
(2007) 02 AP CK 0058

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1076 of 2002

Bagam Nageswara Rao and Others

APPELLANT

Vs

Agent to Government and Another

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Andhra Pradesh Agency Rules, 1924 — Rule 11(4), 13, 2, 2(1), 33
Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 100, 47, 96
Constitution of India, 1950 — Article 227
Scheduled Districts Act, 1874 — Section 6

Citation : (2009) 5 ALT 735

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : D.V. Sitharam Murthy, for the Appellant; C.R.L.N. Sastry, for the Respondent

Judgement

P.S. Narayana, J.—This civil miscellaneous appeal is filed under Order 43 Rule 1 of the CPC (hereinafter in short referred to as "the Code" for the purpose of convenience) by the appellants-respondents-defendants in I.A. No. 52 of 2000 in O.S. No. 92 of 2000 on the file of the Court of the Agent to Government at Khammam.

2. The relevant portion of the order, which is impugned in the present civil miscellaneous appeal, reads as hereunder.

Basically the Sy. No. 179/A is having large extent of Ac.2520-30 gts. and an extent of Ac.600-00 is also recorded against Sy. No. 179/AA, in the name of the six joint pattedars. The land in dispute was got surveyed and as per the report of the Mandal Revenue Officer, Singareni and according to the survey report and sketch, it goes to show that the disputed land is in the occupaion of the petitioner/plaintiff and thus the balance of convenience lies with the petitioner-plaintiff. Accordingly, ad-interim (temporary) injunction is hereby granted in favour of the petitioner/plaintiff restraining the defendants and their men etc.,

claiming with the possession and enjoyment of the suit schedule property.

Aggrieved by the said order dated 20.3.2002 made in I.A. No. 52 of 2000 in O.S. No. 92 of 2000 by the Agent to Government at Khammam, the defendants had preferred the present civil miscellaneous appeal.

3. The main ground raised is that the interim order made cannot be sustained in the light of the judgments made in O.S. No. 21 of 1993 and O.S. No. 91 of 1999. Learned Counsel representing appellants also made elaborate submissions relating to the maintainability of the civil miscellaneous appeal and would contend that inasmuch as the Andhra Pradesh Agency Rules, 1924 (hereinafter in short referred to as "the Rules" for the purpose of convenience) being silent on this aspect, since there is no inconsistency or conflict, the appellants have a right to prefer an appeal under the provisions of the Code. The learned Counsel also had drawn the attention of this Court to Rules 2, 35, 39, 42, 47, 50, 57 and 59 as well and would submit that in the light of the broad scheme of the rules since as against the orders of this nature either granting temporary injunction or declining to grant temporary injunction no specific provision as such is provided for, the civil miscellaneous appeal would lie to this Court.

4. The order, which is impugned in the present civil miscellaneous appeal, was made by the Agent to Government at Khammam. It is not in serious controversy that the rules are applicable by virtue of Section 6 of the Scheduled Districts Act, 1874. The Governor was pleased to make the following rules for the administration of the Agency tracts of the State of Andhra Pradesh and for the regulation of the procedure of the Officers appointed to administer them.

Rule 2 deals with interpretation Clauses and Rule 2(1) specifies that decree shall include orders passed under Rules 39(1) and 43(3) but not orders under Rules 33 and 35.

Rule 39 deals with investigation of claims and objections to execution. Rule 43(3) specifies that where a receiver-

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the amount due from him as the Court directs, or

(c) occasions loss to the property by his willful default or gross negligence, the court may direct his property to be attached and may sell such property and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

Rule 33 deals with decrees against such Rajas and Chiefs and the Agent to the State Government may exempt from the ordinary process shall be executed in accordance with rules that may be specially prescribed with sanction of the State Government.

Rule 35 deals with where it is sought to execute within the Agency tracts a

decree passed by a Court in India situated outside the said tracts, the procedure to be followed.

Rule 47 specifically deals with appeals and the said rule reads as hereunder.

(1) From every original decree passed by an Agency Munsif, an appeal shall lie to the Agency Divisional Officer of the sub-division in which the local limits of the Agency Munsif's jurisdiction are included and from every original decree by the Agency Divisional Officer an appeal shall lie to the agent to the State Government.

When an original suit, which is triable by an Agency Divisional officer or by the Agent to the State Government is transferred to a subordinate Court under Rule 13 of 11(4) the appeal against the decree of the subordinate Court shall lie to the Agent to the State Government or the High Court respectively.

(2) From every appellate decree passed by an Agency Divisional Officer an appeal shall lie to the Agent to the State Government on the grounds specified in Section 100, Civil Procedure Code, provided that the Agent to the State Government may for reasons to be recorded, admit a special appeal on questions of fact.

When an appeal triable by the Agent to the Government is transferred for disposal to an Agency Divisional Officer under Rule 11(4), the appeal if any lies against the Agency Divisional Officer's appellate decision, shall be to the High Court.

Rule 48 specifies that from every decree passed by the Agent to State Government in appeal from an original decree passed by any Court subordinate to him an appeal shall lie to the High court on the grounds specified in Section 100, Civil Procedure Code. It is also specified that decrees passed by the Agent to the State Government in second appeal from original decree passed by Agency Munsifs shall be final but the High court may for special reasons require him to review his judgment as they may direct.

Rules 49, 50, 51, 52 and 53 also deal with certain aspects relating to appeals.

Rule 57 specifies that the agent to the State Government shall submit to the High court in such form and on such dates as the High court may direct, statement of the business done by him, by the agency Divisional Officers and by the Agency Munsifs.

Rule 58 deals with bringing on record the legal representatives and the other connected aspects. Rule 59 of the Rules specifies that all petitions against the proceedings of the Agent to the State Government in respect of matters not otherwise provided for in these rules must in the first instance be submitted to the State Government who may, if necessary refer them to the High court.

Rule 60 specifies that reference will be made by the Agent to the State Government in all cases not provided for by the rules.

5. In all fairness, the learned Counsel would submit that as far as the orders of this nature are concerned, there is no specific rule dealing with appeals under the Rules. In Smt. Ganga Bai Vs. Vijay Kumar and Others, the Apex court held as hereunder.

The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute.

It is no doubt submitted before this Court that since the rules are silent relating to the maintainability of a civil miscellaneous appeal, these parties can fall back on the provisions of the Code and hence rightly the appellants under Order 43 Rule 1 of the Code preferred the civil miscellaneous appeal.

6. The Division Bench of this Court in *The Andhra Bank Limited, rep. by its Manager, Madras Branch v. The Trans-World Traders, a proprietary Concern*, owned by P.N. Bala Subrahmanyam 1976 (1) APLJ 260 while dealing with Rule 35 of the Rules and Sections 47 and 96 of the Code held that the civil miscellaneous appeal under the Code as against an order passed by the Agent to the Government under Rule 35 of the Agency Rules refusing to execute the decree or staying the execution of a decree, cannot be maintained under the provisions of the Code and Revision to the State Government would lie. But, however, the learned Division Bench came to the conclusion that the Agent to the Government exercising functions under the Agency Rules is a Court or Tribunal subordinate to the High Court and the High Court can interfere with his orders under Article 227 of the Constitution and the existence of an alternative remedy of revision to Government is no bar.

7. This court, on 18.4.2002 in C.M.P. No. 7952 of 2002 granted interim suspension and the same was not vacated. In the light of the scheme of the rules, the civil miscellaneous appeal as such preferred under Order 43 Rule 1 of the Code is not maintainable. But, however, the prior judgment in O.S. No. 21 of 1993 is placed before this Court and elaborate submissions had been made. Further submissions at length were made in relation to the nature of the order, which is impugned in the present civil miscellaneous appeal. The procedural technicalities normally not to come in the way while doing substantial justice to the parties.

8. Taking the over all facts and circumstances into consideration and also the fact that interim suspension was granted on 18.4.2002, this Court, in stead of driving the appellants to yet another litigation by invoking jurisdiction of this Court under Article 227 of the Constitution of India, is of the considered opinion that this proceeding to be treated as one under Article 227 of the Constitution of India and accordingly the impugned order is hereby set aside and the matter is remitted to the Agent to Government at Khammam to give opportunity to the parties and to pass appropriate orders in accordance with law.

9. The present civil miscellaneous appeal, which is being treated as a revision

under Article 227 of the Constitution of India, is accordingly partly allowed to the extent indicated above. No order as to costs.