

(1997) 09 AP CK 0099

In the Andhra Pradesh High Court

Case No : Second Appeal No. 175 of 1953

Dronavajjula Vidyamba

APPELLANT

Vs

Vallabhajosyula Lakshmi Venkayamma

RESPONDENT

Date of Decision : 27-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 24, 24(1), 24(2)

Citation : AIR 1958 AP 218

Hon'ble Judges : Umamaheswaram, J; Krishna Rao, J

Bench : Division Bench

Advocate : N Subrahmanyam and J.V. Krishna Sarma, for the Appellant; K. Jagannadharao and D. Madhurana Rao, for the Respondent

Judgement

Umamaheswaram, J.—Three questions are raised in this Second Appeal No. (1) whether the plea of discharge pleaded the appellant is true (2) whether the promissory note was executed on 3-8-1946, and the suit was consequently barred by limitation; and (3) whether, by reason of the terms of the order dated 7-11-1950 in O. P. No. 95 of 1950 on the file Of the District Judge, Krishna, at Masulipatarn having not been complied with, the trial of the suit by the Subordinate Judge was without jurisdiction, and the decree is consequently liable to be set aside.

2. Both the Courts held against the appellant on the plea of discharge, and we see no reason to disturb this concurrent finding of fact.

3. Sri Neti Subrahmanyam, the learned counsel for the appellant, strongly contended that the promissory note was executed on 3-9-1946, and that the suit was consequently barred by limitation. In support of that argument, he relied upon an entry marked as Exhibit A-3 (a) in the account book Exhibit A-3. The entry was noted as 3-8-1946. and the figure was corrected into 9. If, as Sri Subrahmanyam contends, the promissory note was duly executed on 3-9-1946, we are unable to follow why the figure 8 should have been originally entered and later on corrected into 9.

Both the Courts refused to act upon the entry in the account book on the ground that the account book was not regularly maintained. The view of the Courts below is perfectly, justified as we find, on a perusal of the account book, that the entries were not made from day to day. After having heard Sri Subrahmanyam at great length on the facts, we are inclined to agree with the Courts below that the promissory note was executed only on 3rd October 1946. It appears that the appellant purchased a property on 4-10-1948 and that the contract of sale was entered into on 15-4-1946.

If, according to the appellant's case, the amount due under the promissory note was borrowed on 3-9-1946, we fail to see why the entire amount was not paid under, the contract of sale or the sale deed executed earlier. The contract of sale shows that only a sum of Rs. 100/- was paid there under. It is therefore probable that the borrowing under the promissory note was made only on 3-10-1946 and that the amount was paid by the appellant's son-in-law to the vendor. We therefore confirm the finding of the Courts below that the suit was in time.

4. The third objection raised by Sri Neti Surahmanyam is a legal one, and we shall deal with it hereunder. It appears that the appellant's on-in-law, impleaded as the 2nd defendant in he suit, filed O. P. No. 95 of 1950 on the file of the District Judge, Krishna, at Masulipatam for transferring the promissory note suit O. S. No. 347 of 1949, District Munsif's Court Bandar, to the principal Subordinate Judge's Court of Bandar for joint trial with the partition suit filed by him, O. S. No. 6 of 1948. The order passed by the District Judge is as follows:

One suit is for partition and the other is on a promote. Respondents have no objection. Petition allowed. No costs.

It may be noted that the application for transfer was not made by the appellant herein. After the order of transfer, both the partition suit and the promissory note suit were being adjourned together by the Subordinate Judge. From the B Diary, it appears that the Subordinate Judge took up the promissory note suit now under appeal for trial on 29-3-1951 and that after examining the witnesses on both sides delivered judgment an the 31st March, 1951.

The records do not show whether any objection was raised by the appellant or by the son-in-law, the 2nd defendant, to the suit being tried separately and not along with the partition suit.

In the grounds of appeal filed before the District Judge, it was stated that the Subordinate Judge proceeded with the trial of the suit as against the wishes of the defendants and contrary to the directions in O. P. No. 95 of 1950, District Court Krishna at Masulipatam. But, among the points set out for determination by the District Judge, Krishna, this point does not find a place. In the grounds of second appeal filed before this Court, it is not stated that arguments were addressed on the question of jurisdiction and that the District Judge failed to record a finding. But, as the point argued before us is a pure question of law, we shall proceed to deal with it.

5. The important question that arises is whether, under the terms of Section 24 C. P. C, the District Judge was entitled to direct a joint trial of the two suits. Section 24 (1) C. P. C, provides when the High Court or the District Court may transfer or withdraw a suit pending in a subordinate Court. It may be noted that the order of transfer or withdrawal can be made at any stage. Sub-section (2) enacts that where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries the suit, may either re-try it or proceed from the point at which it was transferred or withdrawn subject to any special directions in the order of transfer.

A reading of sub-section (2), makes it clear that special directions, may be issued by the Court ordering the transfer, either to order the trial de novo or to proceed with the suit from the point at which it was transferred or withdrawn. For whatever reasons of convenience or otherwise the order of transfer is made u/s 24 (2) C. p. C, it does not empower the Court or contemplate any directions being given for the joint trial of the transferred suit. So, any violation or contravention of that order of transfer and the separate trial of the transferred suit do not render the proceedings invalid.

6. We find from a perusal of the B diary that the promissory note suit was being posted along with the partition suit in accordance with the order of transfer, and that it was taken up for separate trial on 29th March, and judgment was delivered on the last day of the quarter i.e., 31st March. We agree with the contention of Sri N. Subrahmanyam that the Subordinate Judge acted wrongly in violating the terms of the transfer order and in not proceeding with the joint of the two suits.

7. But, the question for consideration is whether, by reason of such violation, the proceedings of the Subordinate Judge become null and void. The contention is in our opinion untenable. No direct decision has been placed in support of such a proposition. The partition suit had been separately tried by the Subordinate Judge, and the appeal preferred against the partition decree has also been disposed of by this Court. The order of the District Judge directing a joint trial cannot, in the circumstances, be given effect to even if Sri Subrahmanyam's argument is accepted and the decrees of the Courts below are set aside and the suit is remanded to the Subordinate Judge.

In support of the above contention Sri Subrahmanyam relied upon an unreported judgment of Satyanarayana Raju J. in C R. P. No. 1262 of 1956 (Andh-Pra) (A). Having carefully perused that judgment, we do not find that the learned Judge has laid down any such proposition. Satyanarayana Raju J rightly condemned the Prl. District Munsif for not acting according to the terms of the transfer order. It was only on the merits that the learned Judge agreed with the petitioner's contention and remanded the suit for trial to the Trial Court.

8. The last contention that falls to be decided is whether the Subordinate Judge, to whom the suit was transferred u/s 24 C. P. C from the District Munsif's Court,

had no jurisdiction at all to try the suit having regard to the provisions of Section 15 C p. C, and therefore, the decree passed by him is null and void. As the suit was rightly instituted in the District Munsif Court and was transferred by the District Judge for trial by the Subordinate Judge, the objection based on the terms of Section 15 C. P. C, does not at all arise.

Even otherwise, it cannot be held that the Subordinate Judge had no jurisdiction to try the suit. What Section 15 provides is that every suit shall be instituted in the Court of the lower grade competent to try it. Competency, contemplated by the section, is only pecuniary competency, and it has been uniformly held by the Madras High Court starting with Augustine Medlycott, ILR 15 Mad 241 (B), that there is in lack of jurisdiction for the superior court to the suit.

The decisions of the Pull Bench of the Allahabad High. Court in Nidhi Lal v Mazhar Hussian ILR 7 All 230 (FB) (C), and the Calcutta High Court in Matra Mondal v. Hari Mohun Mullick ILR 17 Cal 155 (D), have been followed. S. Subrahmanyam, the learned advocate for the appellant, has not been able to point out a single decision of the Madras High Court dissenting from the decision in ILR 15 Mad 241 (B). Remain argument was that the earlier decisions the Madras High Court in Ramayya v. Subbaiyudu, ILR 13 Mad 25 (E). and Velayudam Arunachala, ILR 13 Mad 273 (P), sounding different view were not discussed in ILR 15 Mad 241 (B).

It is no doubt true that no reference to the decisions was made in ILR 15 Mad 241 (B). both those decisions, there is no discussion as the scope and effect of Section 15 C. p. C., or reference to the direct Full Bench decision the Allahabad High Court in ILR 7 All 230 (F.B.) (C) taking a contrary view. When the question as to the interpretation of Section 15 came for consideration in Gourachandra Patnaiku v. Vikrama Deo, ILR 23 Mad 367 (G), it was held as follows:

Even the provision has been held to be a (sic)of procedure and of jurisdiction a direction to the suitor and not an absolute rule binding the court (see ILR 7 All 230 (FB) (c)) the correctness of the decision in ILR 13 M(sic) 273 (F).

The latest decision of the Madras High Court this point is reported in V. Ramamirtham, Sole Proprietor, Glorious Pictures Vs. Rama Film Service, (sic) first question referred to the Full Bench in the case was :

Whether S. 15 Civil P. C, governs chart(sic) High Courts, and whether in view of it all s(sic) below Rs. 10,000/- in value should not be in(sic) tuted direct in the City Civil Court?

In dealing with this question, Satyanarayan Rao, J. observed at page 95 as follows:

While it enjoins the institution of a suit the Court Of the lowest grade competent to It, it does not oust the jurisdiction of the Court if a Higher grade. Even if the Court of a higher grade tries and disposes of a suit which could have been instituted in a Court of a lower grade, the decision referred is not without jurisdiction (sic)nd is not a nullity. (See ILR 7 All 230 (FB) (C), ILR 17 Cal 155

(D), ILR 14 Mad 183 (H), and ILR 23 Mad 367 (G).

(sic)iswanatha Sastri J., also agreed with this view, at page 101, he observed that the object of Section 15 C. P. C, was only to prevent superior courts being flooded or overcrowded with suits (sic)riable by Courts of inferior grade and that the (sic)ection merely regulated procedure and not jurisdiction. He held that a Court of superior grade does not act without jurisdiction in trying a suit which, u/s 15 might and ought, by reason of its valuation, to have been tried by an interior Court.

9. In discussing the scope and effect of Rules 1 and 2 of the Appellate Side Rules, a Full Bench of the Andhra High Court in Venkates(sic)arulu v. Satyanarayana, 1956 Andh WR 117: (S) AIR 1957 Andh Pra 49) (FB) (J), had.to consider the scope of Section 15 C. P. C. The (sic)evant observations are at page 120 (of Andh (sic)VR): (at p 51 of AIR), and are as follows:

Though Section 15 Civil Procedure Code, di (sic)ects that a suit shall be instituted in the Court of the lowest jurisdiction competent to try it and through. Order 7 Rule 10, empowers a Court to return a plaint at any stage of the suit to be pre? (sic)ented to the Court in which the suit should have been instituted, still it has been held that if a (sic)it triable by a Court of a lower grade is tried (sic)nd decreed by a Court of a higher grade, the decree is perfectly valid. The reason is that Section 15, CPC lays down a rule (sic) procedure and not of Jurisdiction of the superior Court in such cases. Ratan Sen alias Ratan Lal Vs. Suraj Bhan and Others, , Mohini Mohan Das and Others Vs. Kunjabehari Das and Others, Dakor Temple Committee Vs. Shankerlal,

The same view is shared by the High Courts of Allahabad, Bombay, Calcutta and Patna.

10. Sri Neti Subrahmanyam referred to the decisions in Motibhai v. Haridas, ILR 22 Bom 315 (sic)), Sewa Singh v. Tara Chand. AIR 1956 Punj (sic) (O) and Maryarul Nadar v. Nanu Pillai, AIR 1957 Trav-Co 69 (FB) (P), as supporting his view, (sic)fe do not find in those cases any discussion of the provisions of Section 15 C. P. C, or the cases already referred to. We are therefore not preferred to follow them in preference to the cases already cited. In this connection, it might be (sic)ted that in the latest "decision, of the Bombay High Court reported in Dakor Temple Committee Vs. Shankerlal, , the view taken in ILR 22 Bom 315 (N) was not (sic)ihered to.

11. Sri Neti Subrahmanyam strenuously contended that as there is a conflict of decisions (sic) the Madras High Court viz.. between ILR 13 (sic)lad 25 (E) and ILR 13 Mad 273 (F), on the one and and ILR 14 Mad 183 (H), ILR 15 Mad 241 (sic)B) and ILR 23 Mad 367 (G), on the other, the (sic)estion should be referred to a Full Bench on (sic)ie strength of the observations made by Subba Rao C.J. M. Subbarayudu and Others Vs. The State, . Sri Jagannadha Rao, the learned advocate for the respondent on the other hand intended that the view taken in ILR 13 Mad (sic) (E), and ILR 13 Mad 273 (F), has been impli-(sic)dly overruled

by the Full Bench decisions of the Madras High Court and the Andhra High Court in V. Ramamirtham, Sole Proprietor, Glorious Pictures Vs. Rama Film Service, K. Venkateswarulu and Others Vs. S. Satyanarayana and Others and that there is no necessity whatsoever to refer the matter to a Full Bench.

We are inclined to accept the contention of V. Ramamirtham, Sole Proprietor, Glorious Pictures Vs. Rama Film Service, the Full Bench of the Madras High Court had to consider the scope and applicability of Section 15, C, P. C, to suits instituted on the Original-Side of the High Court. Though the learned Judges held that Section 15 C. P. C, did not govern Chartered High Courts, they expressly found that Section 15 C. P. C, lays down only a rule of procedure and not of jurisdiction. The answer given by them was in reference to the second part of question No. I referred to the Full Bench. They expressly approved the decisions in ILR 14 Mad 183 (H), and ILR 23 Mad 367 (G).

Though they have not referred to the decisions in ILR 13 Mad 25 (E), and ILR 13 Mad 273 (F), taking a contrary view, it must be held that by adopting the view taken in ILR 14 Mad 182 (H), and ILR 23 Mad 367 (G), they have impliedly overruled the two decisions reported in ILR 13 Mad 25 (E), and ILR 13 Mad 273 (F). We are unable to agree with the contention, that the observations of Satyanarayana Rao J., and Viswanatha Sastri J., are only in the nature of "obiter dictum", and that the conflict between the decisions in ILR 13 Mad 25 (E), ILR 13 Mad 273 (F), and ILR 14 Mad 183 (H), should still be deemed to subsist.

12. We are equally clear that the view taken in ILR 13 Mad 25 (E), and ILR 13 Mad 273 (F), is impliedly overruled by the Full Bench of the Andhra High Court in K. Venkateswarulu and Others Vs. S. Satyanarayana and Others At p 120 (of Andh WR): (at p 51 of AIR), Viswanatha Sastri J., held that Rule 1 of the Appellate Side Rules was based on principles similar to Section 15 C.P. C. The learned Judge found that Section 15 C. P. C, lays down, a rule of procedure and not of jurisdiction and that there is no ouster of the jurisdiction of the superior court in such cases.

The decision in ILR 14 Mad 183 (H), was expressly approved.

It must therefore be held that the two decisions in ILR 13 Mad 25 (E), and ILR 13 Mad 273 (F), taking a different view without any discussion, must be deemed to have been overruled. We are unable to hold that the observations of Viswanatha Sastri J., are only in the nature of "Obiter Dicta" and do not form the "Ratio Decidendi" of the case. We do not think it necessary to refer to the various authorities cited by Sri Neti Subrahmanyam as to the meaning of "Ratio Decidendi" and "Obiter Dicta".

13. Even assuming that the observations of V. Ramamirtham, Sole Proprietor, Glorious Pictures Vs. Rama Film Service, and the observations of K. Venkateswarulu and Others Vs. S. Satyanarayana and Others, are only in the nature of "Obiter Dicta", still we are not persuaded to refer the question to a Full Bench. The view taken in ILR 14 Mad 183 (H) and ILR 15 Mad 241 (B), has been

consistently followed and not dissented from in any subsequent decision by the Madras High Court.

As already stated, they were approved by Satyanarayana Rao J., and Viswanatha Sastri J. in the two Full Bench decisions referred to supra. We do not think that as a different view was taken in the earlier decisions reported in ILR 13 Mad 25 (E). and ILR 13 Mad 273 (F), we are bound to refer, the matter to a Full Bench. As pointed out by Sri Jagannadha Rao, the learned advocate for the respondent, the observations at page 63 (of Andhra LT): (at PP 93-94 of AIR) in M. Subbarayudu and Others Vs. The State, are only in die nature of obiter.

The question that was referred to the Full Bench was only whether and to what extent the Andhra High Court was bound by the decisions of the Madras High Court delivered before 5th July, 1954. The answer that was given was that the Andhra High Court was bound by the decisions rendered by the Madras High Court prior to 5th July, 1954. The question as to whether a reference should be made to a Full Bench whenever there is a conflict between two Division Benches of the High Court did not arise or fall to be considered in that case, and so the observations of the learned Chief Justice are only in the nature of "obiter".

Similarly, the observations of Leach, C.J., at page 474 (of ILR Mad): (at p 362 of AIR) in Seshamma v. Narasimha Rao, ILR 1940 Mad 454: (AIR 1940 Mad 356) (FB) (R), are also "obiter". We have however, no doubt that in the interests of certainty of law, the weighty observations made by the learned Chief Justice should generally be followed when there is a conflict of Bench decisions. But, we are not inclined, on the facts of this case, to have the Court's time wasted by the Constitution of a Full Bench for the express or the only purpose of overruling the erroneous view taken in the two decisions reported in ILR 13 Mad 25 (E), and ILR 13 Mad 273 (F), which has not been followed ever since by the "Madras High Court. We prefer to follow the view consistently adopted since the decision in ILR 14 Mad 183 (H).

14. As pointed out by Salmond, in his treatise on Jurisprudence, Tenth edition, at page 185,

Without having been expressly overruled or intentionally departed from. it (a precedent) may become in course of time no longer really consistent with the course of judicial decisions. In this way the tooth of time will eat away an ancient precedent and gradually deprive it of all its authority. The law becomes animated by a different spirit and assumes a different course, and the older decisions become obsolete and inoperative.

In the Circumstances stated above, we are in-cited to take the view that the two decisions reported in ILR 13 Mad 25 (E), and ILR 13 Mad 273 (F), may be regarded as having become obsolete and inoperative.

15. Even assuming that the two decisions reported in ILR 13 Mad 25 (E), and ILR 13 Mad 273 (F), have not become obsolete. but stand side by side conflicting

with the later decisions of the Madras High Court, we are entitled to prefer and follow the later decisions of the Madras High Court (which are in accordance with legal principles) to the two decisions reported in ILR 13 Mad 25 (E) and ILR 13 Mad 273 (F). Vide page 189 of Samond's Jurisprudence (10th edition). We are not prepared to agree with the view of the Patna High Court in Sashi Bhusan Rai Vs. Bhuneshwar Rai and Others, , that the earlier decisions prevail over the later decisions.

16. In the result, for reasons already stated, we are not prepared to follow the role laid down in ILR 13 Mad 25 (E). and ILR 13 Mad 273 (F), and set aside the decrees passed by the Courts below on the ground that the Subordinate Judge had no jurisdiction to decree the suit.

17. The Second Appeal consequently fail and is dismissed with costs.