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In the Karnataka High Court

Case No : Civil Petition No. 218 of 1981

Noreen R. Srikantaiah — APPELLANT

Vs

L. Dasarath Ramaiah, Gulbarga and Another — RESPONDENT

Date of Decision : 21-12-1984

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 115, 24
Motor Vehicles Act, 1939 — Section 110, 110 (1)

Citation : (1985) ACJ 628 : AIR 1985 Kar 208 : (1987) 61 CompCas 435(1)

Hon'ble Judges : M.N. Venkatachaliah, J;D.R. Vithal Rao, J

Bench : Division Bench

Advocate : S.P. Shankar, for the Appellant; M. Sowri Raju, for the Respondent

Judgement

1. This civil petition preferred by a claimant in a fatal-accident-action raises the question whether the Tribunal constituted by the State Government under S.110 of the Motor Vehicles Act, 1939 (Act for short) is a "Court" subordinate to the High Court so as to attract the general power of transfer under S. 24 CPC. By the notification under S. 110 the ''District Judge'' was constituted as the Tribunal. Judicial opinion in the High Courts on the point whether the ''District Judge'' functions as "persona designata" or functions as "Court" is not uniform. The petition is before us on its reference to a Division Bench by Kudoor, J.

2. Petitioner is the wife of a certain C. S. Srikantaiah who died on 9-7-1980 in a motor accident. She filed MVC 51 of 1981 on the file of the Motor Accidents Claims Tribunal, Gulbarga, claiming compensation.

3. By the present petition she seeks to invoke the general power of transfer of the High Court under S. 24 C.P.C for the transfer of her case from the Tribunal at Gulbarga, to the Tribunal at Bangalore Metropolitan area. The ground urged is that she is a chronic patient suffering from Hypoglycemia and Low-Blood-Pressure and Vertigo; that she often suffers "bouts of depression" and that in her present physical condition she is unable to stand the 400 mile journey to Gulbarga.

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First-respondent is the owner of the vehicle and second-respondent is the insurer. The former though served, is unrepresented. The Insurer, however, is represented by its learned counsel Sri Sowri Raju.

4. We have heard Sri S. P. Shankar and Sri V. Tarakaram, learned counsel for the petitioner and Sri Sowri Raju, learned counsel for respondent-2.

4A. The controversy is not whether there are grounds to grant the petitioner''s prayer; but one of its permissibility in law. The contention is that the Motor Accidents Claims Tribunal, constituted under S. 110 of the Act, is not a "Court", subordinate to the High Court within the meaning of S. 24 C.P.C.

In State of Mysore v. K. L. Subbanna (1973) 2 Mys LJ 473 : AIR 1974 Kant 109, learned single Judge was of the view that the Tribunal, ex facie, is not a Court subordinate to High Court so as to render a revision petition under S. 115, CPC maintainable. In Revanappa Vs. Gunderao and Others, , Swami, J., has, in a similar context, on a review of the authorities, held that the Tribunal is not a "Court" subordinate to the High Court.

5. The distinction between the concepts of a Court and a Tribunal consists in that though both are vested with, and exercise, the "judicial power" of the State, a "Court" as part of the system of ordinary Civil Courts of the land, exercises the "judicial power" to try all cases of a civil nature, excepting those whose cognisance is either expressly, or by implication barred; while the Tribunal has and exercises "judicial power" in special matters statutorily conferred and delimited. On considerations of policy, the "judicial power" of the State is transferred to and exercised by the "ordinary Courts of the land", or "the Courts of the country" as they are known. They are part of the ordinary hierarchy of Courts of civil judicature; but there is nothing to prevent the State from entrusting its "judicial power" in special matters and in special disputes to judicial "Tribunals".

So both derive their power from and, partake of, a common source, - the "judicial power" of a sovereign State. They necessarily share the common features characteristic of and incidental to the very nature of the power they exercise; and to the commonness of the source of that power. In the case of Courts, however, the procedure followed by, and usually associated with, them and the possession of certain inherent and subsidiary powers intended to help them to effectuate their task are described as the usual "trappings" of the Courts. But the presence of some or all of these "trappings" in an adjudicatory-forum is not necessarily conclusive as to its character as a "Court" if it, otherwise does not share the essential characteristics of one. The line of distinction between a "court" and a "Tribunal" in some cases is indeed fine though real. All Courts are Tribunals but the converse need not necessarily be true. Their procedures may differ, but their functions are not necessarily, different. "What distinguishes them" it is said, "has never been established". Lord Stanp said that the real distinction is that the Courts have an air of detachment". But this is

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"more a matter of age and traditions and not of the essence".

Essentially both a ''Court'' and a judicial ''Tribunal'' must share the characteristics and qualities arising out of the entrustment of the "judicial power". "Judicial power" in the words of Griffith C.J. in Huddart, Parker Pty. Ltd. v. Moorehead (1909) 8 CLR 330 (Aus) is:

" ..... the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some Tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."

The distinction between a ''Court'' and a judicial Tribunal is referred to by Lord Sankey L.C. in Shell Co. of Australia v. Federal Commissioner of Taxation (1931) AC 275 (296), thus:

"The authorities are clear to show that there are Tribunals with many of the trappings of a Court, which, nevertheless, are not courts in the strict sense of exercising judicial power.... In that connection it may be useful to enumerate some negative propositions on this subject:

1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between, whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body ....."

6. In Revanappa Vs. Gunderao and Others, , Swami, J. examined the provisions of the ''Act'' to show that internal evidence contained in the statute itself indicated that the statute envisaged a special Tribunal to adjudicate upon the claims for compensation and not the creation of another set of civil courts. The reference in the statute itself to some claims touching damage to property exceeding Rs. 2000/- being cognisable by the Civil Courts in itself emphasised, according to His Lordship, the distinction between a "Court" and a "Tribunal", which the special adjudicatory forum set-up by the statute was. His Lordship observed (at pp. 167-68-69):

"6..... Thus, the Act itself while conferring jurisdiction on a Claims Tribunal in respect of the claims for compensation falling under sub sec (1) of S. 110 of the Act, has maintained a distinction between a Claims Tribunal and a Civil Court by retaining the jurisdiction of a Civil Court in respect of claims falling under the proviso to sub-see. (1) of S. 110 of the Act."

"7.3..... Thus, from this proviso also, it is clear that Claims Tribunal is not a Civil Court and it is because of this, it is specifically empowered to exercise the powers of a Civil Court. If really it were to be a Civil Court, it was not at all

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necessary to make such a specific provisions in the Act, inasmuch as even in the absence of such a specific provisions, the provisions contained in the Code, would have been available."

"7.4. ..... Accordingly, it has maintained a distinction between a Civil Court and a Claims Tribunal and wherever the jurisdiction is given to a Claims Tribunal, Civil Court''s jurisdiction is ousted and wherever jurisdiction is left with the Civil Court, jurisdiction of the Claims Tribunal to that extent is barred. Therefore, there is a definite indication in the Act itself for, holding that Claims Tribunal constituted under the Act is a Tribunal having special jurisdiction and it cannot be regarded to be a Civil Court ....."

"7.6. Thus, it is clear that merely because, an authority or a body is entrusted with the judicial powers and functions of the State and is having some of the attributes of a Civil Court by itself will not be a determining factor to hold that such a body or authority is a Court, in the strict sense of the term failing within the hierarchy of courts established under the Constitution ....."

7. However, it appears to us, the distinction between the concept of a "Court" and of a "Tribunal", neither term having been a defined one, does not purely turn on the basis of the exclusiveness of their jurisdictions. References to and the recognition of "Civil Courts" in the statute need not necessarily detract from the adjudicatory forum set-up by the statute being, itself, a "Court". Indeed in Rajah Nilmoni Singh Deo Bahadoor v. Taranath Mookerjee (1881) 9 Ind App 174 (PC) the question was whether the Deputy Commissioner who made decrees different suits under the Bengal Act 10 of 1859 could transfer those decrees for execution into another district. If the Rent Court was a Civil Court within the meaning of Act VIII of 1859, then the Collector had power of transferring the decrees. One of the cognate questions that, therefore, arose was whether Rent Courts were Civil Courts. The argument against it was similar to the one Swami, J. considered, and upheld, in Revanappa Vs. Gunderao and Others, , viz., that the expression "Civil Court" is used in the statute in such way as to distinguish the forum set up by the statute from the "Civil Court". The Judicial Committee noticed the argument thus:

"..... There are a number of other sections of similar frame; and the contention is, that the expression "Civil Court" is used in all those sections in such a way as to shew that the framers of the Act X of 1859 did not consider that the Rent Courts established by that Act are Civil Courts."

But referring to the distinction as not conclusive it was observed:

" ..... In that sense there is a distinction between the terms; but it is entirely another, question whether, the Rent Court does not remain a Civil Court in the sense that, it is deciding on purely civil questions between persons seeking their civil rights, and whether being a Civil Court in that sense, it does not fall within the provisions of Act VIII of 1859....."

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The mere lack of general jurisdiction to try all suits of a civil nature does not necessarily yield the inference that the forum is not a court. A court can also be constituted with limited jurisdiction.

8. Then again, the proposition that when the "District Judge" is notified as constituting the Tribunal, the conferment of the special jurisdiction on the District Judge is by virtue, of his presiding over the District Court and not as persona designata and that though the term "District Judge" is used in the notification, the investiture of jurisdiction is in reality in the court of District Judge is eminently arguable. In Balakishna Udayar v. Vasudeva Ayyar, Air 1917 AIR 1917 PC 71, the Judicial Committee observed :

"It appears to their Lordships to be clear that in all these matters the Civil Court exercises its powers as a Court of Law, not merely as a persona designata whose determinations are not to be treated as judgments of a legal Tribunal: ....."

9. It is not necessary to refer to the differing views to the High Courts on the point. We have now the pronouncement of the Supreme Court in Bhagwati Devi and Others Vs. I.S. Goel and Others, which imparts an altogether new complexion to the problem and puts the point beyond controversy. In this decision, Supreme Court referred to its earlier pronouncement in State of Haryana Vs. Smt. Darshana Devi and Others, which arose out of the decision of the Punjab & Haryana High Court in Darshna Devi and Others Vs. Sher Singh and Others, . The question before the High Court in that case was whether a claimant before the Tribunal constituted under S. 110 of the ''Act'' is entitled to the benefit of 0.33 R.I C.P.C. The Tribunal had, in that case, negatived this claim holding that 0. 33, C.P.C. was not one of those provisions which had expressly been made applicable by the Punjab Motor Accidents Claims Rules, 1964. In support of its view the Tribunal had relied upon an earlier opinion expressed by Dua, J. that S.110-C of the M.V.Act by no means clothed the Tribunal with all the characteristics of a Civil Court. But in Darshana Devi''s case AIR 1978.P&H 265, Koshal, C. J. did not subscribe to the earlier view of Dua, J. but referred, with approval, to a Full Bench judgment of that: Court in Shanti Devi and Others Vs. General Manager, Haryana Roadways, Ambala and Others, in which, Jain, J. speaking for the Full Bench had said (at p.72):

"The proceedings before the Claims Tribunal closely resemble the proceedings in a Civil Court and to use the language of their Lordships of the Supreme Court in Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, the Claims Tribunal for all intents and purposes discharges the same functions and duties in the same manner as a Court of law is expected to do. In this view of the matter I hold that the proceedings before the Claims Tribunal are not in the nature of arbitration proceedings and that the Claims Tribunal while disposing of the claims acts as a Court."

(Emphasis ours)

Darshana Devi''s case, in which the above view of Jain, J. was reiterated, went

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up to the Supreme Court. Supreme Court observed:

"2. The poor shall not be prized out of the justice market by insistence on court-fee and refusal to apply the exemptive provisions of O. XXXIII, C.P.Q. So we are distressed that the State of Haryana, mindless of the mandate of equal justice to the indigent under the Magna Carta of our Republic, expressed in Art. 14, and stressed in Art. 39A of the Constitution has sought leave to appeal against the order of the High Court which has rightly extended the ''pauper'' provisions to auto-accident claims. The reasoning of the High Court in holding that Order XXXIII will apply to Tribunals which have the trappings of the Civil Court finds our approval. We affirm the decision.

(Emphasis ours)

But in Revanappa Vs. Gunderao and Others, Swami, J. did not accept the contention, that in Darshana Devi''s case, Supreme Court must be understood to have affirmed the view of Jain, J. in Shanti Devi and Others Vs. General Manager, Haryana Roadways, Ambala and Others, on which Koshal, C.J. had, in turn, placed reliance.

10. However, Bhagwati Devi and Others Vs. I.S. Goel and Others, now puts the points outside the pale of controversy. The matter arose in the context of the power of the Supreme Court: under S. 25 to transfer suits and other proceedings, inter alia, from one "Civil Court" in one State to the other "Civil Court" in any, other State. There is no distinction in the concept of a Court between S. 24 and S. 25 C.P.C; However, the requirement of the element of subordination envisaged in S. 24 so as to render the power under S. 24 exercisable, is, understandably, not in S. 25. If, for purposes of S. 25 a Motor Accidents Claims Tribunal is a "Civil Court", it follows, a, fortiori, that the Tribunal is a "Court", for the purpose of S. 24 as well. It is in this context that the pronouncement in Bhagwati Devi''s" case is instructive on the aspect now under consideration. Supreme Court said:

"In view of the observations of this Court in State of Haryana v. Dharshan Devi, we are of the view that the Motor Accidents Claims Tribunal constituted under the A V. Act is a Civil Court for the purposes of S. 25 of the Civil P.C. We are satisfied that the cases before us are fit cases for being transferred from the file of the Motor Accidents Claims Tribunal, Moradabad to the file of the Motor Accident''s J Claims Tribunal, Delhi ....."

This pronouncement of the Supreme Court, should now serve to put the controversy at rest. In view of this pronouncement, the view taken in State of Karnataka v. Subbanna AIR 1974 Kant 109 and in Revanappas case AIR 983 Kant 164 that such a Tribunal is not a ''Court'' cannot continue to hold the field.

11. The question is whether the Tribunal, as "Court" I subordinate to the High Court. The circumstance that the Tribunal is held to be a "Civil Court" is, in itself, sufficient to hold that it is subordinate to the High Court. In Rajah of Venkatagiri

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Vs. Shaik Mahaboob Saheb and Others, dealing with the question whether the District Collector under S. 15(4) of the Madras Agriculturists Relief Act, 1938, was a "Court" subordinate to the High Court, Patahjali Sastri, J. (as his Lordship then was) speaking for the Division Bench said:

"..... Subordination" is nowhere defined, ... To say that the Collector''s Court is a "Civil Court" within the meaning of this section will be a simple and complete solution of the problem. In our judgment, it is also the correct solution. The preamble to the Code indicates that it is an Act to consolidate and amend the law relating to the procedure of the "Courts of civil judicature."....

From these provisions it seems to us that S. 3 of the Code must be interpreted as a comprehensive declaration, as a matter of corollary, of the subordination of all "Courts of civil judicature" to the District Court in a district area and to the High Court in a provincial area. There can be little doubt that in the present case the Sub-Collector and the District Collector were hearing and determining disputes of a civil nature and we see no sufficient reason why the proceedings before them should not be regarded as "civil proceedings" and their Courts as "civil Courts" for the purpose of S. 3 ....."

(Emphasis ours)

The above view of Patanjali Sastri, J. was followed by Tukol, J. in Narayan v. Shankar AIR 1966 Mys 5.

The enumeration of subordination of Courts in S. 3 is not exhaustive and does not exclude all other Courts from being subordinate to the High Court. There can be no category of "Civil Courts" which are not subordinate to the High Court in relation to the territorial jurisdiction of the High Court. The High Court has appellate jurisdiction over the Tribunals also.

In T.V. Subba Rao Vs. T. Koteswara Rao, , referring to the subordination of courts to the High Court it was observed (at pp. 40-41):

"13 ..... that the High Court of a State exercising jurisdiction over the territory of the State is the highest court in that State and all other Courts exercising civil jurisdiction as contemplated by the Civil P.C. are subordinate to the High Court, and hence the employment of the expression ''any Court subordinate to such High Court'' is not intended to refer to a special category of Courts which alone can be regarded as subordinate and recognise another category of Courts within the territory in which the High Court exercises jurisdiction which are not subject to the jurisdiction of the High Court ....."

xxx xxx xxx " ..... Hence every Court exercising jurisdiction within the territorial limits over which the High Court exercises jurisdiction is subordinate to the High Court. It is subordinate to the High Court if it is exercising its criminal jurisdiction on its criminal side. It is subordinate to the High Court on the civil side if the Court or Tribunal is exercising jurisdiction on its civil side, so that any

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Civil Court exercising civil functions is a Court subordinate to the High Court ....."

The observations of the Supreme Court in Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another, , though made in the context of the revisionary jurisdiction of the High Court under Ss. 435 and 439 of the Criminal P.C., also afford guidance (at p. 6):

"11. We are accordingly of the opinion that even though the State Government is authorised to appoint an appellate authority under S. 6C, the legislature clearly indicated that such appellate authority must of necessity be a judicial authority. Since under the Constitution the Courts being the repository of the judicial power and the officer presiding over the Court derives his designation from the nomenclature of the Court, even if appointment is made by the designation of the judicial officer the appellate authority indicated is the Court over which he presides discharging functions under the relevant Code and placed in the hierarchy of courts for the purpose of appeals and revision. Viewed from this angle, the Sessions Judge though appointed an appellate authority by the notification, what the State Government did was to constitute an appellate authority in the Sessions Court over which the Sessions Judge presides. The Sessions Court is constituted under the Criminal P.C. and indisputably it is an inferior criminal Court in relation to High Court. Therefore, against the order made in exercise of powers conferred by S. 6C a revision application would lie to the High Court ....."

12. In view of the foregoing, we hold that the Motor Accidents Claims Tribunal is a "Court" subordinate to the High Court within, the meaning, and for purposes of S. 24 of the Civil P.C. Transfer of a case from one Tribunal in the State to another is permissible.

13. In the facts and circumstances of the present case, we are of the opinion, that it is a fit case in which the power of transfer should be exercised. We, accordingly, allow this civil petition; transfer the proceedings in MVC 51 of 1981 now pending before the Motor Accidents Claims Tribunal, Gulbarga, to the Motor Accidents Claims Tribunal, Bangalore Metropolitan Area, for disposal in accordance with law. No costs.

14. Petition allowed.

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