

(2004) 08 AP CK 0038
In the Andhra Pradesh High Court
Case No : CRP No. 1137 of 2004

Devireddy Sulochanamma and Others	APPELLANT
Vs	
Rebala Pattabhiramireddy and Others	RESPONDENT

Date of Decision : 13-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 5

Citation : AIR 2005 AP 64 : (2004) 5 ALD 505 : (2004) 5 ALT 475

Advocate : V. Rajagopal Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—Aggrieved by the order dated 19.1.2004 passed in O.P. No. 468 of 1998 on the file of District Judge, Nellore, R1, R2, R3 and R6 therein have filed this civil revision petition under Article 227 of the Constitution of India. R1 to R4 herein are the petitioners/plaintiffs in O.P. No. 468 of 1998. They filed the suit as an indigent person against the petitioners and R5 to R12 herein seeking the following reliefs:

"(a) declaring the first plaintiff herein as an indigent person and permit it to file this suit in forma pauperise

a(a) declaring the Plaintiffs 2 to 4 herein as trustees of Rebala Pattabhirami Reddy charities as indigent persons and permit them to file the suit in forma pauperis;

(b) declaring the plaintiffs title over Plaint A and B schedule properties;

(c) directing the Defendants 1 to 6 herein to deliver possession of Plaint A and B schedule mentioned properties and the relevant documents to the plaintiffs within the time fixed by this Hon"ble Court failing which the same may be ordered to be done through process of Court;

(d) grant costs of this suit;

(e) and grant such other further reliefs as are deemed fit and proper in the

circumstances of this case."

2. Brief facts essential for the purpose of disposal of this civil revision petition are as follows:

Rebala Sujathamma is the wife of Rebala Pattabhirami Reddy. Rebala Sujathamma succeeded to her husband Rebala Pattabhirami Reddy. Rebala Sujathamma, after the death of her husband, brought her sister C.K. Subhaprada, who was working as Assistant Director of Fisheries, Madras, to assist her in managing the estate of Rebala Pattabhirami Reddy. Smt. Sujatamma executed a registered will dated 22.10.1962 bequeathing all her properties to her sister C.K. Subhaprada. C.K. Subhaprada also executed a will dated 21.12.1960 bequeathing her properties to her sister R. Sumjatamma. C.K. Subhaprada created a trust by name Rebala Pattabhirami Reddy Charities under a trust dated 12.1.1994 to advance religious and charitable objects of public utility and gifted a sum of Rs. 1,116-00 to form nucleus of the said Trust. Smt. Rebala Sujathamma executed a codicil on 24.1.1994 as an amendment to the will dated 22.10.1962 whereby she introduced a clause in the will that in case of C.K. Subhaprada predeceasing her, the entire property should absolutely go to Charities created by C.K. Subhaprada. C.K. Subhaprada pre-deceased Rebaka Sujathamma, who died on 4.6.1995. Disputes cropped up with regard to estate of Smt. Rebaka Sujathamma after her death. Therefore, O.P. Nos.151 to 155 of 1996 came to be filed on the file of District Judge, Nellore for granting of succession certificate. After due enquiry all the Ops came to be disposed of by a common order directing the parties to approach the Civil Court for appropriate reliefs. Hence, Rebala Pattabhirami Reddy Charities represented by its Trustees filed suit for the reliefs stated supra and also sought for permission to sue as indigent person. The defendants filed counter resisting the claim of the plaintiffs and questioning the very maintainability of the suit. During the pendency of the enquiry, D8 died and therefore I.A. No. 769 of 2003 came to be filed for bringing the LRs of D8 on record. The said application came to be allowed on 31.7.2003. The plaintiff filed I.A. No. 1065 of 2001 seeking impleadment of Katamreddy Subba Reddy, Magunta Sreenivasulu Reddy and Agastya Reddy Venku Reddy as plaintiffs/Petitioners 2 to 4. They also filed I.A. No. 1447 of 2001 to bring on record LRs of Bejawada Ankamma as defendants. Both the applications came to be allowed on 17.11.2001 by the learned District Judge, Nellore. The defendants 1 to 3 and 6 filed C.R.P. Nos. 980, 981, 1155 and 1688 of 2002 assailing the orders passed in I.A. Nos. 1065, 1447 and 1448 of 2001 and memo in C.F.No. 2686 of 2000. All the revisions came to be dismissed by an order-dated 15.9.2002. I deem it appropriate to refer the relevant portion of the order and it reads as under:

"17. Coming to the third contention canvassed by the learned Counsel for the petitioners that there is no trust in existence and no property is placed in the hands of trustees. Unfortunately, the trust documents are not marked. It is not possible for this Court while exercising revisional jurisdiction to look into the

documents, which are not marked before the Court below at the time of passing of the order. The Court below ought to have taken care to mark the documents before advertng to the terms of the trust. This Court cannot look into those documents even if they were to be placed before this Court unless they are received as additional evidence. There is no request made by either of the parties to receive the documents as additional evidence. In the absence of such a request made before this Court, it cannot look into those documents that are not marked and made part of the orders passed over the petitions. Hence, that matter has to be relegated to the trial Court to be decided.

18. To sum up, I find that there is no illegality in passing of the order impleading the trustees as plaintiffs and the Court below has rightly exercised its discretion. I also find that the Court below has got jurisdiction under Order 33, Rule 5 of Code to decide about the maintainability of the suit at the earliest point of time. In that view of the matter, the common order passed by the learned District Judge, Nellore is confirmed.

19. In the result, the civil revision petition are liable to be dismissed and are accordingly dismissed. No costs. However, this order does not in any way prevent the revision petitioners to canvass once again the maintainability of the suit before the Court below in view of the principles laid down in the decision of the Supreme Court in *Gagandeep Pratishthan Pvt. Ltd. v. Mechand.*"

Thereafter, D1 to D3 and D6 filed Transfer C.M.P. No. 426 of 2003 on the file of this Court under Sections 24 and 151 of CPC seeking withdrawal of O.P. No. 468 of 1998 from the Court of Principal District Judge, Nellore, and transfer the same to another Court at Nellore. This Court by order dated 10-12-2003 dismissed that petition at the admission stage itself with the following observation:

"10. For the foregoing reasons, without any reference to the other contentions raised by both the parties, before this Court, keeping in view the age of the parties and the age of the litigation, and the significance of the contentious issue with regard to maintainability of the very suit itself, and also having regard to the fact that the matter was heard in part way back in March 2003, the Court below is directed to hear the OP.No. 468 of 1998 as regards the preliminary issue of the maintainability of the suit within a period of two weeks from the date of receipt of a copy of this order.

11. Either party is at liberty to have the copy of this order and place the same before the Court below and the same shall be accepted by the Court below as a valid communication. It is also made clear that in a contingency where any other interlocutory application or applications is/are filed by any of the parties to the proceedings, the Court below shall dispose of the same forthwith without insisting either of the party to file counter and to advance any arguments, particularly if the other side gives an order of agreement to the relief sought for in any such interlocutory applications. The Court below is further directed to follow the directions in the present order of this Court in strict compliance and

see that the matter shall be disposed of within two weeks thereafter.

12. With the above directions and observations, the Transfer civil miscellaneous petition is closed at the stage of admission. However, there shall be no order as to costs."

Keeping in view the directions given by this Court in the earlier civil revision petitions and on considering the material on record and on hearing Counsel for both the parties, the learned District Judge by an order dated 19.1.2004 rejected the objection raised by the defendants with regard to the maintainability of suit. Hence, this civil revision petition by D1 to 3 and D6 in the said O.P.

3. Learned Counsel for the petitioners submits that the plaintiff-trust suffers from lack of essential requirement i.e., trust money and therefore there is no trust in the eye of law as on 12.1.1994 and thus the suit filed by the trust represented by its trustees is not maintainable. What he means to say is that the trust money of Rs. 1,116/- is so nominal and paltry to be properly termed as trust money. He further submits that there is no cause of action for the trust to file the suit. His last submission is that Plaintiffs 2 to 4 are not at all the trustees of the 1st plaintiff trust and therefore they have no right to sue the defendants for recovery of the alleged trust property. It is also submitted by him that the trustees are expected to incur expenses in the matter of realizing the trust property and therefore the question of permitting them to file suit as indigent person arises only in case of they too have no means to pay the Court fees. In support of his submissions he placed reliance on the decision of Privy Council in AIR 1949 143 (Privy Council) and Duli Chand v. M.P.T.C, Charitable Trust AIR 1984 Delhi. 145. In Bombay Government (supra), it has been held that there is no provision in the CPC enabling the trustees to sue in the name of trust, as members of the firm may sue in the name of the firm and that in case of a trust, the plaintiffs are bound to be trustees and not the trust. In Duli Chand (supra), it has been held that a suit by one of the co-trustees on the basis of a resolution passed unanimously by all other co-trustees authorizing that trustee to file the suit would not be maintainable. The position of trustees is exactly the same as of any other set of co-owners who must necessarily join together to file a suit.

4. Learned Counsel for R.1 to R4/ plaintiffs submits that since the plaintiffs sued as trustees the question of incapacity to pay the Court fees shall be determined only with reference to the means possessed by the trustees in such a capacity. It is also submitted by him that the trust deed itself is very clear that a corpus amount of Rs. 1,116/- is set apart by Smt. Sujatamma and the question as to whether it is sufficient or insufficient to meet the laudable objects of the trust is not required to be adjudicated in an enquiry on an application seeking permission to sue as indigent person. It is nextly submitted by him that since all the trustees have been joined as plaintiffs, the issue as to the maintainability of the suit does not survive. In support of his submissions he placed reliance on the following decisions Mohideen Khan v. Ganikhan and Thirty Three Ors. 1955 (1) An. WR 461, Venkatasubbaiah v. Tirapathaiah 1955 (1) An. WR 260, Mohamad

Salamatulla Vs. Mohd. Fazlur Raham and Others, , Ayipala Venkataraya Chetty Vs. Ayipala Ramachandriah Chetty and Others, , P.V. Ramamohan Alias Bayappa Reddi and Ors. v. P. Venkata Reddi and Ors. AIR 1971 AP 12, Satyanarayana v. Kotiratnam 1987 (1) ALT 558, and the decision of Supreme Court in Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another, . In Mohideen Khan v. Ganikhan and Thirty Three Ors (supra), it has been held that a defacto trustee who is in possession and management of the institution for the time being may be allowed to maintain a suit on behalf of the institution for the recovery of trust property held adversely by a stranger so long as the action is for the benefit of the real owner viz., the institution. In Venkatasubbaiah v. Tirapathaiah our High Court held that 0.33 of CPC has been enacted to serve a treble purpose: (i) to protect the bona fide claims of a pauper; (ii) to safeguard the interests of revenue; and (iii) to protect the defendant's right not to be harassed. In Mohamad Salamatulla v. Mohd. Faizer Raham and Ors. (supra), it has been held by our High Court that when the petition for permission to sue in forma pauperis discloses a cause of action, it is immaterial whether the case of the petitioner involves complicated questions of law or facts. These do not bear on the question of pauperism. A person who is not in a position to pay Court fee can nonetheless have a case, which raises complicated questions of law as well as of facts. The criterion is not whether the case of the pauper raises complicated questions, but whether on the face of the plaint a cause of action does arise, i.e., on the allegations in the petition it discloses a cause of action. In A.V. Chetty v. A.R. Chetty it has been held that enquiry should be confined only to the allegations in the plaint. It is further held that it is not permissible to the Court to conduct an elaborate enquiry at the instance of the pleas raised by them in the defence of the suit. In P.V. Ramamohan Alias Bayappa Reddi and Ors. v. P. Venkata Reddi and Ors. (supra), it has been held by our High Court that Order 33, Rule 5 of CPC the application to sue in forma pauperis can be rejected only when the allegations made in the plaint do not show a cause of action or from the allegation, in the petition the suit appears to be barred by any law. It is not permissible to either go into the points raised in the counter or documents filed in support of the allegations made in the counter. No enquiry is postulated into the defence, which is likely to be set up if the suit is permitted to be instituted in forma pauperis. What all is required at this stage to be considered is whether prima facie the plaintiff has a cause of action on the averments made in the petition or whether the suit appears to be barred by any law again from the averments made in the petition. In Satyanarayana v. Kotiratnam (supra), it has been held by our High Court as follows:

"Mere failure of the petitioner to show moveable property and its value cannot be a decisive basis for refusing to permit the petitioner to sue as indigent person. Under Order 33, Rule 2, application to sue as an indigent person is required to show the plaint particulars, property particulars and their estimated value. In addition such an application is also required to be signed and verified in the manner prescribed for the signing and verification of pleadings. Broadly Order

33, Rule 2 may be taken to specify three requirements relating to plaint, schedule and signing and verification, the failure to comply with any one of which would result by the operation of Order 33, Rule 5 in mandatory dismissal of the petitioner's application to sue as an indigent person. These are all requirements relating to pleadings. Defects in plaints, in schedules even in verifications are never treated by the CPC incurable and fatal to the maintenance of claims except in the case of a poor man's application to sue as an indigent person. Considering the requirement of Rule 2, it would not be right to give mandatory effect to Rule 5. The mission of Order 33 of Civil Procedure is not to discipline the poor applicants but to enable them to sue as indigent persons."

5. Learned Counsel appearing for the petitioners vehemently contended that there is no cause of action for filing the suit by the plaintiff-trust and that the plaintiff-trust was not in existence as on the date of the presentation of the plaint and therefore the question of permitting the plaintiff-trust to sue as an indigent person does not arise. At this juncture, it is necessary to set out the relevant provisions of CPC, which are as follows:

"Order 33, Rule 5: The Court shall reject an application for permission to sue as a pauper:

- (a) Whether it is not framed and presented in the manner prescribed by Rules 2 and 3, or
- (b) Whether the applicant is not a pauper, or
- (c) Whether he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or
- (d) Whether his allegations do not show a cause of action, or
- (d)(i) Whether the suit appears to be barred by any law, or
- (e) Whether he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter;
- (f) Whether the suit appears to be barred by any law for the time being in force;
- (g) Whether any other person has entered into an agreement with him to finance the litigation.

It has been held by the Supreme Court in *Vijai Pratap Singh and Ramjiwan Misir v. Dukh Haran Nath Singh* (supra), that by the express terms of Order 5, Clause (d), the Court is concerned to ascertain whether the allegations made in the petition show a cause of action. The Court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true, no case is made out

for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the Court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the Court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. By the Statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is shown: the jurisdiction does not extend to trial of issues which must fairly be left for decision at the hearing of the suit.

6. In Para 19 of the plaint, cause of action for filing the suit has been detailed and it reads as follows:

"19. Cause of action for this suit arose on 13-3-1993 when Rebala Lakshminarasareddy died intestate and Rebala Sujathamma inherited to claim Plaintiff-B schedule property and the same was confirmed as per the decree and judgment dated 3-3-1990 in O.P. No. 106/84 on the file of this Hon''ble Court and on 22.10.1962 when Rebala Sujathamma executed her last registered Will and testment in sound and disposing state of mind and on 24-1-1994 when the said Sujathamma executed a registered Codicil in sound and disposing state of mind as an amendment to the existing Will dated 22.10.1962 and subsequently died on 4-6-1995 and when Plaintiff A and B schedule mentioned properties devolved on plaintiff with absolute rights and on 21-10-1997 when the Hon''ble Court passed a common order in O.P. Nos. 151/96 to 155/96 directing the parties concerned to approach the Civil Court for appropriate reliefs in respect of Plaintiff A and B schedule properties. It all arose at Nellore where the Plaintiff A and B schedule properties are situated within the jurisdiction of this Hon''ble Court."

It is explicit from the above-referred para of the plaint that cause of action arose for filing the suit on different dates mentioned therein. Therefore, I do not see any substance in the contention of the Counsel appearing for the petitioner that there is no cause of action for filing the suit.

7. It is nextly contended by the Counsel appearing for the petitioner that there was no trust existing as on the date of the plaint and therefore the suit filed by the plaintiff/trust is not maintainable. His contention is that as on the date of the execution of trust deed of C.K. Subhaprada, there was no property in relation to which trust was said to have been created. The same contention was advanced before the Trial Court also. The Trial Court repealed the said contention by referring the terms of the trust deed dated 12.1.1994. In Para (4) of the plaint it is stated that C.K. Subhaprada gifted a sum of Rs. 1,116/- to form the nucleus of the trust. Therefore, it cannot be said that there was no property in relation to which a trust was created. It is nextly submitted by the learned Counsel for the petitioner that the suit filed by the trust is not maintainable. His contention does

not hold good in view of the fact that the trustees themselves came on record as plaintiffs and the petitioners herein questioned the impleadment of trustees by the plaintiff unsuccessfully by filing civil revision petitions. His last submission is that the means of the trustees are to be taken into account in adjudicating the indigence of the plaintiff. His contention can be repealed by referring to the Division Bench judgment of our High Court in Syed Mohd. Ibrahim Ali v. Syed Akram Ali, 1970 APLJ 125, wherein it has been held that when the plaintiff sues in a representative capacity the question of incapacity to pay Court fee shall be determined only with reference to the means possessed by him in such a capacity.

8. In view of the above discussion, I do not find any valid ground to interfere with the impugned order in exercise of the powers conferred on this Court under Article 227 of the Constitution of India. Accordingly, this civil revision petition stands dismissed.