(1954) 08 AP CK 0012

In the Andhra Pradesh High Court

Case No : Misc. Application No. 7/5 of 1954-55

Bansilal and others — APPELLANT

Vs

Mukand Das — RESPONDENT

Date of Decision : 30-08-1954

Acts Referred:
Constitution of India, 1950 — Article 133

Citation : (1954) 08 AP CK 0012

Hon'ble Judges : Srinivasachari, J;Qamar Hasan, J

Bench : Division Bench

Advocate : Sriram Deshpande, for the Appellant; Irshad Hussain, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application under Cls. (a) and (b) of Sub Art. (1) of Art. 133 of the Constitution of India for leave to appeal to the Sup erne Court against the judgment and decree in Appeal No. 1190 of 1354F., on the file of this court which affirmed without variation, the judgment of the learned Judge on the original side of the High Court, who decreed the claim for I. G. Rs. 64,000/- with costs and past interest at the contractual rate and future interest till realisation at the rate of eight annas per cent per mensem and ordered the plaint to be returned for presentation to a court of competent jurisdiction in so far as the claim for damages amounting Rs. 92,747-11-9 was concerned.

2. In order to appreciate the arguments advanced in support of the application and the rival contentions raised on behalf of the respondent, it is necessary to mention in brief at the outset the necessary facts.

3. The suit being suit No. 43 of 1351F., was brought by the non-applicant for recovery of I. G. Rs. 1,56,747-11-9 on the allegation that he was indebted to one Narayanlal to the tune of the amount claimed and the applicants who were defendants were found to be indebted to the non-applicant to the extent of I. G.

Rs. 64,000/- on accounts having been gone into and the balance struck on 28-8-1953. It was stated that the creditor of Mukund Das, the plaintiff, Narainlal consented to accept this amount in full satisfaction of his outstanding debt.

It was therefore agreed between the parties that applicant No. 1 in his capacity as the manager of the family would pay the sum found to be due soon after the following Divali which would go to liquidate Narayanlal''s debt. If for any reason, the applicants failed to perform their part of the agreement, they would take over the non-applicant''s liability to the said Narayanlal and execute a deed to that effect in favour of the latter. The alleged agreement is Ex. 1 and is printed at page 98 of the printed Paper Book.

The non-applicant''s complaint was that the applicants neither paid the amount as promised nor did they take over the liability of Narayanlal''s debt as agreed. The plaintiff, Mukund Das stated that in order to meet the revived debt of Narayanlal, he was compelled to sell a certain house, and put to loss, the sale price of which went towards part satisfaction of the debt.

Therefore he prayed that a decree be passed for Rs. 85,000/- and odd as damages or in the inter-native to decree the sum of Rs. 64,000/- as an amount of debt due from the defendant and the balance by way of damages.

4. The applicants traversed all the material allegations in the plaint. The learned trial Court on the evidence adduced by the plaintiff-non-applicant before us, and the defendant-applicant before us not producing any evidence, decreed the suit to the extent of Rs. 64,000/- and returned the plaint for presentation to a court of competent jurisdiction in so far as the claim for damages was concerned.

5. The applicants appealed from that portion of the decree winch saddled them with liability to pay Rs. 64,000/- and the non-applicant filed a separate miscellaneous appeal to get the reversal of the order returning the plaint.

6. The miscellaneous appeal was dismissed practically for the reason that it was not pressed. The applicants'' appeal was disallowed holding that there was no substance in the appeal either on a question of fact or on a point of law.

7. It would thus appear that the decree passed by this Court in the applicants'' appeal was a decree of affirmance. There is no dispute that the requirement as regards the value of the subject-matter prescribed in Sub-Art. (a) of Art. 133 is fully satisfied in this case which makes Cl. (b) of the Article irrelevant. But Art. 133 says that where the judgment, decree or final order appealed from, affirms the decision of the court immediately below, leave to appeal will be granted only if the High Court certifies that the appeal involves some substantial question of law notwithstanding the fact that the subject-matter of the appeal exceeded Rs. 20,000/-.

8. The learned Advocate for the applicants argued that the plaintiff had claimed Rs. 1,56,747-11-9 by way of damages and the court below had held that it could not entertain the suit for damages. The court under these circumstances should

have dismissed the whole suit as the claim was one for damages alone. The argument is that the court could not have decreed piecemeal a claim of Rs. 64,000/- said to be due on account.

According to the learned Advocate the plea of jurisdiction was substantial question of law and'' as such leave prayed for ought to be granted. In tins connection, reliance was placed on -- AIR 1925 60 (Privy Council) -- The Secretary of State for India in Council Vs. Mask and Company, by Partners, M. Vedachala Mudaliar and Another, and -- Chittam Subba Rao Vs. Vela Mankanni Chelamayya, respectively.

9. On the other hand, the learned Advocate for the non-applicant contended that though no doubt the plaintiff had claimed the suit money by way of damages, yet at the same time he had also based his suit on the alternative causes of action, of debt and damages. The alternative cause of action for debt was unquestionably within the jurisdiction of the court below. The miscellaneous appeal being dismissed, no question of jurisdiction, it was urged, could be said to be involved in this case for purposes of appeal to the Supreme Court.

We are of the opinion that the contention advanced on behalf of the non-applicant has much force and must prevail. There was undoubtedly an independent cause of action for the recovery of money found to be due on a balance struck on 28-8-1953 and it was expressly pleaded in the alternative in the plaint. Despite the fact that the learned court below found itself unable to entertain the suit for damages, it was not in a position to refuse to pass a decree in respect of the claim which was as well claimed and was within its compliance to entertain.

Therefore, in our opinion, there is no room for the contention that the question of jurisdiction is involved in the case and that it is a substantial question of law. Very different consideration arose in AIR 1923 PC 60 (A) and Chittam Subba Rao Vs. Vela Mankanni Chelamayya, . In the former case while decreeing a suit for possession of property on the ground of adoption, the court ordered that the plaintiff should provide maintenance for the widow of the deceased, who was one of the defendants and that the maintenance should be a charge upon the estate.

On appeal, the High Court modified the decree by increasing the amount of maintenance but affirmed the decree in other respects. The defendants thereupon applied for leave to appeal to the Privy Council but the application Slaving been dismissed, they applied for special leave to appeal. Their Lordships granted special leave but limited it to the question of maintenance.

In Chittam Subba Rao Vs. Vela Mankanni Chelamayya, , the appeal to the High Court arose out of a suit for a declaration that a certain will alleged to have been executed by one Kalla Sambamurthi in favour of the first defendant was false and forged and that the first defendant obtained no right thereunder and for possession of certain properties, for recovery of mesne profits and for directing the parties, for recovery of mesne profits and for directing the first defendant to render on account for the monies of the deceased in his hands.

The plaintiff relied upon another will alleged to have been executed by the deceased in his favour. The trial Court decreed the suit holding that the will relied upon by the plaintiff was the last will and testament of the deceased. The decree ran as follows :

1. The plaintiff do recover possession of the plaint B schedule properties from the defendants,

2. The plaintiff be not entitled to recover possession of the C schedule properties from the defendants,

3. The first defendant do render an account of the monies of Sambamurthi in his hands.

On appeal, the High Court set aside the decree of the trial Court in so far as it granted the relief relating to accounting against the first defendant but upheld the finding of the trial Court as regards the will. The result was that the decree of the lower court was modified by deletion of the clause relating to accounting. The first defendant sought to appeal to the Supreme Court against the decree of the appellate court.

The Full Bench of the Madras High Court held that if the requirements of pecuniary valuation are satisfied, an appellant is entitled as of right to leave to appeal to the Supreme Court if the decree of the court of first instance is modified substantially by the decree of the High Court, whore the matter in respect of which it has been modified is a matter in dispute before the Supreme; Court irrespective of the fact whether the modification is in favour of the applicant or not and although no substantial question of law is involved.

But if the modification is in respect of a matter not comprised in the subject-matter still in dispute in appeal to the Supreme Court, the applicant is not entitled to leave as of right.

10. It would thus appear that the question which arose before the Privy Council and the Full Bench of the Madras High Court does not arise in this case and therefore, these authorities are distinguishable and not helpful. In The Secretary of State for India in Council Vs. Mask and Company, by Partners, M. Vedachala Mudaliar and Another, the position was that in the trial Court, an objection had been taken to the jurisdiction of the court to entertain the suit on the ground that the suit was barred by the provisions of the Sea Customs Act.

That Court tried this issue as a preliminary is the and upholding the objection, dismissed the suit. On appeal by the plaintiff, the High Court held that the civil court was not deprived of jurisdiction in the matter by the provisions of the Sea Customs Act and accordingly, directed the case to be tried on the merits. The amount claimed in the suit was more than Rs 20,000/-.

Their Lordships of the Madras High Court were assured by the Advocate General that the question of jurisdiction was awaiting decision in eight suits pending in the Province and there were other claims of the same kind in which notice of suit had been given and that some litigations were pending in the courts in other provinces.

In view of these considerations and having regard to the general importance of the question, the learned judges came to the conclusion that the case was a fit one for appeal to be certified under Cl. (c) of S. 109 though the order of the High Court remanding the case was not a final order. We have not been convinced by the arguments of the learned Advocate for the applicants that the question of jurisdiction alleged to be involved in this case is of general importance or of a substantial character.

In our opinion, the correct position has been laid down by a Full Bench of the Allahabad High Court in the case of -- Fateh Kunwar Vs. Durbijai Singh, wherein it has inter alia been held that if there are two appeals in the High Court from one decree of the lower court, then the decree of the High Court in each of the appeals will be separately considered and if the proposed appeal to the Supreme Court arising out of one of such decrees relates to a matter on which that decree has affirmed the decision of the court below, there will be no right of appeal without a substantial question of law.

As there is no substantial question of law involved in the appeal filed by the applicant and dismissed by us, we do not think that leave could be granted.

11. For the reasons stated above, we dismiss the application with no order as to costs.

