

Talati Kantilal Bhumabai and Another

Vs

Lalitaben

Civil Appeal No. 292 of 1974

(Y. V. Chandrachud, P. S. Kailasam JJ)

26.07.1977

JUDGMENT

CHANDRACHUD, J. –

1. This is an appeal from a judgment of the Gujarat High Court dated March 5, 1973 on a preliminary point, holding that the Civil Judge (Senior Division), Godhra has jurisdiction to entertain and decide the suit filed by the respondent. Setting aside the finding of the learned Civil Judge that he had no jurisdiction to entertain the suit and therefore the plaint must be returned for presentation to the property Court, the High Court has remanded the suit to the trial Court with a direction to determine the "other issues" raised in the suit in the light of the evidence on record and in accordance with law.
2. In view of the fact that the entire evidence in the case has been recorded by the trial Court and considering that nine years have already passed over the decision of a preliminary point, we are of the opinion that it is undesirable to dispose of this matter piecemeal. The interests of justice require temporarily that the trial Court should proceed to dispose of the suit on the issues which it has not yet decided.
3. We, therefore, confirm the Order of remand passed by the High Court and dismiss the appeal with costs.
4. We must, however, clarify that the dismissal of this appeal will not preclude the appellants from raising the question of jurisdiction or any other question which has been concluded by the judgment of the High Court, in any appeal which the appellants may file in this Court hereafter. If the suit is dismissed, there will be no occasion for the appellants to challenge the finding on the question whether the amount had been kept by the respondent with the appellants by way of deposit or was in the nature of a loan or on the question of jurisdiction. On the other hand, if the suit is decreed, appellants have a statutory right to challenge the decree of the trial Court by filing an appeal in the High Court. But since the High Court has already decided the preliminary question of jurisdiction, the appellants cannot be allowed to reopen that question in the appeal before the High Court. The question of jurisdiction must be treated as finally concluded so far as the trial Court and the High Court are concerned. If, however the appellants fail in the High Court, it would be open to them, by filing an appeal in this Court, to challenge the decree of the High Court on all points decided against them including the points decided by the High Court by its judgment dated March 5, 1973. In other words, so far as this Court is concerned, the question of jurisdiction must be treated as open, despite the dismissal of this appeal.

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