

(1955) 12 AP CK 0019
In the Andhra Pradesh High Court
Case No : A. S. No. 242 of 1951

K. Venkateswarulu and Others	Vs	APPELLANT
S. Satyanarayana and Others		RESPONDENT

Date of Decision : 20-12-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, Order 7 Rule 10, Order 7 Rule 2, Order 7 Rule 2, 15
Constitution of India, 1950 — Article 216, 225
Government of India Act, 1915 — Section 106, 108, 108(1)
Government of India Act, 1935 — Section 223

Citation : (1955) 12 AP CK 0019

Hon'ble Judges : Viswanatha Sastry, J; Krishna Rao, J; Bhimasankaram, J

Bench : Full Bench

Advocate : B.V. Subrahmanyam, for the Appellant; G. Balaparameswari Rao, for the Respondent

Judgement

Viswanatha Sastry, J.—The following questions have been referred to us:

1. Is a Bench of two judges competent to hear a first appeal not exceeding Rs. 7500/- in value when it is not referred to it by a single Judge under Rule 1 of the Appellate Side Rules?

2. In any case, what is the effect of the hearing of such an appeal by a Bench without objection having been taken by the parties to such hearing?

(2) The answer to these questions depends on the construction of Rules 1 and 2 of the Appellate Side Rules of the High Court which, so far as they are now relevant, run as follows:

Rule 1 (3)(c)

The following matters may be heard and determined by one Judge: Provided that the Judge before whom the matter is posted for hearing may at any time, adjourn it for hearing and determination by a Bench of two Judges:

Every appeal from an original decree when the value of such appeal does not exceed Rs. 7500/-" Rule 2 (2)(a)

The following matters may be heard and determined by a Bench of Two Judges: Provided that if two Judges agree that the determination involves a question of law they may order that the matter or the question of law be referred to a Full Bench:

Every appeal from the decree or order of a Civil Court except those mentioned in Rule 1

3. It was sought to be argued for the Respondents that the Appellate Side Rules have been framed for administrative convenience and, are in the nature of domestic rules regulating the internal management of the business of the High Court" and should not be construed as if they were statutory provisions conferring or taking away jurisdiction. For the Appellant it was argued that the Appellate Side Rules having been made by the High Court under statutory authority took effect as if they were part of the statute and should be construed in the same manner

4. The power to frame rules regulating its practice and procedure conferred on the High Court under Parliamentary enactments and the Letters Patent is preserved by Article 225 of the Constitution corresponding to Section 223 of the Government of India Act, 1935 which takes us back to Sections 106 and 108 of the Government of India Act, 1915.

Section 108 of the Government of India Act, 1915 corresponds to Sections 13 and 14 of the High Courts Act 1861. It is unnecessary to reproduce these statutory provisions or Clauses 36 and 37 of the Letters Patent. Suffice it to say that these provisions empower the High Court to make rules for regulating the practice of the Court and to provide by its own rules for the exercise by one or more Judges or by Division Courts constituted by two or more Judges of the original and appellate jurisdiction vested in the High Court.

The Chief Justice of the High Court is the authority to determine which Judge is to sit alone and which Judges are to constitute the several division Courts. The Appellate Side Rules having been made by the High Court under statutory authority referred to above, if they have a meaning and effect inconsistent with the Acts authorising them or if they are in excess of the powers conferred there under or if they contravene the provisions of other enactments they are pro tanto ultra vires.

Otherwise they have the force of law and are binding on all the Judges of the Court, as held by a Full Bench of the Madras High Court in *District Magistrate Vs. K.C. Mammen Mapillai and Others*, (A), affirmed by the Judicial Committee in - AIR 1939 213 (Privy Council) (B).

See also *Shaik Masthan Sahib Vs. Palayani Balarami Reddi*, (C). Judge made rules have to be interpreted in the same way as enactments of the Legislature

and words and expressions occurring in the Rules have to be construed according to the ordinary meaning of the English language unless there is something in the context which shows that they ought not to be so construed. See Lord Esher M. R. in - *Gebruder Naf v. Ploton*", (1890) 25 QBD 13 at p. 15 (D). In - *Danford v. Mc. Anulty*", (1883) 8 AC 456 at p. 460 (E), where Judge-made rules fell to be construed, Lord O'Hagon said:

We cannot act upon intention either in the case of a statute or in the case of a rule; we must have the intention carried into effect...;

We can only say either in the case of the Judges or in the case of the Legislature what the Judges or the Legislature have actually done.

5. Under Article 216 of the Constitution corresponding to Section 2 of the High Courts Act 1861, the High Court consists of a Chief Justice and a number of Judges. Its jurisdiction, broadly speaking, is original and appellate as stated in Section 108 (1) of the Government of India Act, 1915. Where there are several Judges and a large volume of work it is impracticable for the entire court to sit for the determination of every appeal and it is obvious that there should be a division of the functions which the High Court has to perform.

Such a division of functions among the Judges or a delegation of authority to exercise jurisdiction to one or more Judges, in whichever way it may be regarded has been made by the Appellate Side Rules framed by the High Court. The exercise of the High Court's jurisdiction by one or more Judges must be subject to the conditions and within the limits prescribed by the Rules.

A single Judge's power to exercise the functions of the High Court is limited to cases, where, by the Rules, the exercise of such, functions is entrusted to a single Judge and he would be acting beyond his jurisdiction if he were to decide a case required by the Rules to be heard and decided by a division bench.

I am unable to accept the contention of that Respondent that the word "may" in Rule 2 of the Appellate Side Rules gives only a discretionary power and is not mandatory. The argument that each Judge of the High Court has the Jurisdiction to exercise all the powers of the High Court and that the apportionment of work among the several Judges under the rules is only for administrative convenience, ignores the true nature and effect of the Rules.

Cases falling within Rule. 2 of the Appellate Side Rules can only be heard by a Division Bench and a single Judge would have no jurisdiction to hear them, The word "may" occurring in Rule 2 merely Indicates that the Rule is an enabling provision conferring a power. Appeals from decrees whose value does not exceed Rs. 7,500/- are directed to be heard by a single Judge under It. 1 and are therefore taken out of Rule 2.

If therefore, an appeal whose value does not exceed Rs. 7,500/- is posted for hearing before a Division Bench of two Judges the Bench might direct it to be posted before a single Judge in conformity with Rule 1. This is because Judges

are bound to follow the Rules which have been framed by the High Court for the transaction of its business and not because the Division Bench lacks inherent jurisdiction to hear and decide the appeal.

6. Under the provisions of the Madras Civil Courts Act read with the CPC Code, the pecuniary value or the amount or value of the subject-matter of a suit determines the forum of appeal, that is to say, the court to which appeal lies. The object is to prevent superior courts being flooded with appeals of comparatively small value.

under Section 15, CPC every suit shall be instituted in the Court of the lowest grade competent to try it. Here too the object is that courts of higher grades should not be overcrowded with suits of small value. Rule 1 is based on a similar principle that appeals whose value does not exceed Rs. 7,500/- are not of sufficient importance to engage the time of two Judges constituting a Division Bench of the High Court and it is sufficient if they are heard and decided by a Single Judge.

Rule 1 is a rule of procedure, not of jurisdiction and while it lays down that an appeal whose value does not exceed Rs. 7500/- may be heard by a single Judge, it does not oust the jurisdiction of a division Bench of two Judges to hear the appeal. This is apparent from R. 1 itself which provides that a single Judge before whom the appeal is posted for hearing may, at any time, adjourn it for hearing and determination by a Bench of two Judges.

It is not as if a single Judge by adjourning the case for hearing by a Division Bench of two Judges is conferring a jurisdiction to hear the appeal on the judges of the Division Bench which they did not already possess. There is no prohibition of the exercise of their jurisdiction by the Judges of a Division Bench in appeals whose value does not exceed Rs. 7500/- except on a reference by a single Judge as a pre-condition.

There is no inherent incompetence in a Division Bench of the High Court to deal with an appeal whose value does not exceed Rs. 7500/- Far from this being the case, the Division Bench could hear and decide appeals from decrees however high their value might be. It is only where a Judge has no inherent jurisdiction" over the subject-matter of a suit or appeal that the parties cannot, by their consent, convert the proceedings into a proper judicial process.

There are numerous authorities which establish that when in a suit, appeal or other proceeding which the Judge is competent to try, the parties without objection go to trial on the merits, they cannot subsequently dispute his jurisdiction on the ground that there were irregularities in the initial procedure, which if objected to at the time, would have led to the suit or appeal being heard elsewhere.

If the Court has inherent jurisdiction an objection to the irregular exercise of jurisdiction may be waived by the parties and the decree or order passed by the

Court could not be challenged as a nullity. Though Section 15, CPC directs that a suit shall be instituted in the Court of the lowest jurisdiction competent to try it and though Order 7 Rule 10 empowers a court to return a plaint at any stage of the suit to be presented to the court in which the suit should have been instituted, still it has been held that if a suit triable by a court of a lower grade is tried and decreed by a court of a higher grade, the decree is perfectly valid.

The reason is that Section. 15, CPC lays down a rule of procedure and not of jurisdiction and there is no ouster of the jurisdiction of the superior court in such cases. - Ratan Sen alias Ratan Lal Vs. Suraj Bhan and Others, (F); - "Matra Mondal v. Hari", ILR 17 Cal 155 (G); Krishnasami v. Kanakasabhai", ILR 1914 Mad 183 (H) ; - Mohini Mohan Das and Others Vs. Kunjabehari Das and Others, (I); - "Nidhilal v. Mazhar Husain", ILR 7 All 230 (FB) (J); - Dakor Temple Committee Vs. Shankerlal, (K). The position is similar where an appeal whose value is not over Rs. 7500/- is heard and decided by a Division Bench of two Judges under Rule 2 of the Appellate Side Rules without a reference by a single Judge under Rule 1.

7. Section 99, CPC provides that no decrees shall be reversed or substantially varied in appeal on account of any error defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the Court. It has been held by the Judicial Committee that this rule is of general application and "proceeds upon a sound principle and is calculated to promote justice." - AIR 1937 233 (Privy Council) at p. 233) (L).

The rule applies with much greater force where the parties raise no objection on the ground of any irregularity in the proceedings but agree to the appeal being heard by a Bench of two Judges instead, of by a single Judge under Rule 1. As already observed, there is no inherent incompetence or lack of jurisdiction in the Division Bench consisting of two Judges to hear and decide the appeal.

Rules 1 and 2 of the Appellate Side Rules are. Rules of procedure apportioning the work among Judges who have the same powers and jurisdiction. Rule 2 says that a Bench of two Judges may hear every appeal from the decree or order of a Civil Court except those mentioned in Rule 1. So far as the exception is concerned, it is a matter of direction that the matters enumerated in Rule 1 need not be heard by a Division Bench of two Judges. There is no hard and fast rule by which one can say whether a provision is directory or mandatory with an implied nullification for disobedience. Lord Penzance in Howard v. Bodington, 1877 2 PD 203 at p. 211 (M) said:

I believe as far as any rule is framed, you cannot safely go further than that in each case you must look to the subject matter consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative Or only directory.....

8. Originally all first appeals were heard by a Bench of two Judges and it was

only in" 1948 that a single Judge was empowered to hear appeals from decrees of a value not exceeding Rs. 7,500/- The intention of Rule 1 was not to deprive the jurisdiction of the Bench to hear such appeals but to empower a single Judge to hear them. This intention was carried out rather laconically and inartistically by introducing an exception in Rule 2 (2)(a).

On the whole the provision by way of exception in Rule 2(2)(a) appears to be directory rather than mandatory and a disobedience of it is only an irregularity and does not render the proceedings void or nullify the decree and judgment rendered by the Division Bench in an appeal from a decree of a value not exceeding Rs. 7,500/-

9. It was suggested by the Appellant that a valuable right to prefer a Letters Patent Appeal from the decision of a single Judge would be lost to the litigant if Rules. 1 and 2 are construed as I have done. This argument has no substance whatever. If a litigant gets his appeal heard by a Bench of two Judges without being subjected to the expense and delay of a hearing before a single Judge and a further appeal under the Letters Patent and a hearing before a Bench of two Judges, he gains 9xi advantage to which he would not be entitled if Rule 1 had been strictly followed.

The right of the Appellant is to enter the High Court and invoke its interposition by redress the error of the Court below and this right is not touched. His right of further appeal to the Supreme Court if he has the right, is also not prejudicially affected by a Division Bench hearing the appeal in the first instance instead of by way of a Letters Patent Appeal. There is no vested right in a litigant that his appeal should be heard by a single Judge and not by two Judges of the High Court sitting as a Bench.

10. If an appeal against-a decree not exceeding Rs. 7,500/- in value is posted for hearing in the first instance before a Division Bench of two Judges without its being referred by a single Judge under R. 1 of the Appellate Side Rules, it is open to the Division Bench to direct the appeal to be posted before a single Judge in conformity with Rule 1.

If, however, the Division Bench proceeds to hear and decide the appeal, it does not act without Jurisdiction and the decree and judgment of the Division Bench are not a nullity but will be valid and binding on the parties. It follows that the answer to the first question referred to the Full Bench must be in the affirmative. In this view, the second question does not call for an answer.

Bhimasankaram, J.

11. I agree.

Krishna Rao, J.

12. I have had the advantage of perusing the judgment delivered just now by my learned brother. My conclusions on the first question referred to us are a shade

different and it has therefore become necessary to say a few words regarding them.

13. As the rules stand, a single Judge is empowered by Rule 1 to hear and determine appeals of the value not exceeding Rs. 7,500/- and by the proviso therein to adjourn such appeals posted before him for hearing and determination by a Bench of two Judges. A Bench of two Judges is empowered by Rule 2 to hear and determine appeals not mentioned in Rule 1 that is to say appeals of the value exceeding Rs. 7,500/-. Thus Rule 2 does not in terms empower the Bench to hear and determine appeals of the value not exceeding Rs. 7,500/-. But it has to be construed consistently with Rule 1 the proviso to which empowers one Judge to send such appeals for hearing and determination by a Bench of two Judges. It cannot have been intended by Rule 2 to create a stalemate in respect of appeals of the value not exceeding Rs. 7,500/- which are sent by a single Judge to a Bench of two Judges. Therefore when we read Rules. 1 and 2 together so as to give effect to both we cannot but construe the proviso appearing in R. 1 as really a proviso to both the rules. We have perforce to construe the clause in Rule 2 except those mentioned in Rule 1" as meaning "except those mentioned in R. 1 subject to the proviso therein".

14. So much would be legitimate in construction because it is necessary to give effect to both the rules. But can we go further and say that a Bench of two Judges is empowered to hear and determine any appeal of the value not exceeding Rs. 7,500/- which is posted before it for hearing, whether or not an appeal is referred to it by a single Judge? No doubt the intention of Rules 1 and 2 is to save the time of the superior forum, a Bench of two Judges, for appeals of value exceeding Rs. 7,500/- which are prima facie of more importance than appeals of value not exceeding Rs. 7,500/-. A Bench of two Judges is more expensive to the public exchequer than a single Judge and the effect of the rules is that appeals of lower value would normally be taken before the Bench only after a second court-fee is paid by availing of Clause 15 of the Letters Patent. The proviso appearing in Rule 1 is presumably based on the view, that a single Judge would not arbitrarily or capriciously refer an appeal of the value not exceeding Rs. 7,500/- to a Bench but would do so only for good and sufficient reasons. But if all that is necessary for a Bench of two Judges to hear such an appeal is that it should be posted before the Bench by the office, every litigant would be entitled to claim that benefit and little would remain for the intention of Rules. 1 and 2 to operate. We would be construing the entire Rule 1 and the exception in Rule 2 out of existence. It has to be borne in mind that but for Rules 1 and 2 neither a single Judge nor a Bench of two Judges would be competent to exercise the appellate jurisdiction of the High Court, which is composed of the Chief Justice and the entire number of Judges. It appears to me therefore that a Bench of two Judges would be violating the statutory rules and exercising irregularly the jurisdiction of the High Court if they hear and determine a first appeal not exceeding Rs. 7,500/- in value, without the appeal being referred by a single Judge under Rule 1. To this extent the answer to the first question before

us must be in the negative. The Bench ought not to usurp the functions of a single Judge under the rules and the proper course for it is to direct the appeal to be posted before a single Judge.

15. But this is not to say that a Bench of two Judges has no jurisdiction to hear an appeal of the value not exceeding Rs. 7,500/- The rules merely intend to allocate the work of the exercise of the appellate jurisdiction of the High Court between single Judge and Benches of two Judges. I am in complete agreement with the reasoning of my learned brother that there is no inherent lack of jurisdiction for a Bench of two Judges to hear and determine the appeals of the value not exceeding Rs. 7,500/- The irregularity in the exercise of jurisdiction is not one which affects any private right of the parties to the appeal. I would therefore answer the first question referred to us as follows:

A Bench of two Judges is not incompetent to hear such an appeal; its competence is legally defective but the defect is not material to the parties to the appeal as such. With regard to the second question my answer is that the judgment and decree of the Bench is valid and binding on the parties as that of a Bench of the High Court.