
(2003) 04 AP CK 0001
In the Andhra Pradesh High Court
Case No : TR.CMP No. 492 of 2002

Munnangi Ramakrishna Rao	Vs	APPELLANT
Dr. Vanakuru Venkata Siva Ramakrishna Prasad and Others		RESPONDENT

Date of Decision : 21-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115(1), 24
Constitution of India, 1950 — Article 227

Citation : (2003) 4 ALD 56 : (2003) 4 ALT 570 : (2004) 1 RCR(Civil) 662

Hon'ble Judges : G. Bikshapathy, J;C.Y. Somayajulu, J

Bench : Division Bench

Advocate : Satyanarayana Nimmagadda, for the Appellant; P.M. Gopal Rao, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—This Transfer CM.P. is filed seeking transfer of O.S. No. 551 of 2002 from the file of the Court of Principal Junior Civil Judge, Tenali to the Court of the Additional Senior Civil Judge, Tenali, to be tried along with O.S. No. 184 of 2002 pending in that Court.

2. When the matter came up for hearing before a learned single Judge, he, by his order dated 7.2.2003 referred the following points to a Division Bench:

(a) In view of the present language of Section 115 of the Code, a revision as against an order passed by the District Court u/s 24 of the Code can be maintained?

(b) Whether a party who was unsuccessful before the District Court in a transfer O.P. without questioning the same either u/s 115 of the Code or under Article 227 of the Constitution of India can again invoke the jurisdiction of this Court u/s 24 of the Code on the ground of concurrent jurisdiction?

Pursuant to the above order of reference, the matter is posted before us for disposal.

3. Since the learned Counsel for the parties made their submissions not only on the questions referred to us but on the merits of the transfer petition also, we are answering the points referred and are also disposing of the transfer petition.

Point (a)

4. Prior to 1999 Amendment, proviso to Section 115(1) C.P.C. read:

"Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where-

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made."

After 1999 Amendment, proviso to Section 115(1) C.P.C. reads:

"Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

As /seen from the above, by 1999 Amendment Clause (b) of the proviso to Section 115(1) is omitted and Clause (a) is added to the main proviso itself. A transfer petition filed before the District Court is a "proceeding". Since any order, either allowing or refusing to transfer a suit from one Court to another, finally disposes of the transfer petition, there can be little doubt that such order is amenable to revision both prior and subsequent to 1999 Amendment to C.P.C. Therefore, we hold that revision against an order passed in a petition filed u/s 24 C.P.C., either allowing or refusing to transfer a suit or proceeding by the District Court is maintainable. The point is answered accordingly.

Point (b)

5. Section 24 C.P.C. reads:

"24 (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any state-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under Sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,--

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this Section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

A plain reading of the above Section shows that both High Court and District Court have concurrent jurisdiction to transfer proceedings in any Court subordinate to them to another Court either suo motu or on an application by any of the parties to the proceedings. There is nothing in the said Section to suggest that when the District Court is seisin of a similar application the High Court should not entertain an application for the same purpose. If we may say so, under the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") both High Court and Sessions Court are given powers to grant anticipatory bail (Section 438 Cr.P.C.) and bail (Section 439 Cr.P.C.). Plethora of case law shows that the fact that the Sessions Court was moved for bail or anticipatory bail, by itself, is not a bar for the High Court entertaining a similar application. Here we feel it relevant to mention that a learned Single Judge of this Court in *K. V. Soorayya Chetty v. P. Dasaratha Naidu* 1966 (1) ALT 372, relying on the decisions of Calcutta and Patna High Courts, took the view that both District Court and High Court have the same power of transfer u/s 24 C.P.C.

We feel it relevant to refer to the decision of a Full Bench of Calcutta High Court in *Diptendu Nayek and Others Vs. State of West Bengal*, where the question as to whether an application for anticipatory bail u/s 438 Cr.P.C. would lie before the High Court when such application was rejected by the Sessions Court. In para 11 of the said Judgment it is observed as follows:

"During the course of argument we drew the attention of the learned Counsel for the parties to the provisions of Section 24 of the Code of Civil Procedure, 1908, wherein the analogous expression "the High Court or the District Court", has been used and it has been provided that "the High Court or the District Court may at any stage" transfer or withdraw any suit, appeal or other proceeding and the settled position in this Court is that a party may apply afresh to the High Court u/s 24 even after moving the District Court without success. As early as in 1909, when it was urged before a Division Bench of this Court in Hari Nath v. Debendra Nath (11 CLJ 218) that u/s 24, the High Court and the District Court having concurrent powers, the High Court would have no jurisdiction under that Section where the District Court had already declined the transfer, Sir Ashutosh, speaking for the Bench, repelled the contention (at 219) as having "manifestly no foundation" and ruled that u/s 25 of the preceding Code of 1882, corresponding to Section 24 of the present Code, "this Court frequently exercised the power of transfer after an application, for transfer made to the District Court had proved infructuous". To the same effect is the later decision of the Patna High Court in Sheo Nandan Lal and Others Vs. Mangal Chand, where the Division Bench decision of this Court in Hari Nath (supra) was followed. A similar contention appears to have been made in a much later Division Bench decision of this Court in Gorachand v. Dipali (1976 CriLJ 380) and it was urged that the petitioner once having made an application u/s 24 before the District Court and that application having failed, shall not be entitled to move a fresh application u/s 24 before the High Court. The Division Bench has ruled (at 387) that "on a plain reading of the Section it cannot be said that moving an application before the District Court will preclude the petitioners from moving a fresh application before the High Court" and relied on and followed the Division Bench decision in Hari Nath (supra) and the Patna decision in Sheo Nandan (supra) for the purpose."

It is thus seen that both Patna and Calcutta High Courts have also taken the view that an unsuccessful party before the District Court can move a fresh application for the same purpose in the High Court, which impliedly means that he need not question the order of dismissal by the District Court either u/s 115 C.P.C. or under Article 227 of the Constitution. Therefore, we hold that a petition u/s 24 C.P.C. is maintainable even without the order of dismissal of such petition by the District Court being questioned either u/s 115 C.P.C. or under Article 227 of the Constitution of India. The point is answered accordingly.

6. Now we consider the question whether petitioner is entitled to seek transfer of O.S. No. 551 of 2002 from the Junior Civil Judge's Court to Senior Civil Judge's Court at Tenali?

7. The case of the petitioner is that he filed A.T.C. No. 17 of 2002 before the Special Officer-cum-Principal Junior Civil Judge, Tenali, for declaration that he is the tenant in respect of the properties mentioned in the schedule appended to the said petition, and that the ex parte interim injunction granted in his favour

was vacated after hearing the petition on merits, and that respondents, having filed O.S. No. 551 of 2002 before the Principal Junior Civil Judge, Tenali, seeking an injunction in respect of the very same property covered by A.T.C. No. 17 of 2002 and some other property, obtained an ex parte injunction against him and filed a petition seeking police aid alleging that he, in violation of the order of injunction, is trying to interfere with their possession and that he subsequently filed O.S. No. 184 of 2002 on the file of the Additional Senior Civil Judge, Tenali, seeking partition of the plaint schedule properties, which include the properties covered by O.S. No. 551 of 2002, alleging that all those properties belong to the family consisting of himself, respondents and others, and filed O.P. No. 213 of 2002 u/s 24 C.P.C. before the District Court, Guntur, seeking transfer of O.S. No. 551 of 2002 from the Court of the Principal Junior Civil Judge, Tenali to the Court of the Additional Senior Civil Judge, Tenali to be tried along with O.S. No. 184 of 2002, alleging that the learned Principal Junior Civil Judge, Tenali is prejudiced against him, and that the learned District Judge, after hearing the contentions of both parties, dismissed O.P. No. 213 of 2002 by his order dated 4.12.2002 though the respondents in their counter stated that they have no objection for transfer of the suit.

8. The contention of the learned Counsel for the petitioner is that since the properties covered by both the suits i.e., O.S. No. 551 of 2002 and O.S. No. 184 of 2002, are substantially the same, it would be convenient if the two suits are tried together by the same Court to avoid conflicting decisions. He relied on Indian Overseas Bank, Madras Vs. Chemical Construction Company and Others, . On the other hand, the contention of the learned Counsel for respondents is that this petition is filed only with a view to drag on the proceedings, and since issues that arise for consideration in the two suits are different, there is no need to transfer O.S. No. 551 of 2002 to be tried with O.S. No. 184 of 2002.

9. Normally, a suit for injunction in respect of a property which is the subject-matter of a suit for partition between the same parties should be tried by the same Court in order to avoid conflicting decisions. But, in the facts and circumstances of this case, in our considered opinion, the points that arise for consideration in the suit for partition and the point that arises for consideration in the suit for injunction are not, and would not be, the same, because it is the specific case of the petitioner that he is a tenant in respect of the properties covered by A.T.C. No. 17 of 2002, which is also the subject-matter of O.S. No. 551 of 2002. Since respondents are denying the status of the petitioner as tenant, the main point for consideration in O.S. No. 551 of 2002 would be whether the petitioner is the tenant in respect of that part of the plaint schedule property, which is covered by A.T.C. No. 17 of 2002. The point for consideration in O.S. No. 184 of 2002 would be whether the properties covered by that suit are joint family properties or not. The finding on the status of the petitioner as tenant in respect of the property covered by A.T.C. No. 17 of 2002, which also is the subject-matter of both the suits O.S. No. 551 of 2002 and O.S. No. 184 of 2002, may not be relevant for disposal of O.S. No. 184 of 2002 because the

substantial questions that arise for consideration in that suit are different. The facts in Indian Overseas Bank case (supra), relied on by the learned Counsel for petitioner, are entirely different from the facts of this case. In that case the issues in both the suits were common. In this case they are not. So, the said decision has no application to the facts of this case.

10. If the petitioner really felt that it would be expedient in the interests of justice for both the suits being tried by the same Court, he would have made that fact only a ground for seeking transfer in O.P. No. 213 of 2002 filed by him in the District Court. But he sought for transfer of the suit on the ground that the Presiding Officer is prejudiced against him. That contention was not accepted by the learned District Judge. It may be a fact that the respondents, in the counter filed by them in O.P. No. 213 of 2002, have stated that they have no objection for the transfer of the case, because transfer was sought on the ground of the alleged prejudicial attitude of the Presiding Officer. They are now opposing the transfer, which is sought on the ground of expediency of justice. In our considered opinion, the fact that the respondents in their counter in OP No. 213 of 2002 had stated that they have no objection for transfer of the case (on the ground alleged in that petition) does not, cannot and would not estop them from contending that petitioner is not entitled to seek the transfer of the suit on the ground alleged by him in this petition.

11. In the circumstances of the case, we find no merits in this petition. So, the petitioner deserves to be, and hence is, dismissed. No costs.