

(1960) 12 AP CK 0014

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No 194 of 1958

Ethakota Peddu Raju and Another

APPELLANT

Vs

Gannamareddi Lakshmayya

RESPONDENT

Date of Decision : 01-12-1960

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1962 AP 162

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : E. Parthasarathi Swamy, for the Appellant; Venkata Rao, for I. Baliah, for the Respondent

Judgement

(1) The defendants in small Cause suit No. 157 of 1957 are the petitioners before this Court. The respondent filed a suit for the recovery of a sum of Rs. 100.61 nps., being the amount claimed by him towards damages caused by the petitioners to the plaintiff's crops by allowing water to flow into his land. The plaint averments are briefly as follows.

(2) The plaintiff-respondent purchased in February, 1957 the horsegram crop in Acs. 1-25 cents in the land of one valluru Jagannadha Rao near the western channel of Rayakuduru. The petitioners (defendants) are tenants of the adjacent lands of the daughters of one Pemmaraju Gurraju. They raised pillipesara crop, and for watering the said crop they made a gandi in the channel in about March, 1957 and as the water came in large quantities, they let it out by breaching the bund into the crop purchased by the respondent. The result was that the crop became rotten. Even if the petitioners did not make the gandi to the channel as the crop of the respondent became submerged due to the wrongful acts due to the petitioners in letting off the respondent became submerged due to the wrongful acts of the petitioners in letting off the water into the respondent's crop, they are liable for the loss. The petitioner filed a written statement denying the allegations.

(3) The court below on an appreciation of the evidence adduced in the case found that the 1st defendant made a breach in the bund of the channel and watered his pillipesara crop and allowed the excess water to submerge the respondent's crop. To a notice issued by the respondent to the petitioners complaining that they made a gandi in the channel and let out the excess water into his crop thereby damaging it, the petitioners sent a reply admitting that somebody made the breach of the channel higher up and that they were not responsible for the breach and that they did not allow the water to damage the plaintiff's crop. The court below on an appreciation of the evidence came to the conclusion that the defendants were responsible to the plaintiff and passed a decree. No objection was taken by the petitioners to the jurisdiction of the court to try the suit on the Small Cause side. The defendants have preferred this revision petition before this court and have taken the objection that the suit is not recognizable by the Small Cause Court inasmuch as it falls within clauses (i) and (ii) of Art. 35 to Schedule II of the Provincial Objects to the point being raised for the first time in this court in a revision under S. 25 of the Act.

(4). Reliance is placed on the judgement of Beasley, C. J. of the Madras High Court in a case reported in Ramath Kappalli Kelu Kurup Vs. Eacharambath Madathil Subramania Aiyar and Another, It is there in rules by the learned Chief justice that the High Court is not bound to allow the point to be taken for the first time in revision. The learned judge observed that as the point was being constantly taken for the first time in the High Court in similar revision petitions, he examined the case put before him and the majority opinion in the Madras High Court was that the High Court was not bound to allow the point to be raised under similar circumstances. According to the learned judge the point is capable of only one answer. The learned judge observed as follows:

" If the District Munsif sitting on the wrong side of his court, passes a decree which is correct in the opinion of the High Court, to whom a civil revision petition is presented, must the High Court set that decree aside merely because he has passed it on the wrong side of the Court, though the High Court would have upheld it had it been passed on the right side of the Court? The answer to this question seems to me to be clearly in the negative, viz. that the High Court is not bound under such circumstances to interfere in revision."

(5) This view of the Madras High Court has been constantly followed and no decision either of that court taking a contrary view has been shown to me. In fact an examination of the authorities shows that several of the High Courts have taken the same view. In Lala Babu Lal Vs. Pt. Jugla Saran, it was pointed out that a question of jurisdiction not raised before the Small Cause Court could not be allowed to be raised in the High Court. It appears from the judgement that was the consistent view of the Allahabad High Court. The decisions in Ramlal v. Kabul Singh, ILR 25 All 135, Raghuraj Singh Vs. Sham Dei and Another, and Sukhalal v. Nanon Prasad, ILR 40 All 666: (AIR 1918 All 355) were cited in support of the proposition laid down the same proposition. In Sakhya v.

Sadashiv, AIR 1930 Bom 361, it was observed as follows:

"It is not in our opinion open to an unsuccessful litigant to raise in revision a new plea of this character even as regards his own pleadings, much less in regard to the pleadings of his successful adversary."

(6) The latest case of the Bombay High Court is that reported in *Bai Dahi Vs. Ghanashyam Haridas*, where it is held that a technical contention cannot be permitted to be raised in revision unless it is shown that substantial injustice has resulted by reason of infringement of the rules as to the trial of suits. A Bench of the Calcutta High Court in a case reported in *National Insurance and Banking Co. Ltd. v. Biswambar Chowdhary*, 29 Ind Cas 566: (AIR 1916 Cal 230) has held that "a revision application based mainly on the ground that the Small Causes Court had no jurisdiction to try the suit, an objection which was never taken in the lower court, has no merits, and the High Court will not interfere."

(7) In a case reported in *Sawnley Mian v. Zabunnissa Begam*, (1957) 1 Andh Wr 261 a suit which ought to have been tried on the small cause side was tried on the regular side without objection. Against the decision of the trial Court an appeal was taken to the City Civil Court. From the decision of the appellate court a revision petition was filed u/s 115, C. P. C. as a second appeal was not permissible u/s 102 of the C. P. C. in the connection it was held by Mr. Justice Kumarayya that the mere fact that there was wrong assumption of Jurisdiction, does not require the High Court to set aside the order even though the mistake was bona fide and Justice is done in the case, for the revisional powers of the High Court are intended to correct errors of justice and pass such orders in the case as may appear to be just and equitable. Where a suit was fully tried on the merits and justice done to the parties, it was held not proper to interfere with the findings of the Court below on the mere ground that the suit was tried on the regular side and not on the small cause side. This was no doubt the converse case.

(8) The learned judge at page 263 considered the case of an original suit which may be tried by a small causes court and referred to an Allahabad case reported in *Raghuraj Singh Vs. Sham Dei and Another*, where the same view was taken regarding the scope of interference in revision by the High Court. Mr. Parthasarathi appearing for the petitioners cited before me the decision of the Madras High Court rendered by Cargenven, J. in *Kalahasthi Munusamiah and Another Vs. Umaderjah Raje Damara Kumara Venkata Lingam Nayanam Bahadur Varu, Raja of Kalahasthi*, it appears that a suit which ought to have been tried on the original side was tried by the Small Causes Court. In a revision preferred u/s 25 of the Act it was held by the learned judge that since the decree of the court below was passed interfere in revision. It does not appear from a perusal of the judgement whether the point as to the recognizability of the suit by the Small Cause Court was or was not taken in the Court below. What all appears from the judgement is that the point was not taken in a certain previous litigation between the parties where the same point arose, and that as such the point has to be

decided for the first time. The actual words used by the learned judge are:

"The point has to be decided here for the first time, on a consideration of the nature of the dues claimed....."

(9) From this it is argued that the question of jurisdiction was not raised before the trial court, but it was raised only for the first time in the High Court. I cannot agree. Reading the sentences it is clear that the learned judge was only observing that the point had been taken in the previous litigation and that as such it has to be decided for the first time in this litigation. In any event this case is not an authority for the proposition that the High Court is bound to interfere in revision under Sec. 25 of the Act when the point as to the want of jurisdiction has not been taken before the trial court. Chief justice Beasley says that a number of decisions have been placed before him. If the Chief justice did not consider that this case decided the point to the contrary certainly this case would have been commented upon. I do not consider for by the learned counsel for the petitioners.

(10) The next case relied upon by the counsel was the case reported in *Ramaswamy Chettair v. R. G. Orr*, ILR 26 Mad 176. In that case a suit which ought to have been tried on the small cause side was tried by the court on the Original Side. The matter was taken in appeal at the instance of the defendants. Neither in the court of Appeal nor in the trial court was the question as to the suit being cognizable only by the Small Cause Court, raised. In a revision petition taken to the High Court the question was raised for the first time that the suit should not have been tried by the Court on its original side, but should have been tried only by the Small Cause Court. The question raised was whether the High Court was bound to interfere in a revision u/s 622 C.P.C. (now 115 C.P.C.). It was observed by Sir Arnold White, C. J., at page 178 as follows:

"Then, the further question arises, Am I bound to interfere and exercise the powers which are conferred on the High Court by Sec. 622 of the Code of Civil Procedure?..... but in my opinion I have no alternative but to set aside all the proceedings in this suit and to direct that the plaint be returned for presentation to the proper court."

(11) This case came up for consideration in *Parameswaran Nambudri v. Vishnu Embrandari*, ILR 27 Mad 478. In that case a suit which was recognizable by the Small Cause Court was tried by the District Munsif as a regular suit and decreed in plaintiff's favour. The defendant who raised no objection to the mode of trial by the District Court and even there made no reference to the question of jurisdiction. The District Judge dismissed the appeal. On a revision petition taken to the High Court of Madras it was held that even assuming that the case was one not cognizable by the Small Cause Court, the High Court was not bound to set aside the decrees of the lower courts but had a discretion either to interfere or not according to the merits of the case. The decision in ILR 26 Mad 176 was not followed.

(12) The matter again came up for consideration in *Collipara Sitapathi v. K.*

Subbayya, ILR 33 Mad 323 . In that case the plaintiff sued for recovery of a certain sum of money due under an award made by an arbitrator. The defendant denied the reference and raised various objections, which were over ruled by the District Munsif, who passed a decree in favour of the plaintiff. On appeal by the defendant to the Subordinate Judge of Eluru, this decree was set aside. The plaintiff applied to the High Court in revision u/s 622 C.P.C. (now 115 C.R.C.) to set a side the decree of the Subordinate Judge on the ground that as the suit was one cognizable by the Small Cause Court, no appeal lay to the Subordinate Judge and his decision was passed without any jurisdiction. When the case came up before Wallis, J., following the decision in ILR 27 Mad 477 he declined to interfere for the simple reason that the plaintiff himself instituted the suit on the original side and could not therefore be heard to complain that the defendant filed an appeal against the decree in the original suit. The matter was taken up in Letters Patent appeal before Sankaran Nair and Abdur Rahim JJ. who referred the following question to the Full Bench:

"Where a small cause suit is tried by the Munsif on the original side and his decision on appeal is reversed by the Subordinate Court, is the High Court bound to set aside the decree in appeal as having been passed without jurisdiction."

(13) In their referring order it is observed by Sankaran Nair J. as follows at page 325:

"I agree therefore with the learned judges in ILR 27 Mad 477 that the principle of the express provision in Sec. 646 (B) C.P.C. should be followed in the exercise of the discretion allowed by Section 622 and that we should not interfere solely on this ground not with the decision of a court of first instance even when the question was raised and a fortiori when the question was not raised."

(14) They further observed as follows:

"It stands to reason that a suit tried by the Munsif on the original side should not be sent to the same Munsif to be tried as a Small Cause suit. But the same reasons do not obviously apply to a decision in appeal. Disregarding Sec. 646(B) I am of the opinion that in this respect the decision in Shankarbhai v. Somabhai, ILR 25 Bom 417 and ILR 26 Mad 176 so far as the appellate decision is concerned, should be followed and that the decree of the lower appellate court should be set aside and that of the Munsif be restored with costs throughout. I need hardly add that consent cannot give jurisdiction to the District Court. *Ledgard v. Bull*, ILR 9 All 191 (PC) and *Meenakshi v. Subramanya*, ILR 11 Mad 26."

(15) It is therefore apparent from the referring order that the learned judges were prepared to approve the decision of the Bench in ILR 26 Mad 176 only to the extent that the High Court is bound to interfere and set aside the decision of the appellate court. In fact they held that the decision of the Munsif should be restored. This is contrary to the view taken in ILR 26 Mad 176 which directed the plaintiff to be represented to the proper courts. When the matter came up before

the Full Bench it was decided that the appellate court acted without jurisdiction and their Lordships accordingly held that they were bound to set it aside, and they definitely confined their approval of ILR 26 Mad 176 only so far as the decision of the appellate court was concerned. When the matter again came up before the Division Bench their Lordships following the opinion of the Full Bench reversed the order of wall is J. and of the lower appellate court and restored that of the munsif. This clearly shows that the decision in ILR 26 Mad 176 in so far as it holds that the proceedings in the suit should be set aside directiog the plaint to be returned for the presentation to the proper count, was not approved by the Full Bench.

(16) The case of ILR 27 Mad 478 was only dissented on the other aspect, viz. so far as the decision of the appellate court was concerned. These decision cited by the learned counsel for the petitioners in the ultimate analysis show that the High Court is not bound to interfere in revision, so far as the decision of the trial court is concerned whether it bea case where a Munsif tried a small cause suit as orginal suit or an orginal suit as a small cause suit. in view of the established practice of the Madras High Court of Calcutta, Allahabad and Bombay , I feel that there is no justification to accede to the request of the learned counsel for the petitioners to post the matter before a Division Bench. Respectfully following the Madras view I uphold the objection raised at the instance of the respondent and dismiss the revision petition with costs.

(17) Revision dismissed.