandate to the Court that notwithstanding that a case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). This sub- rule relaxes the mandate to a limited extent by conferring discretion upon the Court that if it 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. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force. "

14. Thus, it is the discretion of the court to decide an issue as to the jurisdiction of the court or bar to a suit created by any law for the time being in force.

15. In deciding whether the court should grant or refuse a prayer to try an issue of jurisdiction or a bar to a suit as a preliminary issue, harmony should be observed between two conflicting considerations, namely, (i) it is undesirable to try cases piecemeal as it would result in protracted litigation; and (ii) the specific and wholesome provision of Rule 2 enacted with a view to preventing injustice by forcing his opponent to drag him into long litigation when the case or substantial part thereof can be disposed of on a point of law without investigation of facts.

16. An issue as to the bar of suit created by any other law for the time being in force may be decided as a preliminary issue if the court is of the opinion that the case or part thereof may be disposed of on such issue only. The question, what is an issue of law, the Code does not define. Normally, if an answer to an issue is determinable on the basis of some principle of law, the issue may be called an issue of law. If the parties are required to lead evidence on such issue, it ceases to be an issue of law.

17. In **Ramesh D. Desai and others v. Bipin Vadilal Mehta and others; (2006) 5 SCC 638,** while dealing with the issue of limitation, the Court opined that: (SCC p. 652 para 19)

"19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact." The Court further proceeded to state that a plea of limitation is a mixed question of fact and law. On a plain consideration of the language employed in sub-Rule (2) of Order XIV it can be stated with certitude that when an issue requires an inquiry into facts it cannot be tried as a preliminary issue. In the said judgment the Court opined as follows: -

> *"13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the 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 v. Brig. F.J. Dillon; AIR 1964 SC 497*** *and it was held as under: (SCR p. 421)*
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> *"18.....Under Order 14 Rule 2, Code of Civil Procedure 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 depend upon the decision of issues of fact, would result in a lopsided trial of the suit."*

18. Though there has been a slight amendment in the language of Order XIV Rule 2 C.P.C by the amending Act, 1976 but the principle enunciated in the abovequoted 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 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.

19. Same view has been reiterated by the Hon'ble Supreme Court in case of **Satti Paradesi Samadhi And Pillayar Temple Vs. M. Sankuntala (Dead) Through L.R. and others; (2015) 5 SCC 674.**

20. Plea regarding maintainability of suit is required to be raised at the first instance in the pleading (written statement), then only such plea can be adjudicated by the trial court on its merit as preliminary issue under Order XIV Rule 2 CPC.

21. The Rajasthan High Court in the case of **M/s. Dullar Enterprises Private Limited v. Bhagwan & Another; AIR 2001 Rajasthan page 44** where the defendant filed an application to raise a preliminary issue relating to jurisdiction of the court after conclusion of the plaintiff's evidence, held that the application cannot be said to be bona fide as in the 10 years of pendency of the suit, the defendant has not produced any evidence.

22. In the present case, the suit is of 2006, issues were framed in December, 2008 and evidence of the plaintiff has also been recorded in part during this period. It was only in July, 2025, the application has been filed by the defendant to decide issue Nos. 3 and 6 as preliminary issue. In my view, the application filed by the petitioner cannot be said to be a bona fide application as he has chosen not to press the relief to decide issue Nos. 3 and 6 as preliminary issue for about 18 years.

23. In my considered opinion, it will be of no use to direct the court below to decide those issues as preliminary issues on an application moved by defendant-petitioner after a lapse of 18 years from the date of framing of issues, especially when almost plaintiff's evidence has been recorded, rather it would be appropriate that the court below should consider and decide all the

issues framed simultaneously, at the time of decision of the suit after considering the evidence led by all the parties.

24. In the present case, the suit is pending since 2006, therefore, it would be desirable that the court below shall make every endeavour to decide the Original Suit No. 859 of 2006, in accordance with law, expeditiously, preferably, within a period of one year from the date of production of a certified copy of this order, after hearing all the concerned parties and giving a reasonable opportunity of leading evidence in respect of their case provided there is no other legal impediment.

25. Accordingly, the petition stands disposed of.

(Manish Kumar Nigam,J.)

March 20, 2026
Nitika Sri.