
(1952) 02 KAR CK 0007
In the Karnataka High Court
Case No : Second Appeal No. 201 of 1948-49

Siddamma and Another

APPELLANT

Vs

Nanje Gowda

RESPONDENT

Date of Decision : 05-02-1952

Acts Referred:

Constitution of India, 1950 — Article 225, 372
Mysore High Court Act, 1884 — Section 15

Citation : AIR 1952 Kar 75 : (1952) ILR (Kar) 279

Hon'ble Judges : Venkataramaiya, J

Bench : Single Bench

Advocate : S. Ranga Raj, for the Appellant; K.R. Gopi Vallabha Iyengar, for the Respondent

Judgement

1. A preliminary objection is raised to the appeal being heard by a single Judge on the ground that all appeals are required to be heard by a Bench of not less than two Judges of the Court u/s 15 of the Mysore High Court Act and that the amendment of this by Act 35 of 1951 providing for second Appeals in which the value of subject-matter is not more than Rs. 3,000/- being decided by a Judge sitting alone is ultra vires. Act 35 of 1951 came into force on 18th December 1951 and all second appeals were being heard till now by a Bench of two Judges, irrespective of the value of subject-matter. The validity of this Act is questioned not because of any doubt about the hearing of the appeal or the decision by a single Judge being fair but on the score of want of authority for the State Legislature to alter existing laws at the time of the Constitution relating to the High Court. Articles 225 and 372 are referred to for the law prevalent on the date of the Constitution continuing to be in operation and Entry 78 in List 1 (Union List), viz. :

"Constitution and Organisation of the High Court except provisions as to officers and servants of High Courts : persons entitled to practice before the High Court."

is relied upon to show that the provisions of Mysore High Court Act can be

changed, if at all, by Parliament.

If the change in the number of Judges by whom a second appeal is to be decided is regarded as affecting the constitution or organisation of the High Court, the Act may be impugned, The Act does not establish the High Court, does not confer or take away jurisdiction, does not fix the number of Judges. Nor does it prescribe the relation between the High Court and other tribunals. It only provides for an arrangement to deal with a class of cases and for the decisions in these being those of one Judge instead of two. Legislation concerning this can be said to appropriately come under Administration of Justice mentioned in Entry 3 of List II state List. In this view the Act cannot be impeached at all as it is exclusively within the powers of the State Legislature to legislate on such matters.

Even otherwise Entry 65 of List II. State List, Entry 40 of List III concurrent List show that the State can legislate in respect of jurisdiction and powers of all Courts except the Supreme Court with respect to any of the matters in those lists. Entry 13 in List III is "Civil Procedure including all matters included in the CPC at the commencement of the Constitution; limitation, arbitration" -- The words in this entry are wide enough to cover provisions not contained In the CPC and are capable of being applied to procedure for disposal of Second Appeals.

In State of Bombay Vs. Narothamdas Jethabai and Another, , the Bombay Civil Court Act was held to be valid although as a result of the notification thereunder the jurisdiction of the High Court to entertain suits was affected relying on the words in Entries of lists in the Government of India Act Schedule, which are analogous to those now for consideration. Generally, there is a presumption of validity in regard to legislation and the presumption is not shown to be unjustified by those who attack it.

2. The objection in my opinion is untenable and I overrule it. (The rest of the judgment is not worth reporting--Editor.)

3. Objection overruled.