

(1963) 08 AP CK 0015

In the Andhra Pradesh High Court

Case No : Second Appeal No. 438 of 1960

S. Imam Peer Khadri Nooredaria

APPELLANT

Vs

S. Khadija Bi and Others

RESPONDENT

Date of Decision : 21-08-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6
Contract Act, 1872 — Section 213

Citation : AIR 1965 AP 18

Hon'ble Judges : Gopalakrishnan Nair, J

Bench : Single Bench

Advocate : A. Bhujanga Rao, for the Appellant; K.F. Baba and M. Imtiaz, for the Respondent

Judgement

(1) This Second Appeal is directed against the Judgment of the Subordinate Judge at Kurnool, who dismissed the defendant's appeal and confirmed the decree for plaintiffs passed by the District Munsif, Adoni.

(2) The plaintiffs-respondents instituted a suit for an account against the defendant in the Court of the District Munsif, Adoni, on the basis of a contract of agency arising out of a power-of-attorney (Exhibit B-3) dated 29-12-1951 executed by the plaintiffs in favour of the defendant for the management of their estate. The defence was that the defendant had earlier been appointed agent by the deceased mother of the plaintiffs under Exhibit B-5 dated 28-11-1940 for management of the said properties and that he had overpaid the plaintiffs' mother and was entitled to an account and reimbursement from the plaintiffs who admittedly inherited the properties from mother. The defendant, therefore, asked that an account be taken for the period beginning from 28-11-1940 and ending with the death of the plaintiffs' mother in June 1951 and the amount due to him ascertained and awarded to him. This claim was made by the defendant in the shape of a counter claim in respect of which he paid a court-fee of Rs. 11/- as though it were a plaint in a suit for rendition of accounts.

(3) The main question that arose for decision in the Courts below was whether the counter claim raised by the defendant was sustainable. The trial Court held that the counter claim related to a different contract of agency and could not therefore be set up in answer to the plaintiff's action which was based on a separate later contract. Consequently it passed a preliminary decree for accounts in respect of the period covered by Exhibit B-3. The defendant was not satisfied with this preliminary decree. He wanted an account relating to the agency created by the plaintiff's deceased mother to be taken. He, therefore, appealed to the Subordinate Judge, Kurnool. The learned Subordinate Judge dismissed the appeal on the grounds that the defendant's counter-claim which related to a different contract was not maintainable and that it was barred by time.

(4) In this Second Appeal, the defendant has again pressed his counter claim. Mr. Bhujangarao for the defendant has urged that in respect of his counter claim the defendant was in effect and substance a plaintiff and that as a suit for accounts by him would be maintainable his counter claim ought to have been decreed.

(5) It is true that a counter claim can well be regarded as substantially a cross action. It is not the same as a legal set off under O. VIII R. 6 of the CPC or an equitable set-off for that matter. Every set-off can be pleaded as counter claim cannot be pleaded so desires; but every counter claim cannot be pleaded as a set-off. It is however beyond doubt that a counter-claim can be maintained only where the defendant is entitled to bring an independent action for the same relief in the same Court in which the counter-claim is laid. Therefore, if the defendant in the instant case is not entitled as an agent to bring an independent suit for an account against the plaintiffs as his principles, the counter-claim preferred by him has to fail. This is the crucial aspect of the problem which however was not gone into by the courts below.

(6) There is no provision in the Contract Act or any other enactment conferring a right on an agent to sue his principle for accounts. The general rule is that an agent is not entitled to bring a suit for accounts against his principle except in exceptional circumstances. Such exceptional Circumstances would exist where the agent is unable to know the amount due to him without examining the accounts which are in the possession of his principal and which he is not able to get at, or where his remuneration depends upon the extent of the dealings entered into between his principal and third parties which he is not aware. In other cases, an agent, is bound to sue his principal for a specific sum of money and not for an account. This position seems to be well settled on authorities.

In Ramachandra Madhavados Co. Vs. Moovakat Moidunkutti Birankutti and Brothers, , Abdur Rahman, J., at page 708 stated :

"It is only in exceptional cases where his remuneration depends on the extent of dealings which are not known to him or where he cannot be aware of the extent of the amount due to him unless the accounts of his principal are gone into that a suit by an agent for accounts against his principal might be competent."

In *Basant Kumar v. Roshan Lal* AIR 1954 Nag 300 a Division Bench of the Nagpur High Court consisting of Hidayatullah J. (as he then was) and R. Kaushalendra Rao J. held that where an agent worked for his principal, who was a bookseller, on commission basis canvassing in certain areas for sale of the books and did not know how many books were sold through his efforts as he could not keep accounts for the transactions entitling him to commission and those accounts were admittedly kept by the principal, an action for accounts by the agent against the principal was maintainable and that in such a case it would be wrong to insist that the agent should sue for a definite sum of money against the principal.

In *Lakshmiji Sugar Mills Co. Ltd., Maholi Vs. Banwari Lal Tandon*, , a Division Bench of the Allahabad High Court (Lucknow Bench) consisting of V. Bhargava and B. N. Nigam JJ. observed as follows at p. 550 :

"There is no provision for a suit for accounts by the agent against his principal either in the Contract Act or in the Limitation Act. Therefore, normally such a suit will not lie. But the existence of special circumstances will justify such a suit for accounts. For the maintainability of such a suit, it should be made clear that the exceptional circumstance of the agent not being able to claim a specific sum without the principal's accounts being gone into exists. If this circumstance does not exist a suit for accounts by the agent would be clearly not maintainable."

(7) In the instant case, the defendant has made his counter claim in his capacity as an agent. No doubt, so far as the period not covered by the plaint is concerned, his claim is not against his principal in the strict sense but only against the legal representatives of his deceased principal. But this will not alter the nature of his claim as one for accounts by an agent against his principal. There is nothing in the defendant's counter claim to show the existence of any special circumstances which necessitated his seeking the relief of rendition of accounts instead of making a claim for a definite sum of money. It is not his case that he is not able to claim a definite sum of money as due to him without going into the accounts of the principal ; nor is it his case that he is entitled to any remuneration on the basis of certain dealings of which the plaintiffs alone are aware. On the contrary, his express claim is that as agent he spent certain moneys for the deceased mother of the plaintiffs and also overpaid her in respect of the income of her properties and that he is entitled to those amounts. In such a case the agent ought to bring a suit for a specific sum of money and not ask for a general account.

In view of the authorities already adverted to, I think the defendant's claim for accounts is incompetent. In this view, I do not think it necessary to go into the question of limitation, although I am inclined to say that Art. 89 of the Limitation Act does not govern a suit for accounts by an agent against his principal and that as there is no specific article dealing with such a suit, the residuary Art. 120 would be attracted. The Court of Appeal below was clearly in error in thinking that the defendant's counter claim was barred by Art. 89.

(8) It is next contended by the learned counsel for the defendant that although the agency by the deceased mother of the plaintiffs came to an end with her death, as that agency was continued by the sons by the execution of Exhibit B-3, both the agencies should be taken together as an integrated whole with the result that it is permissible for the defendant as agent to put forward his claims in respect of the previous agency also as items of account in the present suit. For this proposition, the learned counsel for the defendant has placed reliance on a decision of the Division Bench of the Madras High Court reported in V.N. Subramania Iyer Vs. K.M.S.R.M. Kannappa Chetti and Others, But that decision is far removed from the facts of the present case.

There the same principal executed two powers of attorney in favour of the same agent to cover one unbroken period of agency; there was no interregnum between the period of operation of one power-of-attorney and that of the other. The true position on the facts of that case therefore was as if there was only one contract of agency for one entire period. On these facts, it was held in V.N. Subramania Iyer Vs. K.M.S.R.M. Kannappa Chetti and Others, that the agency was a continuous one. But the facts here are that the first agency was created under Exhibit B-5 dated 28-11-1940 by the mother of the plaintiffs. The suit agency was created by the plaintiffs under Exhibit B-3 dated 29-12-1951. The earlier agency under Exhibit B-5 terminated with the death of the plaintiffs' mother in June 1951. Thus the two principals were different. There was no continuous agency. There was a hiatus of about six months between the date of the death of the plaintiffs' mother and the execution of Exhibit B-3. Therefore, the ruling in V.N. Subramania Iyer Vs. K.M.S.R.M. Kannappa Chetti and Others, does not seem to be apposite to the instant case. No doubt, the property which was the subject-matter of agency as also the agent was the same under both Exhibit B-5 and Exhibit B-3.

But this is not sufficient to bring the case within the purview of V.N. Subramania Iyer Vs. K.M.S.R.M. Kannappa Chetti and Others, The defendant appears to have had realised this when he brought the counter-claim. If the suit contract were the only contract of agency, there would have been no need or scope for the defendant to make a counter-claim. He could have claimed the amounts due to him from the plaintiffs in respect of the suit agency, as part of the accounts asked for by the plaintiffs themselves. But the position would be different, if the agent seeks to raise claims pertaining to transactions of a contract of agency distinct and different from that sued upon. The suit by itself would not comprehend such claims, the agent would therefore have to seek separate relief by way of counter-claim or legal set off. It is therefore idle to contend that the defendant could ignore his counter-claim and yet obtain relief here regarding his claims relating to an anterior contract of agency which is separated from the suit contract by a wide gulf of time and which was enacted into with a different principal.

In view of the foregoing, this appeal fails and is dismissed with costs. Leave

refused.

(9) Appeal dismissed.