

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5124 OF 2013

Santosh Kumar @ Rana Ram Kalal

.....Appellant

Versus

Ashok Chand and Others

.... Respondents

JUDGMENT

N. V. Ramana, J.

1. The instant appeal, by way of special leave, is directed against order dated 15.03.2010 passed by the High Court of Judicature for Rajasthan at Jodhpur in Civil Writ Petition No. 6517 of 2009 whereby the High Court allowed the writ petition filed by the respondent nos. 1 and 2 herein, and directed the Trial Court to decide certain issues as preliminary legal issues.

2. A conspectus of the facts necessary for the disposal of the appeal are as follows: the appellant herein filed a civil suit against

the respondents in the year 2007 seeking, *inter alia*, possession of the disputed property and a declaration that he is the owner of the disputed property. The Trial Court, *vide* order dated 22.04.2008, framed as many as eleven issues, of which we are concerned currently with the four issues extracted below:

“iii. Whether as narrated in para 9 and 12 of the plaint, the plaintiff is entitled to take legal possession and to receive rent of the concerned shops from the defendant Nos. 3 to 5?

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vi. Whether as narrated in the Majid Ujrat in the written statements, Smt. Kanta Devi and Nikita on becoming Sadhvis after taking Jain Diksha on 17.2.2000 have suffered civil death, thus no sale deed was executed nor could have been executed by them or by their alleged power of attorney holder, thus the suit of the plaintiff is not legally maintainable as being based on unnecessary and non existent documents?

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viii. Whether as narrated in para 9 of the written statement, this court does not have jurisdiction to hear this suit?

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ix. Whether this suit is liable to be dismissed as being barred by law and being without any cause of action?”

3. Thereafter, the respondents filed an application under Order XIV Rule 2, Code of Civil Procedure before the Trial Court seeking that the above issues be decided as preliminary questions of law. On 19.05.2009, the Trial Court rejected the application of the respondents on the ground that the issues raise mixed questions of fact and law, and therefore require the parties to lead evidence before the same can be decided.

4. Aggrieved by the order of the Trial Court, the respondent nos. 1 and 2 filed a writ petition before the High Court challenging the same. *Vide* the impugned order dated 15.03.2010, the High Court allowed the writ petition, thereby setting aside the order dated 19.05.2009 passed by the Trial Court, and directed the Trial Court to decide the above issues as preliminary questions of law.

5. Aggrieved by this order of the High Court, the appellant has filed the present civil appeal, by way of special leave.

6. The learned counsel for the appellant submits that the High Court erred in directing the Trial Court to decide the issues in question as preliminary issues of law when they related to mixed questions of law and fact. Further, the learned counsel for the

appellant also submits that the High Court, in its impugned order, has passed certain observations on the legal issues involved which would adversely affect his suit.

7. On the other hand, the learned counsel for the respondents submits that the impugned judgment of the High Court does not merit any interference by this Court in its jurisdiction under Article 136 of the Constitution. They submit that no prejudice is caused to the appellant by the impugned order. The counsel further submits that although there is no stay of trial, it has still not concluded despite the fact that the suit was filed as far back as in 2007.

8. Heard counsel for the parties at length.

9. While the counsel for the appellant strenuously submitted that the issues involved mixed questions of fact and law, he was unable to produce any material to substantiate the same. On the other hand, it appears that the appellant's claim is based on documents executed by a power of attorney holder, as per his own plaint. Further, he has also admitted that the original owners had taken "Jain Diksha" and become "Sadhvis". In such a

circumstance, the approach of the High Court in directing the above framed issues to be decided as preliminary questions of law cannot be said to be incorrect. The learned counsel for the respondents has rightly pointed out that all the above framed issues relate to maintainability of the suit. Further, on being questioned by the Bench, the learned counsel for the appellant could not point to any prejudice that would be caused if the issues are taken up and decided by the Trial Court as preliminary questions of law.

10. Having said that, we are inclined to agree with the submission of the counsel for the appellant that some of the observations of the High Court in the impugned order may adversely affect his case before the Trial Court. Certain stray observations of the High Court, particularly in paragraphs 5 and 7 of the impugned order, appear to prejudge the issues at hand.

11. We are therefore not inclined to interfere with the impugned order dated 15.03.2010 passed by the High Court, except to the extent of directing the Trial Court to decide the issues at hand, and the suit, without being influenced by any observations made by the High Court.

12. Keeping in mind the submission of the counsel for the parties that the present trial has been pending for a long duration, we direct the Trial Court to decide the matter expeditiously on its own merits and in accordance with law.

13. The Civil Appeal is, accordingly, disposed of with the above directions. Stay on operation of the impugned order, directed vide this Court's orders dated 07.05.2010/12.05.2010 and 01.07.2013, stands vacated.

.....J.
(N.V. RAMANA)

.....J.
(SURYA KANT)

.....J.
(ANIRUDDHA BOSE)

NEW DELHI;
FEBRUARY 02, 2021.