
(1981) 11 AP CK 0016

In the Andhra Pradesh High Court

Case No : Second Appeal No. 405 of 1979

Andhra Pradesh Kuruma Sangham Society

APPELLANT

Vs

Mirza Ayanutullah Baig

RESPONDENT

Date of Decision : 12-11-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 2
Societies Registration Act, 1860 — Section 6

Citation : AIR 1982 AP 138 : (1982) 1 APLJ 57

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Advocate : N.B. Ranga Rao, for the Appellant; N.V. Ranganadham, for the Respondent

Judgement

1. The suit was filed by A. P. Kuruma Sangham represented by its General Secretary Sri Agiri Gopalarao against the defendant for recovery of a sum of Rs. 3,300/- representing the arrears of rent and for possession of the suit premises. That suit was contested by the defendant-tenant. One of the contentions raised by the defendant was to deny that the plaintiff was a registered Society. The defendant also contested the legal authority of Sri Agiri Gopalarao to sue. On that the trial court raised the following issues:-

1. Whether the plaintiff is a registered society ?

2. Whether A. Gopalarao is entitled to file the suit ?

2. On the first issue the plaintiff produced the certificate of registration which the trial Court accepting held that the Society was a registered Society. But the trial court misunderstood the second issue as an independent issue. Accordingly it independently examined the evidence and found that the General Secretary. A Gopalarao was empowered to manage and supervise the day-to-day activities of the Sangham and conduct the meetings, attend to its correspondence, implement the resolutions. Manage all the properties of the society of Sangham.

It found the Secretary of the plaintiff-Sangham to be the Chief Executive Officer of the Sangham and that therefore the Secretary was entitled to file the suit under the authority of the plaintiff's constitution. Against that judgment of the trial Court the defendant filed an appeal in the cause title of which he had described the plaintiff respondent as "A. P. Kuruma Sangham situated at Karvan. Hyderabad represented by its General Secretary Sri Agiri Gopalarao s/o Mallaiah, resident of Karvan. Hyderabad." In the body of his memorandum of grounds, the appellant-defendant had never objected to the competence of the Secretary to represent the Sangham and sue the defendant on its behalf. In other words, the description of the plaintiff in the cause title of the defendant's memorandum of grounds of appeal was not intended to be formal. From the statement made by the learned counsel for the appellant and not denied by the learned counsel for the respondent, I gather that the defendant's appeal was taken in the grounds advanced in the arguments. The lower court accordingly heard the appeal on points other than those relating to the competence of Gopalarao to represent the Society and on conclusion reserved its judgment. It posted the case for judgment on 19-4-1979. On that day the learned Judge of his own motion raised the question relating to the competence of Gopalarao, Secretary to represent the society and sue that defendant and posted the matter for arguments the next day i. e., on 20-4-1979. On 20-4-1979 he heard the argument and rendered this judgment under appeal four days thereafter.

3. The plaintiff attacks this judgment in this Second appeal. Firstly he objects to the procedure followed by the lower court and secondly he objects to the judgment on the basis of the merits in the case. Taking the uncontradicted facts as stated by the appellant's counsel I must say that the procedure followed by the appellate Judge is not satisfactory. Courts must be neutral between parties and must appear to be so in our adversary system of hearing. A point given up by the party cannot be the basis for reopening the case unless it is so fundamental and jurisdictional. The question whether the Secretary was authorised was not such a point. However, if the court felt the need to re-open the case on a point never raised by the appellant before it, the minimum that should have been done by the Court was to afford adequate opportunity to the successful party-respondent before it. I regret to say that the Court did not do in this. On the other hand, he reopened the matter on 19-4-1979 and posted the matter on 20-4-1979. This is clearly hurrying up of the hearing of the appeal. Whether it also amounted to burying justice in the case I need not deal. All I say is that the procedure followed by the Court impinged on the posture of its neutrality.

4. But what is much more important and conclusive against the judgment is the objection of the appellant-plaintiff based on a point of law. The appellant says that when once the defendant had appealed against the trial court's judgment showing the respondent as the sangham represented by his client Secretary Gopalarao without objecting to the capacity of the Secretary to sue representing the Sangham in the body of the memorandum of grounds, the defendant must

be taken to have waived or given up that objection. This legal contention of the appellant-plaintiff appears to be fully supported by a judgment of the Gauhati High Court reported in Haladhar Sarma v. Assam Go-seva Samity AIR 1979 Gau 23. In that decision it is held:-

"Where in the appeal against a society, the respondent-society was described in the memo of appeal as the society through a particular person as its presidents, the appellant must be deemed to have admitted the person so referred as the president of the society. Consequently, the appellant could not deny the locus standi of such person to file the suit against which appeal was preferred. as the president of the society in question. In such a case. it was not open to the appellant to say that the person was so described in the memo of appeal because he was similarly described in the plaint when there was no allegation to that effect in the memo of appeal or anywhere."

5. Following that judgment I hold that the learned Appellate Judge ought not to have entertained the present objection. Relating to the capacity of the Society to sue through its General Secretary, Gopalarao, particularly suo motu. It should be noted that the trial court had found on evidence that the Secretary was empowered to manage and supervise day-to-day activities of the Sangham and conduct the meetings. attend correspondence, implement the resolutions, manage all the properties of the society of Sangham and the Secretary was the Chief Executive Officer of the Sangham. The Society has made available the funds to the secretary for issuing lawyer's notice to the defendant before institution of the suit and thereafter for institution of the suit by incurring expenditure. In those circumstances, the appellate Judge was not right in holding that the Secretariat had no authority to sue. It must be noted that these objections which are of a technical nature not touching upon the merits of the matter justice of the cause should not be light-heartedly entertained by the Courts in civil litigation. Such arguments are no doubt pleasant to hearing but offensive to justice. The complaint of the appellant that this particular objection that the Secretary was not a competent person to represent the society was not taken at all in the written statement filed by the defendant appears to me to be correct. The defendant's written statement read carefully reveals an objection of the defendant on the ground that the Society was not registered and that therefore, Gopalarao could not sue The objection was not that the Secretary. Gopalarao. was not authorised by the constitution of the Society or by special resolution to sue. Yet, the appellate court considered this objection because of its too much of obsession I suppose with the provisions of Statute. The relevant provision of the Societies Registration Act is merely enabling. See Educational Society, Tirunelveli v. . Madurai University (1975) 1 Mad 297).

6. In view of the above, I allow this appeal. set aside the order of the appellate court and confirm the decree of the trial Court. There will be no order as to costs in this court. But the defendant shall pay the costs of the plaintiff in the trial court as well as in the first appellate court.

7. Appeal allowed.