
(1971) 12 AP CK 0005

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 170 of 1970

C.S. Rangaswamy

APPELLANT

Vs

Pedda Bidda and Others

RESPONDENT

Date of Decision : 02-12-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23

Citation : AIR 1972 AP 266

Hon'ble Judges : Gopal Rao Ekbote, J; A.V. Krishna Rao, J

Bench : Division Bench

Advocate : C. Pattabhi Rama Rao, for the Appellant; S.L.N. Rao, for the Respondent

Judgement

Gopal Rao Ekbote, J.—This appeal is from the judgment of our learned brother, Obul Reddi, J. given in S. A. No. 118 of 1967, on 22-4-1970 where by the learned Judge allowed the appeal holding that the Civil Court has no jurisdiction to entertain the suit and consequently directed the return of the plaint for its presentation before the proper forum created by the Estates Abolition Act.

2. The relevant facts are that the plaintiff who is not 6th respondent before us filed a suit for declaration of title in regard to a land admeasuring Ac. 1-50 cents situate in Peddabadanevada village in former Kuppam Zamindari. He claimed the suit land as private land. He wanted possession of the same. he claimed past as well as future mesne profits.

3. The allegation was that Chakravarthi Srinivasa Raghavachari was the original holder of inam. He, because he was old, and the other members of the family entrusted the management to Rajagopala Chakravarthy, the 6th respondent herein, to manage the estate as well as to institute the present suit out of which this appeal arises. It was alleged that by Ex. A-5 dated 24-8-1919. Srinivasa Raghavachari usufructually mortgaged the suit land to one Gangappa the father of Defendant 1. to 4 and husband of Defendant No. 5 for a sum of Rs. 160/-. ON 18/6/1945, Ex. A-6, the mortgage was discharged. Gangappa was given lease by

Srinivasa Raghavachari of the suit land. Till three years prior to his death he was paying rent. His heirs, after his death, continued the cultivation as tenants and continued to pay the rent till 1363 Fasli. It was further alleged that defendants then committed default. The plaintiff, therefore, issued the suit notice, Ex . A-2, on 18-4-1955 claiming possession and share of the produce. The defendants gave a reply notice, Ex. A-3 on 26-4-1955. They denied the tenancy as well as the title of the plaintiff. The plaintiff, therefore, claimed the above said reliefs.

4. The defence set up by the defendants was almost the same as they had set out in the reply notice. Apart from denying the tenancy and the title of the plaintiff they questioned the locus standi of the plaintiff to file the suit representing the joint family. They claimed that the land in question is a ryoti land, that they have got occupancy rights and that the plaintiff has not title whatsoever to the suit land. The inam estate was abolished and taken over by the Government. The plaintiff filled an application u/s 15 of the Estates Abolition Act for the grant of a patta and as a result the plaintiff cannot file the suit not the civil Court has jurisdiction as the matter is pending before the Settlement Officer. We are not concerned with the other defences raised in this appeal.

5. Upon these pleadings the trial Court framed appropriate issues. The issue with which we are concerned was framed on 12-12-1956 as an additional issue:---

"Whether the allegations made in paras 4 and 5 of the written statement are true and whether this Court has no jurisdiction to try this suit?"

6. After a property trial the trial Court held that it has jurisdiction. It referred also to the earlier finding given in that behalf and to the fact that an appeal was preferred against that decree. The appellate Court held that the Civil Court has jurisdiction. The trial Court held that that decisions became final as no appeal was preferred against it and was binding upon the parties. The trial Court further found that the suit land is a private land and that the plaintiff is entitled to sue. It further held that the defendants are tenants and that they do not have occupancy rights. As a result it found that the plaintiff is entitled to the reliefs which he claimed. The suit was decreed.

7. The matter was carried in appeal by the defendants to the District Court. The District Court confirmed the findings of the trial Court on all the issues. It is pertinent to note that the question of jurisdiction does not seem to have been raised before the District Court as we do not find any discussion or determination of that question in the judgment.

8. Against the said decision S. A. No. 118 of 1967 was filed. The learned Judge, without going into the merits of the case, held that the Civil Court has no jurisdiction to entertain the suit and it is the tribunals constituted under the Estates Abolition Act that are entitled to entertain and decide the dispute between the parties in regard to the suit land. It is this view that is now questioned in this Letters Patent Appeal.

9. Before we deal with the question which was raised before us, it is also necessary to mention that originally the trial Court on 2-1-1957 held that it had no jurisdiction and directed the return of the plaint to the plaintiff for presentation before the proper forum. A. s. No. 64 of 1957 was preferred to the District Court. The District Judge allowed the appeal holding that the Civil Court has jurisdiction to entertain the suit. No appeal was filed against that judgment of the District Court and it became final.

10. After the matter went back to the trial Court, the trial Court by its decision dated 8-10-1957, as stated earlier, decreed the plaintiff's suit. As against that A. S. No. 218 of 1957 was filed and it was dismissed by the District Court on 15-10-1958. S. A. No. 209 of 1959 was filed. It came up before a single Judge of this Court on 14-11-1962. An application to amend the plaint was filed by the plaintiff. He wanted the plaint to be amended so that his contention that the suit land is a private land can be made clear. The learned Judge allowed the amendment and remanded the case to the trial Court for fresh disposal.

11. It is only after the case was remanded that another additional issue seems to have been framed by the trial Court which reads as follows:

"Whether this Court has no jurisdiction to entertain this suit by virtue of the provisions of the Estates Abolition Act?"

12. Thus in this case we have two issues, one additional issue framed on 12-12-1956 relating to jurisdiction of the Court and another framed on 27-3-1963 after the remand by this Court as stated above.

13. The question urged before us was that the decree passed by the District Judge in A. S. No. 64 of 1957 holding that the Civil Court has jurisdiction to entertain the suit has become final. The correctness of that decision could not have been considered by the learned Judge in S. A. No. 118 of 1967. Reliance was placed in support of this contention on Nain Singh Vs. Koonwarjee and Others, .

14. In so far as the position of law in this behalf is concerned it seems to be now fairly settled that the correctness of the remand order was not open to review if no appeal directly has been filed against the order of remand. Justice Hedge on behalf of the Court said:

"The High Court, in our opinion, erred in holding that the correctness of the remand order was open to review by it. The order was open to review by it. The order in question was made under R. 23, O. 41, Civil Procedure Code. That order was appealable under Order 43 of that Code. As the same was not appealed against, its correctness was no more open to examination in view of section 105(2) of the Code which lays down that where any party aggrieved by an order of remand from which an appeal lies, does not appeal therefrom, he shall thereafter be precluded from disputing its correctness. The High Court has misconceived the scope of its inherent powers. Under the inherent power of

Courts recognised by Sec. 151, C. P. C. a Court has no power to do that which is prohibited by the Code. Inherent jurisdiction of the Court must be exercised subject to the rule that if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked. In other words, the Court cannot make use of the special provisions of Section 151 of the Code where a party had his remedy provided elsewhere in the Code and he neglected to avail himself of the same. Further the power u/s 151 of the Code cannot be exercised as an appellate power."

15. It is plain that the said decision covers the present case. We have already noticed that against the order of remand made in A. S. No. 64 of 1957 holding that the Civil Court has jurisdiction, no appeal was preferred although that order admittedly is an appealable order as it was passed under Order 41, Rule 23, C. P. C. That order, therefore, became final. It was, therefore, not open to this Court to ignore that order or review it in a regular appeal which came to this out in pursuance of the remand order was made. Respectfully following the above said decision of the Supreme Court, we hold that this Court could not have gone into the correctness or otherwise of the remand order passed in A. S. No. 64/57. It became final and was binding upon the parties. The question of jurisdiction therefore had become final and could not be reiterated in this suit at any subsequent stage and it was not open to this Court to review it.

16. The contention of Sri. V. S. L. Narasimha Rao, the learned counsel for the respondents, however, was that the said decision of the Supreme Court is not applicable to the facts of the present case. His contention was that as the learned single Judge after allowing the petition to amend the plaint had remanded for its disposal afresh, according to him that order of remand necessarily implies that the previous order of remand in A. S. No. 64/57 was set aside and the question of jurisdiction was again open for debate. He further contended that it is because of that, that the trial Court again framed the additional issue in 1963. We do not think that the argument is valid. It is plain that the learned 14-11-1962 merely allowed the petition to amend the plaint and remanded the case to the trial Court. He had no occasion to consider the question of jurisdiction at all nor did he actually consider it. The order is silent in that behalf. The learned Judge could not have also considered it obviously because the order of remand in A. S. No. 64-57 had by then become absolute and binding on the parties. Thus it is clear that neither the second appellate Court in S. A. No. 209/59 was competent to review the earlier remand order made by the District Court nor in fact it has so reviewed it. The effect of the remand order made was not to deprive the remand order in A. S. 64/57 of its efficacy or of its binding nature on the parties. We fail to see how merely because subsequently the case was again remanded, the earlier order, which was appealable and which had become final and binding upon the parties, ceased to have that effect. No authority could be cited nor are we aware of any such authority. The fact that the trial Court framed another issue would not in our judgment, alter the position of law. The trial Court also not have

considered that question again because the remand order in A. S. 64/.57 had become final by once again in regard to jurisdiction therefore, was superfluous and unnecessary act of the trial Court and it has no legal effect whatsoever. The order passed on that additional issue by the trial Court was also redundant although it had held that the Civil Court has jurisdiction. That is why the defendants did to raise the question of jurisdiction before the District Judge. Having chosen not to raise this plea before the District Judge obviously because of the finally of the previous remand order, it was not open to them to raise that matter again before the learned single Judge. In any case, in view of the Supreme Court's decision, it was not open to this Court to either ignore the earlier order or review it.

17. For the reasons stated we would allow the appeal, set aside the judgment of the learned single Judge and remit the case for the disposal of the appeal on merits. The costs of this appeal will abide the result of the second appeal. The appellant will get back the Court-fees paid on the memorandum of Letters Patent Appeal.

18. Appeal allowed.