
CASE COMMENT: CASE: SATHYANATH VS. SAROJAMANI, 2022

Drishti Meena, Unitedworld School of Law, Karnavati University

INTRODUCTION

CASE: Sathyanath & Anr. v. Sarojamini, 2022¹

BENCH: Justice Hemant Gupta and Justice Ramasubramanian

APPELLANT: Sathyanath & Anr.

RESPONDENT: Sarojamini

FACTS:

1. In the present case the Appellants filed suit² against respondent, paternal aunt, claiming declaration for them to be declared as absolute owner of the suit property, to declare judgement and decree passed in 2003³ as null and void and for permanent injunction restraining the defendant from disturbing the peaceful possession and enjoyment.

2. That the defendant filed an application under Order 7 Rule 11 of CPC for rejection of plaint which was dismissed⁴ by trial court. Thereafter, defendant filed an application to frame issues under Order 14 Rule 2(2) for following preliminary issues:

1. Whether the suit is subjected to res judicata and estoppel?
2. Whether the suit is barred by limitation?
3. Whether plaintiffs have deliberately and wantonly abused process of the court?

¹ (2022) 7 SCC 644

² OS No. 95 of 2016

³ OS No. 65 of 2003

⁴ Order on 20.06.2017

4. Whether the suit is valued properly and court fee paid is sufficient?

3. It is submitted that the trial court dismissed⁵ the above-said application. That such order was challenged in revision petition under Article 227 of Constitution of India. In the aforesaid petition HC ordered⁶ framing of issues of res judicata as preliminary issue.

ISSUE OF THE CASE: Challenges the order of HC that directed trial court to frame preliminary issue as to whether the suit is barred by res judicata.

RELEVANT PROVISIONS: Code of Civil Procedure, 1908

Order 14 Rule 2 - Sub-rule (1) says that court shall pronounce judgement on every issue. Sub-rule (2) says that if both issues of law and fact has arisen and case can be disposed of on issue of law only court may try that first if issue relates to jurisdiction and bar on suit.

Order 20 Rule 5 says that court shall state its decision on each separate issue with reason unless finding on one or more issue is sufficient for decision of suit.

Order 41 Rule 24 says that if evidence on record is sufficient to enable Appellate court to pronounce judgment it may do so after resettling the issues notwithstanding that the court of first instance has proceeded on whole different ground.

Order 41 Rule 25 says that if the trial court has omitted to frame or try any issue or determine any question fact, which is necessary, the Appellate court may frame issue and refer the same to trial court.

CONTENTIONS

Raised by Appellant:

1. Appellants contented that O14 R2 was substituted by Central Act 104 of 1976. It was argued that such amendment was necessitated to avoid delay the disposal of suit and further appeal and revision would only be preferred against preliminary issue.⁷

⁵ Order on 03.10.2019

⁶ Order on 03.09.2021

⁷ Azala Firoshi, *Res Judicata Plea Cannot Be Determined As Preliminary Issue When It Is A Mixed Question Of Fact & Law: Supreme Court*, Lawersclubindia, 13 May, 2022.

2. It was further contented that it was to ensure expeditious disposal and avoid possibility of remand by appellate or revisional jurisdiction it was mandatory for court to record reason on all issues even if findings were reversed.⁸

Raised by Respondent:

1. In terms of Order 14 Rule 1 of the Code of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues.⁹
2. That the ground of res judicata could not be decided merely by looking averments in the plaint rather it requires consideration of the pleadings, issues and decision in the previous suit and such a plea would be beyond the scope of Order VII Rule 11.¹⁰
3. The plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it.¹¹

ISSUE AND FINDINGS

ISSUE: Whether the plea of res judicata can be tried as preliminary issue?

1. Provisions of Order 14 Rule 2 are procedural law enacted to ensure expeditious disposal of the case and in case of setting aside of findings in preliminary issue, the possibility of remand can be avoided. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, it cannot be tried as preliminary issues.¹²

Web-source: <https://www.lawyersclubindia.com/judiciary/res-judicata-plea-cannot-be-determined-as-preliminary-issue-when-it-is-a-mixed-question-of-fact-law-supreme-court-5923.asp>

⁸ *Supra* note 1, at para 5

⁹ *Abdul Rahman v. Prasony Bai*, (2003) 1 SCC 488, p. 497 para 21

¹⁰ *Srihari Hanumandas Totala v. Hemant Vithal Kamat*, (2021) 4 SCC (Civ) 489, p. 113 para 28

¹¹ *Jamia Masjid v. K.V. Rudrappa*, (2022) 9 SCC 225, para 66

¹² *Supra* note 1, at para 21

2. Preliminary issues are those where no evidence is required and on bare reading of plaint and law, if the jurisdiction of court or bar on suit can be made out, the court may decide the issues for expeditious decision.¹³
3. The court referring to *Ramesh B. Desai v. Bipin Vadilal Mehta*¹⁴ and *S.S Khanna v. F.J. Dillon*¹⁵ held that 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 depends upon the question of fact, it cannot be tried as a preliminary issue.¹⁶
4. 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.¹⁷
5. The objective of Order 41 Rules 24 & 25 is early finality to suit. If evidence is recorded by trial court on all the issues, it would facilitate the first appellate court to decide the questions of fact even by reformulating the issues. If no evidence is found, the appellate court can call upon the parties to lead evidence on such additional issues, either before appellate court or trial court.¹⁸
6. To avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues.¹⁹

¹³ *ibid*

¹⁴ (2006) 5 SCC 638

¹⁵ AIR 1964 SC 497

¹⁶ *Supra* note 1, at para 17

¹⁷ *Ramesh B. Desai*, *supra* note 11

¹⁸ Livelaw news network, *Order XIV Rule 2 CPC - Res Judicata Plea Cannot Be Determined As Preliminary Issue When It Is A Mixed Question Of Fact & Law: Supreme Court*, 10 May, 2022 & *Supra* note 1, at para 34
Web-source: <https://www.livelaw.in/top-stories/supreme-court-res-judicata-preliminary-issue-mixed-question-of-fact-law-sathyanath-vs-sarojamani-2022-livelaw-sc-458-198710>

¹⁹ *Supra* note 1 at para 35

JUDGEMENT

The court held that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties²⁰ and runs counter to the mandate of O14 R2 which is not sustainable in law.²¹ The SC set aside the order passed by the HC.²²

CRITICAL APPRAISAL

In the case of *Sunni Central Waqf Board v. Gopal Singh Vishrad*,²³ the court analysed the material changes by substituting O14 R2. It was held that the word 'shall' in the unamended provision has been replaced by the word 'may' in the substituted provision, therefore, it is now discretionary for the Court to decide the issue of law as a preliminary issue, or to decide it along with the other issues. It was further held that even all issues of law cannot be decided as preliminary issues and only those issues of law falling within the ambit of clause (a) and (b) of sub-rule (2) of Rule 2 could be decided.²⁴

In the case of *Prithvi Raj Jhingta v. Gopal Singh*,²⁵ the legislative background was explained of old Rule 2, whereby trial court only used to decide preliminary issues which was later on appeal to Appeal Court was remanded to trial court for trial on other issues, which resulted into delay in disposal of cases. Therefore, to eliminate this delay and to ensure the expeditious disposal of the suits, both at the stage of the trial and appeal, the legislature decided to provide for a mechanism in amended provision. In result of which court held that in situations where the Court has framed all issues both of law and facts, it is not open to the Court in such a situation to adopt the principle of severability and proceed to decide issues of law first, without taking up simultaneously other issues for decision.²⁶

In the case of *Hardwari Lal v. Pohkar Mal*,²⁷ the Haryana HC did comparative analysis of pre and post-amendment of O14 R2 by bare reading of the provisions.²⁸ In the case of *Usha Sales*

²⁰ *Supra* note 1, at para 33

²¹ *Supra* note 1, at para 36

²² *Supra* note 1, at para 37

²³ AIR 1991 All 89, para 24 & 25

²⁴ *Supra* note 1, at para 10

²⁵ AIR 2007 HP, at para 9 & 8

²⁶ *Supra* note 1, at para 11

²⁷ AIR 1978 SCC P&H 230, para 5

²⁸ *Supra* note 1, at para 12

Ltd. v. Malcolm Gomes,²⁹ the court held that after amendment, a duty is cast upon the Court to hear all the issues and pronounce the judgment on the same but the Court may try an issue relating to the jurisdiction of the Court or the legal bar to the suit as a preliminary issue.³⁰

²⁹ AIR 1984 Bom 60, para 11 & 12

³⁰ *Supra* note 1, at para 14