

(1993) 04 AP CK 0064

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3984 of 1988

Oruganti Bhaskara Rao and Others

APPELLANT

Vs

Angara Saibabu and Another

RESPONDENT

Date of Decision : 16-04-1993

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 11(4)
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(2), 115

Citation : (1993) 2 ALT 475

Hon'ble Judges : Syed Shah Mohd. Quadri, J

Bench : Single Bench

**Advocate : M.S.R. Subrahmanyam and M. Ramamurthy, for the Appellant;
Addepalli Suryanarayana and K.V. Subrahmanya Narsu, for the Respondent**

Final Decision : Dismissed

Judgement

Syed Shah Mohd. Quadri, J.—The plaintiffs in O.S.No. 668 of 1980 on the file of the IV Additional District Munsif, Visakhapatnam, are the petitioners in this Civil Revision Petition. The suit was filed for declaration and injunction in respect of the suit property against the first defendant in 1980. On 24-12-1982 the petitioners impleaded the second defendant. The second defendant filed his written statement on 3-3-1987. In the written statement he took the plea that the plaintiffs had under valued the suit and if the suit is valued on the basis of the market value as in 1980, the Court would not have pecuniary jurisdiction to try the suit. On the basis of that plea, three additional issues were framed on 12-3-1987, of which issue No. 2, which is relevant for purposes of this revision, is as follows:-

"Whether the court fee paid is not correct and this Court has no jurisdiction?"

Thereafter, the second defendant filed I.A.No. 190 of 1987 to give a finding on additional issue No. 2, which touches upon the pecuniary jurisdiction of the Court. The trial Court considered the issue and recorded the finding that the valuation given by the plaintiffs was not correct and that if the suit is valued on

the basis of half of the market value given in Ex. A-10, the suit would be beyond the pecuniary jurisdiction of the court, allowed the I.A., and directed that the plaint be returned for presentation before the proper court. This order was passed on 13-4-1987. The plaintiffs carried the matter in appeal before the I Additional District Judge, Visakhapatnam, in C.M.A. No. 30 of 1987. The learned appellate Judge confirmed the finding of the trial court and dismissed the appeal on 21-7-1988. It is the correctness of this order of the appellate Court that is assailed in this Civil Revision Petition.

2. Mr. M. Rama Murthy, learned counsel for the petitioners, contends that u/s 11 (4) of the Andhra Pradesh Court-Fees and Suits Valuation Act, the question with regard to court fee and jurisdiction has to be decided before the commencement of the trial. He relied on a Full Bench Judgment of this Court in Chillakuri Chenchurami Reddy v. Kanupuru Chenchurami Reddy 1968 20 An.W.R. 616 and the Judgment of a learned single Judge of this Court in Rai Bahadur S.S.Durga Prasad v. State of A.P. 1969 (1) An.W.R. 200 Mr. A. Suryanarayana, learned counsel for the first respondent, on the other hand, contends that the second defendant was impleaded after four years of the filing of the suit. He raised the question of jurisdiction at the earliest opportunity in his written statement and immediately thereafter he applied for determination of that issue. He did not even cross-examine the witness. Therefore, the commencement of the trial has no effect so far as the second defendant is concerned.

3. The short question that arises for consideration is whether the order under revision is sustainable in law.

4. It may be pointed out that while exercising the jurisdiction u/s 115 of the Code of Civil Procedure, two conditions must be satisfied - (1) The order under revision should suffer from an error of jurisdiction, and (2) If the order is allowed to stand, it would occasion failure of justice or cause irreparable injury to the party against whom it was made. I shall now see whether these two requirements are satisfied for interference of this Court u/s 115 of the Code of Civil Procedure.

5. From the facts narrated above, it is evident that the second defendant was impleaded in December, 1984 and he filed his written statement in March, 1987. Even before he filed the written statement, the plaintiff was examined on 18-7-1986 and 29-7-1986 and he marked Exs. A-1 to A-10 on-1-10-1986. The second defendant did not cross-examine P.W.1. While so, the trial did not progress. The second defendant filed his written statement on 12-3-1987 raising the question with regard to payment of court fee and jurisdiction of the court. In view of the pleas taken in the written statement, the trial court framed three additional issues, including the issue extracted above. Immediately thereafter, the second defendant filed I.A.No. 190 of 1987 to decide the issue with regard to Court fee and jurisdiction. It would be appropriate to read here Order XIV, Rule 2 of the Code of Civil Procedure, which is in the following terms:

"2(1) 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.

(2) 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."

6. Sub-rule (1) of Rule 2 of Order XIV of C.P.C. enjoins that the judgment should be pronounced, subject to the provisions of Sub-rule (2), on all the issues, even though the case might be disposed of on a preliminary issue. But as noted, it is subject to the provisions of Sub-rule (2). Sub-rule (2) provides that where issues both of law and 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 postpone the settlement of the other issues until after that issue has been determined and deal with the suit in accordance with the decisions on the same. Additional Issue No. 2 relates to jurisdiction of the Court. But then the question is whether the trial court could have tried additional issue No. 2 after the trial has commenced on all the issues and given finding on that issue alone on the ground that issue relates to jurisdiction of the Court.

7. Now, we may refer to Sub-section (4) of Section 11 of the Andhra Pradesh Court Fees and Suits Valuation Act, which reads as follows:-

"11. (4) Any question relating to the value for the purpose of determining the jurisdiction of Courts shall be heard and decided before the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908."

A plain reading of the provision makes it clear that any question relating to the value for the purpose of determining the jurisdiction of the Court, is required to be heard and decided before the hearing of the suit as contemplated by Order XVIII of the Code of Civil Procedure. This takes us to the question as to when the hearing of the suit commenced. In *Sultan Saleh Bin Omer Vs. Vijayachand Sirimal*, a learned single Judge of this Court held as under:-

"In other words, once the trial of the suit is taken up and the examination of the witnesses has commenced, the hearing of the suit is said to begun and that hearing comes to an end only with the delivery of the judgment, or when the suit is posted for judgment where it is reserved."

The question arose in that case in the context of recalling of witnesses for further examination under Order XVIII Rule 17 C.P.C. This judgment was followed by another learned single Judge of this Court in T. Ramachandra v. K. Rama Murthy AIR 1980 A.P. 265.

8. In the instant case, as noticed above, P.W.1 was already examined and he marked documents, Exs. A-1 to A-10. Therefore, the trial of the suit had commenced.

9. I shall now refer to the cases relied upon by Mr. Rama Murthy, learned counsel for the petitioners. In Chillakuri Chenchurami Reddy v. Kanupuru Chenchurami Reddy (1 supra), a Full Bench of this Court held:

"The Court is bound to adjudicate upon the questions raised by the defendant before the hearing of the suit. Sub-section (4) also casts a duty on the Court to decide questions relating to value for the purpose of determining the jurisdiction but this must be done before commencement of the hearing of the suit. That this decision should be before the hearing of the suit is necessary for obvious reasons."

10. In Rai Bahadur S.S Durga Prasad v. State of A.P. (2 supra) the question was whether the trial court can review the question of valuation after the trial of the suit has concluded and arguments were heard in part. In deciding this question, Justice Chinnappa Reddy, as he then was, who was also a member of the above stated Full Bench case, placing reliance on the observations, extracted above, of the Full Bench, held that the occasions when the decision under Clause (a) of Section 11(1) might rightly be reviewed are mentioned therein, and that Section 11 (i) (b) does not give a carte blanche to the Court to review the decision at whatever stage a defendant raises an objection or whenever one Presiding Officer succeeds another. The learned Judge has observed that the principle of Sub-sections (2) and (4) of Section 11 appears to be that progress of trial, once commenced, should not be impeded. In that case as the question was raised and decided after the arguments were heard in part, the learned Judge held that the order of the Subordinate Judge reviewing the question of valuation, was not valid.

11. In my view, the trial Court, therefore, committed an error of law in proceeding to decide the question after the trial has commenced. But, that would not help the petitioners because errors of law cannot be corrected in revisional jurisdiction u/s 115 of the Code of Civil Procedure. Further, in view of the proviso to Section 115, an order under revision can be interfered with if it would occasion failure of justice or it will cause irreparable injury to the petitioners. Here neither the order is without jurisdiction nor its existence would occasion failure of justice or cause irreparable injury to the petitioners. For all these reasons, I am not inclined to interfere with the order under revision. The petitioners are granted two weeks time for presenting the plaint to the proper court.

12. Subject to the above observation, the Civil Revision Petition is dismissed, but in the circumstances without costs.