

**(2011) 04 AP CK 0088**

**In the Andhra Pradesh High Court**

**Case No :** Appeal Suit No. 2265 of 2003 and CMA No. 3214 of 2003

Molugu Ram Reddy, Molugu Uma Reddy, Molugu Sanjeeva Reddy and Molugu Jaswanth Reddy @ Dasmantha Reddy

APPELLANT

Vs

Molugu Vittal Reddy and Others

RESPONDENT

**Date of Decision :** 11-04-2011

**Acts Referred:**

Andhra Pradesh Civil Courts Act, 1972 — Section 17  
Andhra Pradesh Court Fee Act, 1870 — Article 17, 7  
Civil Procedure Code Amendment Act, 1999 — Section 115  
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2(3), Order 21 Rule 58, Order 21 Rule 58(3), Order 41 Rule 10(2), Order 43 Rule 1

**Citation :** (2011) 5 ALD 522 : (2011) 3 CivCC 809

**Hon'ble Judges :** V.V.S. Rao, J;P. Durga Prasad, J;B. Prakash Rao, J

**Bench :** Full Bench

**Advocate :** T.S. Praveen Kumar, for the Appellant; V. Pattabhi, for Respondent Nos. 1 to 4 and 6 to 33 and H. Venugopal, for the Respondent

## Judgement

V.V.S. Rao, J.

### INTRODUCTION

1. The following question is referred to this Full Bench: "whether an appeal against order as Civil Miscellaneous Appeal u/s 104 read with Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (CPC, for brevity) or a regular appeal u/s 96 of the Code of Civil Procedure, is maintainable against the judgment/order passed under Rule 11 of Order VII of the Code of Civil Procedure?"

### BACKGROUND

2. The Plaintiff's 1 to 4 (hereafter referred to as such) are the Appellants in the Appeal Suit as well as Civil Miscellaneous Appeal. They instituted O.S. No. 42 of 2001 on the file of the Court of the I Additional District Judge, Ranga Reddy District, for partition and separate possession of plaintiff A, B and C properties. It was claimed that Plaintiff's and Defendants Nos. 1 to 18 (hereafter referred to as

such) are descendants of one Molugu Ram Reddy, who died leaving behind six sons. The fifth and sixth sons died issueless, and Plaintiff's and Defendant Nos. 1 to 18 are the respective legal representatives of other four sons, who had 1/4th share in the property left behind by Molugu Ram Reddy. They averred that the suit schedule properties are undivided Hindu joint family properties in which Plaintiff's and Defendant Nos. 1 to 18 have share. After the death of the original ancestor, Narasimha Reddy and Malla Reddy, two of the four surviving sons, filed O.S. No. 295 of 1984 on the file of the Court of the Additional Sub Judge, Ranga Reddy District, for partition of Acs. 107.17 guntas situated at Kushaiguda, Hamlet of Khapra Village of Ranga Reddy District. The suit was compromised in 1988 under which all the properties were partitioned, divided and allotted to each individual. However, the suit lands abutting the road were not divided. They were kept for development purposes and remain joint. In September 2000, Plaintiff's came to know that Smt. Sunitha, daughter-in-law of Ram Reddy, was given pattadar pass books in respect of plaint "A" schedule property. An appeal was filed before the Revenue Divisional Officer, Ranga Reddy District. When the orders of stay were vacated, a revision was filed before the Joint Collector, who ordered status quo. In spite of the same, the Defendants made attempts to raise constructions ignoring objections by the Plaintiff's.

3. The fifth Defendant filed an application, being I.A. No. 2962 of 2001, under Order VII Rule 11 to reject the plaint, inter alia, as barred by res judicata. He pleaded as follows. After death of Molugu Ram Reddy, Narasimha Reddy and Malla Reddy instituted O.S. No. 342 of 1980, which was transferred to the Court of the Additional Subordinate Judge, Ranga Reddy District, as O.S. No. 295 of 1984. The suit covered entire property including the land in survey Nos. 254/2 (Acs. 6.10 guntas), 227 (Ac.0.30 guntas), 216 (part) and 219 (Ac. 1.31 guntas). In the compromise decree the immediate predecessors of Plaintiff Nos. 1 and 2 agreed that they shall have No. claim whatsoever in respect of the remaining suit "A" schedule property in future and as against Defendants. As per the compromise decree the father of the second Plaintiff and the father of the third Plaintiff were allotted one-fourth share each. One-fourth share was also allotted to other branches. The suit schedule properties were part and parcel of the compromise decree in O.S. No. 295 of 1984, and hence the issue cannot be raised again.

#### LOWER COURT DECISION

4. During the enquiry of the interlocutory application the fifth Defendant marked Exs.A1 to A3, and the Plaintiff's marked Exs.B1 to B22. Considering these documents, the Court below recorded the finding that the compromise decree in O.S. No. 295 of 1984 was passed with the consent of all the shareholders, that the Plaintiff's abandoned their claim in respect of other properties except the properties allotted to them in the compromise decree, and therefore, the cause of action for filing the partition suit is barred under Order II Rule 2(3) of the Code of Civil Procedure. By an order dated 06.08.2002, I.A. No. 2962 of 2001

was accordingly allowed rejecting the plaint.

#### APPEALS and FULL BENCH REFERENCE

5. Being aggrieved by the order of the lower Court in I.A. No. 2962 of 2001 rejecting the plaint, Plaintiff's filed Civil Miscellaneous Appeal under XLIII Rule 1(r) of the Code of Civil Procedure, being CMA. No. 3214 of 2003 on 21.04.2003. A day thereafter, they also filed regular appeal suit u/s 96, being A.S. No. 2265 of 2003. These appeals were listed on 06.01.2004 before the referring Bench comprising one of us (Hon'ble Sri Justice B. Prakash Rao). An objection was raised on behalf of the Defendants that the Plaintiff's are precluded from filing two appeals against the order rejecting the plaint. The Plaintiff's, however, contended that a Civil Miscellaneous Appeal is not barred. They relied on the decision of the learned single Judge of this Court in Ragam Yellaiah v. Chintha Shankaraiah 2003 (1) Decisions Today (AP) 78. Therein the learned single Judge of this Court held that an order rejecting the plaint being the "deemed decree" u/s 2(2), Civil Miscellaneous Appeal would lie. The learned single Judge distinguished the decision of the Supreme Court in Shamsheer Singh Vs. Rajinder Prasad and Others, and followed the decision of the Division Bench in B. Nookaraju Vs. M.S.N. Charities and others, wherein it was held that a Civil Miscellaneous Appeal is maintainable against the order under Order XXI Rule 58(3). Disagreeing with Ragam Yellaiah and Nookaraju, the Division Bench referred the question to the Full Bench.

#### SUBMISSIONS

6. Counsel for the Plaintiff's Sri T.S. Praveen Kumar, Sri H. Venu Gopal Counsel for the fifth Defendant, and Sri V. Pattabhi Counsel for the contesting Defendants, made their submissions. They also relied on various decisions. We would make reference to the relevant ones at appropriate place.

#### CONSPECTUS of RELEVANT CPC PROVISIONS

7. It is necessary to quote the definitions of "decree", "judgment" and "order" as under.

2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation.-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

2(9) "judgment" means the statement given by the Judge on the grounds of a decree or order.

2(14) "order" means the formal expression of any decision of a Civil Court which is not a decree.

8. The definition of "decree" in Section 2(2) of the CPC can be split up into three parts - the main part, the inclusionary part and the exclusionary part. The main part is explanatory in nature and defines "decree" as formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The inclusionary part expressly includes the rejection of plaint and the determination of any question within Section 144. The exclusionary part excludes an order of dismissal for default and any adjudication from which an appeal lies as an "appeal from an order".

9. The Section 96 of the CPC provides that an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court. Section 17 of the Andhra Pradesh Civil Courts Act, 1972, provides that an appeal, when it is allowed by law, shall lie from any decree or order in a civil suit or proceedings of the District Court to the High Court; of the Court of Senior Civil Judge to the District Court when the amount or value of the subject matter of the suit or proceeding is not more than rupees five lakhs, to the High Court in other cases, and of the Court of Junior Civil Judge to the District Court. Thus as of now if the value of the subject matter is more than rupees five lakhs, an appeal would lie to the High Court. An appeal would also lie from the original decree passed ex parte, but No. appeal shall lie from a decree passed by the Court with the consent of parties, and if the subject matter of the original suit does not exceed ten thousand rupees, an appeal is barred. The rules in Order XLI, needless to mention, govern the procedural and substantive aspects of adjudication of appeals from original decrees.

10. The appeal under the Section 96 of the CPC against a decree is different from an appeal against an order (in this judgment referred to as the civil miscellaneous appeal) provided u/s 104 against an order, which means the formal expression of any decision of a Civil Court, which is not a decree. There is also No. gainsaying that all non-decree orders are not appealable. Only those orders as are referred to in Section 104(1)(ff), (ffa), (g), (h) and (i) are appealable. As per Section 104(1)(i) read with Order XLIII, as many as 18 categories orders passed under various provisions of the Rules are appealable. Section 105 bars an appeal from any order made by a Court in the exercise of its original or appellate jurisdiction unless an appeal is specifically provided as contemplated u/s 104 or Order XLIII. Thus there are appealable orders and non-appealable orders. In regard to appealable orders, Section 104(2) bars further appeal against an order in a miscellaneous appeal whereas u/s 100 a second appeal is provided to the High Court from every decree passed in appeal by any Court subordinate to it. Thus the important distinction between the decree as defined u/s 2(2) and appealable order as defined u/s 2(14) is that a second

appeal is provided against an appellate decree to the High Court whereas No. such second appeal is provided u/s 100 against the order in the civil miscellaneous appeal. This leads to another inference that an order, which is not a decree, is not always appealable. If the civil miscellaneous appeal is barred the remedy is u/s 105, which is to the effect that the error, defect or irregularity in any non-appealable order may be set-forth as a ground of objection in the memorandum of regular appeal filed against the decree.

## REJECTION OF PLAINT

11. The CPC empowers the jurisdictional Court to decline cognizance of a suit in two distinct situations: one is when the plaint is returned and the other is when the plaint is rejected. For ready reference, we will quote the order VII Rule 10 and Rule 10A of the Code of Civil Procedure, which deals with return of plaint.

### Order VII

10. Return of plaint.--(1) Subject to the provisions of Rule 10-A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation.--For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint.--On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

10-A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.--(1) Where, in any suit, after the Defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the Plaintiff.

(2) Where an intimation is given to the Plaintiff under Sub-rule (1), the Plaintiff may make an application to the Court--

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the Defendant.

(3) Where an application is made by the Plaintiff under Sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has No. jurisdiction to try the suit,--

(a) fix a date for the appearance of the parties in the Court in which the plaint is

proposed to be presented, and

(b) give to the Plaintiff and to the Defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under Sub-rule (3),--

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the Defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the Defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the Plaintiff under Sub-rule (2) is allowed by the Court, the Plaintiff shall not be entitled to appeal against the order returning the plaint.

12. A plain reading of the above provisions would show that at any stage of the suit, the Court may return the plaint to be presented to the proper jurisdictional Court. This power subject, however, to Rule 10A of the CPC can be exercised even at the stage of appeal; a Court of appeal or revision after setting aside the decree passed in a suit, may direct the return of the plaint for being presented to proper Court. Order VII Rule 10A empowers the Court to fix a date of appearance in the Court where the plaint is to be filed after its return. Before doing so, intimation shall be given to the Plaintiff, who may then file an application to the Court satisfying the Court in which he proposes to present the plaint after its return, praying the Court to fix a date for appearance of the parties in the said Court and requesting that the notice of the date so fixed may be given to him and the Defendant. When once such an application is accepted in accordance with Sub-rules (3) and (4) of Rule 10A of Order VII, the Plaintiff shall not be entitled to miscellaneous appeal against return of plaint (Sub-rule (5)). Thus an order directing the return of the plaint with or without specifying the Court in which the returned plaint is to be presented and/or with or without fixing a date of appearance of the parties, is an appealable order u/s 104(1)(i) read with Order XLIII Rule 1(a), but if for returning the plaint the Court has followed the procedure contemplated under Order VII Rule 10A, such an order is not appealable and No. miscellaneous appeal would lie.

13. The rejection of plaint is dealt with by Order VII Rules 11 and 12 of the Code of Civil Procedure, which reads as under.

#### Order VII

11. Rejection of plaint.--The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the Plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails

to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the Plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the Plaintiff fails to comply with the provisions of Rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the Plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the Plaintiff.

12. Procedure on rejecting plaint.- Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

14. The Court is entitled, at the stage of assuming jurisdiction to reject the plaint either for curable defects when remain unrectified or non-curable defects. Order VII Rule 11 (b), (c), (e) and (f) of the CPC are curable defects subject, however, to the proviso to Order VII Rule 11. The aspects in Clauses (a) and (d) respectively are prematurity or bar of common law remedy - that is to say when the plaint does not disclose cause of action or the suit is barred by any law. The suit would be barred when the jurisdiction of the civil Court is expressly or by implication ousted and/or when the suit is hit by the doctrine of res judicata or under any of the Rules in the First Schedule or those made u/s 122 or Section 125. In either case, by reason of the proviso to Order VII Rule 11 and Sections 148 or 149, the Court is precluded from enlarging the time beyond the period of thirty (30) days or such time as may be granted by the Court for correction of valuation, or supplying requisite stamp-paper.

15. The Section 2(2) of the Code of Civil Procedure, in its inclusionary part, defines "decree" as the formal expression of an adjudication of rejection of plaint as well. Obviously it refers the rejection of plaint under Order VII Rules 11 and 12 of the Code of Civil Procedure. Be it also noted that Order XLI Rule 10(2) also empowers the appellate Court to reject the appeal where security as demanded by it is not furnished. The word "reject" is not defined in Code of Civil Procedure. Whether the word "reject" or the term "act of rejection" amounts to dismissal of the suit? As a verb "reject" means - dismiss as inadequate or inappropriate... refuse to agree; and as a noun to reject a person or thing dismissed as failing to meet standards or satisfy the tests (see The New Oxford English Dictionary, 2002). Advanced Law Lexicon (Ramanatha Aiyer, 3rd edn., Book IV) defines the

word "reject": to refuse to hear, receive or admit; to refuse to grant or accede to; to throw or cast away. To reject the appeal means to refuse to entertain an appeal. Thus to reject the plaint by passing a formal order under Order VII Rule 12, conclusively means and has the effect of dismissing the suit.

16. Insofar as the remedy of appeal u/s 96 of the CPC is concerned, there cannot be any distinction between a judgment of the Court dismissing the suit after full trial or the order of the Court rejecting the plaint for any curable or non-curable defects mentioned under Order VII Rule 11. In either case, the effect would be the same except that under Rule 13 of Order VII, the rejection of the plaint shall not of its own preclude the Plaintiff from presenting fresh plaint in respect of the same cause of action, subject however to law of limitation, doctrine of ouster of jurisdiction or doctrine of res judicata. If the rejection is for any curable defect, the Plaintiff may move the Court seeking time to rectify the defects especially those referred to in Order VII Rule 11 (b), (c), (e) or (f), and if the request is not acceded to, it would be an order amounting to dismissal of the suit.

17. Whether the suit is dismissed after full trial or whether the plaint is rejected either because there are non-curable defects or curable defects (which remain unrectified), the remedy of the Plaintiff is only to prefer an appeal u/s 96 of the Code of Civil Procedure. There are mainly four reasons for this. First, reading of Section 2(9) with Sections 2(2) and 2(14), judgment of the Court rejecting the plaint under Order VII Rule 11 is a "deemed decree" not an "order" against which the remedy is by way an appeal u/s 96. Secondly, from reading of Section 104(1)(i) and Order XLIII(1) together it is irresistible that judgment or the order rejecting the plaint is not appealable by way of miscellaneous appeal, as is the case in appeals against orders. Thirdly, Section 104(1)(i) read with Order XLIII(1) (a) provides a miscellaneous appeal only when "plaint is returned under Order VII Rule 10" except when the procedure under Rule 10A of Order VII was followed. Fourthly, the judgment of the Court rejecting the plaint not being one under Sections 35A, 91, 92 or 95, or an order u/s 94(a) read with 104(h), No. miscellaneous appeal would lie, when a plaint is rejected under Order VII Rule 11. Thus, a judgment rejecting the plaint; not being an order appealable by way of miscellaneous appeal under any of the provisions as contemplated u/s 104 read with Order XLIII - is only appealable u/s 96. This view is well supported by a decision of the Privy Council, three judgments of the Supreme Court as well as two Full Bench judgments of this Court and that of Kerala High Court.

#### CASE LAW

18. In Paruchuru Thirumala Satyanarayanacharyulu and Another Vs. Vannava Ramalingam and Others, , a Full Bench of Madras High Court was considering a civil revision petition filed u/s 115 of the Code of Civil Procedure. It was against an order of a Subordinate Judge rejecting the plaint for non-payment of required deficit court fee. The Chief Justice Rajamannar held that, "when once an order is passed rejecting the plaint having the effect of dismissing the suit, the revision u/s 115 would not be maintainable and that the remedy is only by way of regular

appeal against the decree". The other two learned Judges, Justice Viswanatha Sastri and Justice Panchapakesa Ayyar agreed with the Chief Justice. The following observations from the opinion of Justice Viswanatha Sastri bring about the difference between an adverse order passed with reference to the court fee payable by the Plaintiff and an order rejecting the plaint.

An erroneous order of the lower Court demanding additional court fee is revisable by the High Court at the instance of the Plaintiff on the ground that there is a refusal to exercise the jurisdiction vested in the lower Court to proceed with the trial and decide the suit unless the condition imposed by the Court is fulfilled and the court fee demanded is paid by the Plaintiff. Therefore, a Plaintiff against whom an adverse order has been passed with reference to the court fee payable by him on the plaint has been held entitled to move this Court in revision without waiting for the rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure.... An order rejecting a plaint does not conclusively determine the rights of the parties; nor is it a formal expression of an adjudication determining the rights of any party with reference to any matter in controversy in the suit. Order VII Rule 13 of the CPC provides that the rejection of the plaint on any of the grounds mentioned in that order is No. bar to a fresh suit on the same cause of action. Nevertheless, Section 2(2) enacts that an order rejecting a plaint under Order VII Rule 12 of the CPC shall be deemed to be a decree, apparently because the rejection of the plaint conclusively determines that the Plaintiff is not entitled to bring his suit on a court fee stamp of a value less than what has been found by the court and to this extent there is a final decision. An appeal lies against an order rejecting the plaint, but not against an order demanding payment of additional court fee. The latter order is open only to a revision. If No. revision petition has been filed against the order demanding additional court fee before the plaint is rejected for non-compliance with it, the remedy of the Plaintiff is to appeal against the order rejecting the plaint. It is for this reason that Order VII Rule 12 requires the court to pass a formal order rejecting the plaint giving the reasons for its conclusion.

(Emphasis supplied)

19. In *Kumarika Subarna Rekha Mani Devi and Others Vs. Ramakrishna Deo and Others*, a Full Bench of this Court, while accepting the legal position that a regular appeal would lie against an order rejecting the plaint, held that a memorandum of regular appeal against an order rejecting the plaint under Order VII Rule 11 (a) to (d) of the CPC is not governed by any of the provisions of the Andhra Pradesh Court Fee & Suits Valuation Act, 1956 and that ad volarem court fee is payable under Article I Schedule I of the Court Fee Act. The dissenting Judge, Justice Kumarayya (as he then was) also observed that when a decree is passed after adjudication invariably an appeal alone lies and a second appeal also on the grounds mentioned in Section 100 and that No. miscellaneous appeal would be maintainable. In *Mohammed Kani Rowther v. Hasan Rowther Bulghese Beevi* AIR 1972 Kerala 56 (FB), Justice Krishnamoorthy Iyer speaking for the Full

Bench of Kerala High Court reiterated the view that an order rejecting a plaint under Order VII Rule 11 being a decree u/s 2(2), the proper remedy of the Plaintiff is to file an appeal and that a revision petition is not maintainable.

20. The Privy Council in *Adikappa v. Chandrasekhara* AIR 1945 PC 12 faulted with the order of the Madras High Court in entertaining revision u/s 115 of the CPC observing thus: "... the order amounted to the former expression of adjudication which so far as regard the Court expressing it, conclusively determined the rights of the parties with regard to one of the matters in controversy in the suit... that order was a decree within the meaning of Section 2(2) of CPC and an appeal lay u/s 96 of the Code..." In *Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another*, a Constitution Bench of the Supreme Court while considering whether on memorandum of appeal presented to the High Court, court fee was payable u/s 7(iv)(c) or Article 17 of Schedule II of the Court Fee Act, 1870, categorically held that, "an order rejecting a plaint is a decree as defined in Section 2 Sub-section (2) and is appealable as such" and that, "when the plaint is rejected for non-payment of proper court fee only an appeal would lie against an order rejecting the plaint which results in dismissal of the suit. It was however observed that, "an appeal would not be proper remedy when the Plaintiff questions the interlocutory order with reference to the proper court fee passed by the trial Court".

21. In *Shamsher Singh Vs. Rajinder Prashad and Others*, : *Shamsher Singh Vs. Rajinder Prashad and Others*, the facts are the following. The Appellant filed a suit on the foot of mortgage. It was decreed. He took out execution. The Respondent 1 and 2, sons of mortgagor, filed suit for declaration that the mortgage executed by their father is null and void; that it is ineffectual against them as the property was a joint Hindu family property; and that mortgage had been effected without consideration or family necessity. The Appellant raised a preliminary objection that the suit was not properly valued for the purpose of court fee and jurisdiction. The same was adjudicated as a preliminary issue and the learned Subordinate Judge held that the case is covered u/s 7(iv)(c) of the Court Fee Act and directed the Plaintiff's to pay the deficit court fee which was not paid. The same was not paid. The plaint was rejected. They then filed an appeal before Punjab and Haryana High Court which held that neither the earlier decree nor the alienation binds the Plaintiff. In the appeal, it was contended that the appeal was not competent. Rejecting the plea, the Supreme Court held as follows.

In the present case the plaint was rejected under Order 7 Rule 11 Code of Civil Procedure. Such an order amounts to a decree u/s 2(2) and there is a right of appeal open to the Plaintiff. Furthermore, in a case in which this Court has granted special leave the question whether an appeal lies or not does not arise. Even otherwise a second appeal would lie u/s 100 of the CPC on the ground that the decision of the first appellate court on the interpretation of Section 7(iv)(c) is a question of law. There is thus No. merit in the preliminary objection.

22. In Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, interpretation of Section 115 of the CPC as amended by the CPC (Amendment) Act, 1999 fell for consideration. The revision power u/s 115 is exercisable in a case where the order or the decree, as the case may be, was not appealable. In that context, the Supreme Court explained the operation of the provisions dealing with regular appeals as well as miscellaneous appeal as below.

In Section 2, the expressions "decree" and "order" have been defined in Clauses (2) and (14) respectively. It is to be noted that it matters little that the judgment is styled as an "order". If, in fact, it fulfils the conditions of the definition u/s 2(2), it is a decree and becomes appealable. Orders that are not appealable are, generally speaking, those which are procussual i.e. interlocutory or incidental orders regulating proceedings but not deciding any of the matters of controversy in the suit. Order 43 deals with "appeals from orders". These appeals lie u/s 104 of the Code. The said section deals with appeals from orders and specifies the orders from which appeals can lie. Sub-section (2) of Section 104 says that No. appeal shall lie from any order passed in appeal under the said section. Section 104 and Order 43 Rule 1 contain a full list of appealable orders. An order which amounts to a decree within Section 2(2) does not fall within Section 104 and the only applicable section is Section 96. Clauses (a) to (f) of Section 104 were omitted by Arbitration Act, 1940. Section 105 relates to other orders. It, inter alia, relates to any order i.e. to appealable as well as non-appealable orders. It is in the nature of a prohibition stipulating that save as otherwise expressly provided, No. appeal shall lie from any order made by a court in exercise of original or appellate jurisdiction; but where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. Sub-section (2) deals with case of remand. This section, in fact, contemplates two things i.e. (1) regular appeal from decree; and (2) the provision relating to grant of objection relating to interim order. Order 43 Rule 1 is an integral part of Section 104.

(Emphasis supplied)

23. In Ragam Yellaiah, the learned Single Judge followed Nooka Raju. Be that as it is, doubting its correctness, another Division Bench referred the question to a Full Bench. In Mr. Gurram Seetharam Reddy Vs. Gunti Yashoda and Another, the Full Bench overruled Nooka Raju and held that an order passed under Order XXI Rule 58(3) of the CPC is appealable u/s 96. The relevant observations are as follows.

When Section 96 CPC specifically provides for appeals against decrees, and Sub-rule (4) of Rule 58 of Order 21 directs that the order passed under Sub-rule (3) thereof shall have the force of a decree, there hardly exists any basis to deny such characteristics to such an order. An interpretation to the contrary would have the effect of setting at naught, the intention of the Parliament in attributing characteristics of a decree to an order. In view of a clear mandate under Sub-rule (4) of Rule 58, an order passed under Sub-rule (3) thereof, partakes a character

of a decree for all practical purposes, more so, in the context of availing the remedy of appeal. Same reasoning holds good for the orders passed under Rules 98 and 100 of Order 21 CPC. Hence, there does not exist any justification to treat the same as different, in any way from decrees, at least in the context of deciding the forum and provision for appeal. The question as to what nomenclature is to be given to the appeals, needs to be dealt with by the High Court or the District Courts, on administrative side. Hence, we are of the view that the judgment of this Court in Nookaraju's case does not lay the correct proposition of law. Once it is held that orders passed under Rule 58(3) and Rules 98 and 100 of Order 21 Code of Civil Procedure, are appealable u/s 96 Code of Civil Procedure, it is axiomatic that a second appeal is maintainable against the order passed in such appeals.

(Emphasis supplied)

24. Indeed the subsequent Full Bench judgment was not cited before the referring Bench.

#### CONCLUSION

25. In the result for the above reasons, the reference is answered as follows. On the true construction of Sections 2(2), 2(9), 2(14) and Sections 96, 104 and 105 of the Code of Civil Procedure, the conclusion is irresistible that a judgment rejecting a plaint is "decree" and is appealable u/s 96. A miscellaneous appeal against an order rejecting the plaint would not lie. There is a much consensus of judicial opinion that supports this conclusion. A Plaintiff, who is aggrieved by rejection of the plaint for any of the reasons as contemplated under Order VII Rule 11(a) to (f), is entitled to file a regular appeal u/s 96, and a miscellaneous appeal u/s 104 read with Order XLIII Rule 1 is barred.

26. We direct that A.S. No. 2265 of 2003 and C.M.A. No. 3214 of 2003 shall be placed before appropriate Bench for disposal, after obtaining the orders of the Hon"ble the Chief Justice.

27. The reference is ordered accordingly and we refrain from making any order as to costs.