
(1952) 09 MAD CK 0027

In the Madras High Court

Case No : Appln. No. 346 of 1952 in C.S. No. 415 of 1950

R.P. O'Connor

APPELLANT

Vs

P.G. Sampath Kumar

RESPONDENT

Date of Decision : 29-09-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 49 Rule 3(1), Order 7 Rule 10, 151
Constitution of India, 1950 — Article 215

Citation : AIR 1953 Mad 897 : (1953) ILR (Mad) 958 : (1953) 66 LW 691 :
(1953) 2 MLJ 272

Hon'ble Judges : Rajamannar, C.J;Venkatarama Ayyar, J

Bench : Division Bench

Advocate : G.A. Chellappa Nadar, for the Appellant; A. Narasimhachari, for the Respondent

Judgement

Rajamannar, C.J.—The applicant filed a suit on the original side of this court for the recovery of a sum of Rs. 6720 alleged to be due on a promissory note executed by the defendant in favour of his mother. The defendant pleaded "inter alia" that the court had no jurisdiction to entertain the suit as the defendant was a permanent resident of Bangalore and the promissory note and the endorsements thereon were made outside the limits of the original jurisdiction of this court. Thereupon, the applicant took out an application praying that the plaint which he had filed should be returned to him. In the affidavit filed by him in support of the application he stated that in order to enable him to pursue his remedies it is necessary that an order should be made directing the return of the plaint to him and this court had jurisdiction to return the plaint for presentation to the proper court once it found it had no jurisdiction to entertain the suit. The application came on before Panchapakesa Ayyar J. who heard counsel on both sides and directed the papers to be placed before me for constituting a Full Bench to consider this point. I have however thought it was unnecessary to constitute a Full Bench because there was no conflict of decisions of Division Benches in our Court.

2. The question for decision as framed by Panchapaksa Ayyar J. is as follows :

"Whether a Chartered High Court has not got inherent powers u/s 151, C. P. C. to return a plaint entertained by it in the exercise of its ordinary or extraordinary original jurisdiction for presentation to the proper court for the ends of justice despite the provisions of Order 49, Rule 3, C. P. C."

3. Order 7, Rule 10(1) of the Code provides that a plaint shall at any stage of the suit be returned to be presented to the court in which the suit should have been instituted. Order 49, Rule 3 of the Code declares that this rule among other rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. There is no rule similar to Order 7, rule in of the Code made by this Court in the exercise of its rule making powers. The position therefore is that there is no express provision in the Code or in the rules framed by this court for the return of a plaint filed on the Original Side of this court when it is found that this court has no jurisdiction to entertain the suit. It therefore becomes necessary to consider whether Section 151 of the Code can be invoked, that is-to say, whether it, can be held that this court has inherent power to .make an order directing the return of a plaint if it is necessary for the ends of justice or to prevent abuse of the process of court.

4. There is very little or direct authority on this question. The only decision in which it is specifically discussed is that in "Bhaiyat v. L. Chong Kha", AIR 1934 Rang 342 (A) in which Leach J. as he then was, held that although Order 7, Rule 10, Civil P. C. does not apply to the High Court³ it may by reason of its inherent powers direct that the plaint shall be returned to the plaintiff so that he may file it in the proper court if it finds that it has no jurisdiction to entertain the suit. The learned Judge based his decision chiefly on the fact that it would be unjust to require a suitor, who has filed a suit in a court in the belief that he would obtain from it an adjudication on his claim but could not do so because the court had no jurisdiction, to pay another court-fee in the circumstances. He relied upon the observations of West J. in "Prabhakarbhat v. Vishwambhar", 8 Bom 313 (FB). That learned Judge said :

"Whether a court-fee on the institution of a suit has been paid in a court which cannot possibly afford the relief sought, it does not seem consistent with sound principle that the plaintiff should be condemned to lose the fee thus paid or that he should not be allowed to ask without paying a second fee for an adjudication from a court which can really give one."

With great respect to the learned Judge, I agree with him in this view.

5. Mr. Narasimhachari who appeared for the defendant and opposed the application relied on two things, (1) the uniform practice of this court and (2) this court being a Court of Record. So far as I am aware, the practice on the Original Side of this court undoubtedly has been not to return the plaints in suits which the court finds it has no jurisdiction to entertain. The reason for this practice is not however very clear to me.

6. In "Abdul Karim v. Badrudeen", 28 Mad 216 (C), Moore J. observed:

"As has already been pointed out the court has no jurisdiction to try the suit as brought. Such being the case as it does not appear to me to be advisable to permit the plaint to be amended as prayed for, the only course open to me is to dismiss this suit. I should have preferred to have returned the plaint for presentation to the proper court u/s 57, Civil P. C. but this I have no power to do (Vide S. 638)."

Ramesam J. apparently was of the same opinion, and for the same reason, C.S. No. 420 of 1921 (Mad) (D), for the learned Judge refers to Order 49, Rule 3. In Sri Raja Rao Venkatakurumara Mahipathi Surya Rao Bahadur Varu Vs. Sri Rajah Rao Venkata Mahipathi Gangadhara Rama Rao, . Wallace J. refers to the practice of this court not to return a plaint once filed on the Original Side of this Court. Ordinarily I would be loath to depart from a practice which has been in vogue in this court from a long time. It may be the practice did not result in great hardship because till recently the court-fees on the original side were much below the court-fees in the mofussal which were levied under the Court-fees Act. Then again, when a plaint is returned by a Court to be presented in the proper court, that plaint should ordinarily be presented as it is to the proper court. That obviously could not be done if this court had returned the plaint before the recent rule which made the provisions of the Court-fees Act applicable even to suits instituted on the Original Side of this court. Be that as it may, it is not clear why this practice was followed and when insistence on a continuation of this practice is likely to lead to great hardship and injustice I see no reason why we should not put an end to the practice.

7. The other ground pressed upon by Mr, Narasimhachari is based on the fact that this court is a court of Record. Clause 1 of the Letters Patent says so, and Article 215 of the Constitution runs as follows:

"Every High Court shall be a Court of Record and shall have all the powers of such a court including the powers to punish for contempt of itself."

This leads us to an enquiry as to what is a Court of Record and what are its special features and to find out if any of those features inevitably leads to the conclusion that a plaint once filed in such a court should always be retained in that court, In Halsbury's Laws of England, 2nd Edn., Vol. 8, at pages 527-528, we have the following information regarding a Court of Record :

"Another manner of division is into courts of Record and Courts not of Record. Whether a court is a Court of Record or not depends on whether it has power to fine and imprison, whether for contempt of itself or for other substantive offences. Courts of Record are such as have been expressly made so by statute or by implication of a statute, that is by having statutory power to fine and imprison, "and courts of record at common law. These latter are such civil courts as have power to hear and determine, according to the course of the common law actions in which the debt, damages or value of the property claimed is forty

shillings or above and such criminal courts as have power to fine or imprison. Courts not of record are those civil courts in which the proceedings are not according to the course of common law (except such as have been made courts of record by statute). All courts of record, with the exception of the courts of the counties palatine, are courts of the King, even though a subject or corporation has the benefit of the court, as in the case of borough and city courts of record. The proceedings of a court of record, preserved in its archives are called records, and are conclusive evidence of that which is recorded therein." In the footnote (e) at page 528 we have the following further information : "Record is a writing or Parchment, wherein are enrolled Pleas of Land or Common Pleas, Deeds, or Criminal Proceedings in any court of record; but in courts not of record as Admiralty Courts, Christian Courts, Baron etc., their Registry of proceedings are not properly called Records. But courts of law held by the King's Grant are courts of Record." (Termes de la ley, sub voce record.) See also Jacobs' Law Dictionary, Sub Voce, Record. Records are no longer kept on parchment."

8. The learned Advocate-General referred us to passages in Holdsworth's History of English law dealing with the History of the concept of a Court of Record. The learned author points out that the technical conception of a Court of Record was not ready made but was of slow growth. He cites from Maitland who says :

"The distinctions that we still draw between courts of Record and courts that are not of record take us back to very early times when the King asserts that his own word as to all that has taken place in his presence is incontestable. This privilege he communicates to his own special court; his testimony as to all that is done before him is conclusive."

The essential point of difference appears to be that the formal records of the King's court cannot be disputed, whereas this is not so with inferior courts which keep no formal records.

"It is the infallibility of its formal record which is the earliest mark of a Court of Record. But gradually the Court of Record developed other characteristics. Its record was kept upon a parchment roll It alone could fine and imprison. And this characteristic which was perhaps one of the latest to be developed is its most important characteristic at the present day." (Holdsworth, Vol. V, p. 158).

One aspect of the doctrine of estoppel is estoppel by matter of record, and the principle upon which this class of estoppel depends is that matters solemnly recorded by the King's court must be accepted as proof, so that no averment to contradict them can be received. The record of the King's Court could not be denied, though the judgments of other courts could be. This distinction is the foundation both of the contract between courts of record and courts not of record and of this branch of the doctrine of estoppel. All matters recorded by the King's court, and authenticated by its seal not only judgments but also other transactions enrolled thereon were records and were accorded the same conclusive effect (Holdsworth, Vol. IX, pages 147-148). But it was always

understood that statements in pleadings on which no judgment had been given would not estop (Vol. IX, page 150).

9. It appears clear to me from the authorities above cited that the fact that this court is a court of record does not" necessarily imply that it has no power to return any document presented to it and especially so a plaint which it has no Jurisdiction to entertain. There might have been an impression that as a court of Record this Court should keep on its file all the proceedings before it. But there is nothing either in the Letters Patent or in any Statute which makes it incumbent on this court on its Original Side to retain on its file even plaints which ought not to have been properly presented to this court.

10. Mr. Narasimhachari, learned counsel for the defendant, referred us to certain observations of Bayley J. in "In re Bai Amrit", 8 Bom 380 (F). The decision in that case is of very little interest to us after the Full Bench decision in 8 Bom 313 (B) and in view of the language of Order 7, Rule 10, Civil P.C. Though the case related to a second appeal filed in the High Court of Bombay, that is, on its appellate side, the learned Judge adverted to the practice obtaining on the Original Side of the Court. According to him, the practice on the Original Side had been not to return plaints except on presentation. He referred to the provisions of the Civil Procedure Codes of 1877 and 1882 corresponding to Order 7, Rule 10 and Order 49, Rule 3(1) of the present Code and also to certain earlier rulings of the Bombay High Court. The learned Judge expressed the view that the practice followed in the court was based on good grounds. One of these grounds was that the Court was a Court of Record. The learned Judge's conclusion, in so far as it related to the matter before him, namely, a memorandum of second appeal, is no longer good law, having regard to the provision in Order 1, Rule 10 of the Code of 1908. But with great respect to the learned Judge, I do not agree with him that it follows from the circumstance that the Chartered High Courts are Courts of Record that plaints filed in such courts should be retained in the said courts, even when they cannot be the subject-matter of a trial in those courts.

11. Assuming that it is necessary to preserve carefully the proceedings taken in a Court of Record, we see no reason why the suitor should lose the benefit of the Court-fee stamps which he had affixed to the plaint filed by him in a wrong court. A memorandum of appeal filed in this court can certainly be returned if it is found that this court has no jurisdiction to entertain the appeal. Such a memorandum is never retained on the file of this court, in spite of the fact that this court is a court of record. Logically there should not be any difference between a Memorandum of appeal filed on the Appellate Side of this Court and a plaint filed on the Original Side of this Court. Apparently the practice on the Original Side of the Bombay High Court had changed since the days of -- 8 Bom 380 (F), because we find in *Sewaram Gokaldas Vs. Bajrangdat Hardwar Potdar*, , Macleod J., sitting on the Original Side directing a plaint to be returned to the plaintiffs for presentation in the proper court after holding that the High Court had no jurisdiction.

12. After giving my full consideration to the matter, I am of opinion that it is open to this court to direct the plaint to be returned to the plaintiff for presentation to the proper court when this Court finds that it has no jurisdiction to entertain it.

13. For the purpose however, of preserving the proceedings taken in this court a verified copy of the plaint can be made and filed in place of the original which is returned. I accordingly direct the plaint in this case to be returned after a copy of the plaint has been made and filed in place of the original.

14. The applicant shall pay a sum of Rs. 100 to the defendant towards costs of the present application as well as the costs of prior applications on which the Court made an order that the costs therein should be costs in the cause.

Venkatarama Ayyar, J.

15. I agree.