

(2001) 10 AP CK 0053
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4451 of 2000

Munakkayala Konda Reddy and Others	APPELLANT
Vs	
Thallam Venkata Reddy and Another	RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 1(1), Order 14 Rule 2, Order 14 Rule 2(1), Order 14 Rule 2(2)

Citation : (2002) 1 ALT 343(1) : (2001) 3 APLJ 222

Hon'ble Judges : S.B. Sinha, C.J.; V.V.S. Rao, J

Bench : Division Bench

Advocate : L.J. Veera Reddy, for the Appellant; Gudapati Venkateswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—A learned single Judge of this Court by an order dated 3-8-2001 has referred the matter - whether the question of res judicata is bar to the suit created by any law for the time being in force within the meaning of Order 14 Rule 2 (2) (b) of the Code of Civil Procedure, 1908 (for short "the Code").

FACTS:

2. The plaintiff-opposite party filed the suit for injunction. It was contended that earlier, Original Suit No. 655 of 1980 was filed by the vendors of the defendants-petitioners herein on the file of the Munsif Magistrate, Rajampet for declaration of title and injunction for the self-same property. When the suit was dismissed, an appeal -being A.S.No. 40 of 1985, was preferred thereagainst which was allowed by an order dated 28-7-1986. Assailing the same, second appeal was filed before this Court which was marked as S.A.No. 58 of 1987 and the same was dismissed on 31-8-1998.

3. The contention of the defendants-petitioners herein, therefore, is that O.S.No. 70 of 1992 cannot be entertained as the same is barred under the principles of

res judicata. For determination of the said issue as a preliminary one, an application was filed by the petitioners herein which was marked as I.A.No. 743 of 2000. By reason of the impugned order dated 27-9-2000 the said application was dismissed. Aggrieved thereby the present civil revision petition has been filed.

4. The learned referring Judge having taken into consideration the decisions cited on behalf of the petitioners herein viz., Kodavandla Imam Saheb Vs. Shaik Nayab Rasool and Others, , Femina Handloom of India, Cannanore Vs. M.R. Verma and Sons, and Durg Rajnandgaon Grameena Bank v. Suresh Kumar Shukla and Ors., (1999) 1 SCC 243 on the one hand and the decision of the Full Bench of this Court in Veeranna v. Sayamma 1958 ALT 364 : 1958 (1) An.W.R. 307 : AIR 1958 A.P. 363 (F.B.), Smt. Laxmi Mani Dasi Vs. Manik Chandra Das, and Mary and Another Vs. Mathew Joseph and Others, was of the view that:

In the light of the object of Section 11 C.P.C., it cannot be said that this doctrine is always a pure question of law. In fact, it is a mixed question of fact and law. The Courts repeatedly held that the plea of res judicata has to be raised as a plea and the pleadings are to be placed before the Court and it has to be established that a particular suit is barred by res judicata and hence it cannot be said that the bar imposed under Order 14 Rule 2 (2) (b) C.P.C. is applicable to such a case.

QUESTION:

5. However, the learned Single Judge, in view of the decision of another learned Single Judge in Kodavandla Imam Saheb's case referred the question to the Bench.

FINDINGS:

6. Issues in terms of Order 14 Rule 1 arise for determination when a material proposition of fact or law is affirmed by one party and denied by the other. Issues although broadly can be sub-divided under two heads in terms of Order 14 Rule 1 (1) into issues of facts and issues of law, there can be an issue having mixed question of fact and law and determination of the fact only would give rise to a determination of the question of law and the determination of the question of law must precede the determination on facts.

7. Order 14 Rule 2 of the Code must be construed having regard to the proposition contained in Order 14 Rule 1. Sub-rule (1) of Rule 2 of Order 14 of the Code reads:

Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce Judgment on all issues.

8. Sub-rule (2) of Rule 2, however, states:

Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law

only, it may try that issue first if that issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

9. Prior to amendment, Order 14 Rule 2 of the Code read thus:

Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

10. The Court may, therefore, try and dispose of an issue of law as a preliminary issue in terms of Order 14 Rule 2 if the same relates to (a) the jurisdiction of Court, and/or (b) a bar to the suit created by any law for the time being in force. Under the aforementioned provision, issue relating to jurisdiction of the Court should be tried as a preliminary issue only if the same can be disposed of without recording any evidence. If the issue about jurisdiction is a mixed question of law and fact requiring recording of evidence the same cannot be tried as a preliminary issue.

11. The question came up for consideration before a Full Bench of this Court in Veeranna's case (4 supra) wherein it is held:

The essential conditions for the application of the doctrine of res judicata are: (1) the matter directly and substantially in issue in the subsequent suit or issue must be the same matter which is directly and substantially in issue either actually or constructively in the former suit; (2) the former suit must have been a suit between the same parties or between parties under whom they or any of them claim; (3) the parties must have litigated under the same title in the former suit; (4) the Court which decided the former suit must have been a Court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and (5) the matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit.

12. Section 11 of the Code although bars the jurisdiction of the Court, the said plea can be given effect to when the following conditions are proved:

(a) that the litigating parties are the same;

(b) subject matter of the suit is identical;

(c) the matter has been finally decided between the parties and the suit has been decided by a Court of competent jurisdiction.

13. A Division Bench of this Court in Devarapu Narasimharao Vs. Yerrabothula

Peda Venkaiah and Others, held:

Whenever the plea of res judicata is raised, the Court has to investigate the facts in order to determine whether the requirements of Section 11 of the CPC have been fulfilled or not. The concerned party has to file copy of the pleadings of the earlier suit as also copy of the issues and the Judgment so that the Court can see whether the required elements are present on record or not. Where the concerned party does not place the relevant material before the Court, the question of making an investigation into the facts and invoking the doctrine of res judicata does not arise, because, it is not a pure question of law and the plea of res judicata is not the one which affects the jurisdiction of the Court.

14. The Apex Court in Syed Mohd. Salie Labbai (Dead) by L.Rs. and Others Vs. Mohd. Hanifa (Dead) by L. Rs. and Others, has clearly held:

..... In our opinion the best method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suits, and then to find out as to what had been decided by the Judgments which operate as res judicata. Unfortunately however in this case the pleadings of the suits instituted by the parties have not at all been filed and we have to rely upon the facts as mentioned in the Judgments themselves.

15. The decision of the Apex Court clearly shows that how difficult sometimes it may be to uphold the plea of res judicata.

[See Iftikhar Ahmed and Others Vs. Syed Meharban Ali and Others, and Ramagya Prasad Gupta and Others Vs. Murli Prasad and Others,]

16. The Calcutta High Court in Smt. Laxmi Mani Dasi (5 supra) held that the res judicata is a question of law and it constitutes bar to suit created by law.

17. Yet again in Mary's case (6 supra) it was held that the issue of res judicata or estoppel is not a bar to suit as contemplated by Order 14 Rule 2 (2) (b) of the Code.

18. In Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, wherein the law has been stated in the following terms:

The High Court cannot while exercising its jurisdiction u/s 115, correct errors of fact, however gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute itself. It is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. Points of law may arise which are related to questions of jurisdiction. A plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party which raises them would oust the jurisdiction of the Court. An erroneous decision on

these pleas, therefore, can be said to be concerned with questions of jurisdiction falling within the purview of Section 115 of the Code. But an erroneous decision on a question of law having no relation to questions of jurisdiction will not be corrected by the High Court u/s 115.

19. Order 14 Rule 2 (2) does not mandate that the Courts must try the suit on a preliminary issue. It may do so. It is the Court's discretion which is circumscribed by the fact that issue must relate to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. The Court's discretion, therefore, must be exercised judiciously. It, having regard to the fact situation of each case, may try a suit on a preliminary issue or may not. In (Mr.) Francis Joseph Rebellow v. Smt. Olivia Jane Rebellow the Bombay High Court set aside the order of the trial Judge deciding a case on a preliminary issue stating that the decision of the suit on the preliminary issue without examination of the legal position is something which cannot be said to be proper exercise of the Court's jurisdiction under Order 14 Rule 2 of the Code. (Also see Francis Joseph Rebellow Vs. Olivia Jane Rebellow and Others,

20. We are, therefore, of the opinion that only because a plea of res judicata has been raised the same by itself cannot be a ground for determining the issue by way of a preliminary one.

21. Applicability of the bar of res judicata in a given situation, therefore, may depend on the finding of fact which in turn may have to be arrived at upon considering the pleadings of the parties and thus in cases falling within those categories, the suit may not be determined as a preliminary issue.

22. The decision in Kodavandla Imam Saheb's case (1 supra) has been rendered without considering the effect and purport of Order 14 Rule 2 of the Code.

23. In M/s. Femina Handloom of India's case (2 supra) the question did not relate to framing of a preliminary issue.

24. In Durg Rajanandgaon Grameena Bank's case (3 supra) the Apex Court held that as the right of the appellant therein was determined by the Madhya Pradesh High Court in a writ petition the suit filed by him for the self-same reliefs was barred by res judicata and the same could not have been entertained and before arriving at the said finding the Apex Court also perused copy of the writ petition.

25. We are, therefore, of the opinion that the learned trial Judge cannot be said to have committed any jurisdictional error in refusing to decide the issue of res judicata as a preliminary issue. Thus, we find no merit in the Civil Revision Petition which is accordingly dismissed. There shall be no order as to costs.