

GUJARAT HIGH COURT

Devnarayan Ramsumar Tewari

Vs.

State of Bombay

Appeal No. 112 of 1960, C. A. No. 40 of 1959

(V.B. Raju, J.)

12.09.1962

JUDGMENT

V.B. Raju, J.

1. A plaint was rejected by the trial Court, and in appeal that order was reversed by the appellate Court which directed the trial Court to proceed with the suit. It is against this order that this appeal has been filed.
2. The plaint was rejected by the trial Court after issues had been framed by it. So the order is clearly wrong. Under Order 14, Rule 1, Civil Procedure Code, issues are framed at the first hearing of the suit; in other words after the suit has been admitted under Order 7, Rule 9, Civil Procedure Code. When a suit has been admitted under Order 7, Rule 9, Civil Procedure Code, it cannot be rejected under Order 7, Rule 11, Civil Procedure Code. On this ground alone, the appellate Court was right in setting aside the order of the rejection of the plaint.
3. The learned counsel for the appellant, however, relies on *Kishore Singh v. Sabdal Singh*¹, and contends that a plaint can be rejected at any stage of a suit. The learned Judges of the Allahabad High Court were dealing with the case where a plaint in a pre-emption suit had; after the issues had been framed, been rejected on the ground that in the plaint the plaintiff had not shown any cause of action. A second suit for pre-emption was filed, and the first Court dismissed the suit on the single ground that it was barred under Section 13, Civil Procedure Code, because of what had taken place in the previous preemption suit between the parties. In appeal, it was held that there was no bar and the case was remanded, and there was an appeal to the High Court from that order. The High Court held that the order of remand was properly made. The learned Judges of the Allahabad High Court were dealing with the sections as they stood in the old Civil Procedure Code. Section 53 of the old Code dealt with the case of rejection of a plaint at or before the first hearing on the grounds mentioned in that section. Section 54 of the old Act dealt with rejection

of a plaint on the grounds mentioned in that section. But it contained no limitation as to the stage at which the order could be passed. On this ground it was held that there was no limitation as to time under Section 54, which generally corresponds, but not exactly, to order 7 Rule 11 of the present Civil Procedure Code. A

¹ ILR 12 All 553

decision based on the peculiar wording of Sections 53 and 54 of the old Code cannot be applied as such to the present Civil Procedure Code, where the wording is different. Order 7, Rule 10, Civil Procedure Code, reads as under :-

"(1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it and a brief statement of the reasons for returning it."

The words used are "at any stage of the suit". But these words are not used in Order 7, Rule 11, Civil Procedure Code. Where the legislature intended that a particular rule could be applied at any stage of the suit, it specifically used the words "at any stage of the suit" as can be seen from O. 7, Rule 10. But these words are not used in Order 7, Rule 11, Civil Procedure Code. Apart from that there are several other grounds also for holding that a plaint cannot be rejected after the first hearing of the suit. Order 5, Rule 1, Civil Procedure Code reads as follows :-

"When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified."

Order 5, Rule 5, Civil Procedure Code reads as follows :-

"The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly."

Sub-rule (5) of Rule 1 of Order 14, Civil Procedure Code, reads as follows :-

"At the first hearing of the suit the Court shall after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereafter proceed to frame and record the issues on which the right decision of the case appears to depend."

Order 9, Rule 1, Civil Procedure Code, reads as follows :-

"On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court."

In view of the above provisions, a plaint cannot be rejected after the issues are framed as has been done in this case. It is also clear from Order 9, Civil Procedure Code, that after summons are served on the defendants, the suit can be dismissed but the plaint cannot be rejected. The lower appellate Court was therefore right in setting aside the order of rejection of the plaint. The appellate Court has given a finding that there was a cause of action. The questions whether there was or not a cause of action and whether the suit is to be dismissed on the ground that there was no cause of action are left open to be decided by the trial Court.

4. The appeal is, therefore, dismissed, but there will be no order as to costs.
Appeal dismissed.