

(2007) 10 AP CK 0044

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4295 of 2007

S.K. Raghava Chary

APPELLANT

Vs

E. Susheela Devi and Others

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Andhra Pradesh Agency Rules, 1924 — Rule 1, 15, 16, 3, 5
Andhra Pradesh Civil Courts Act, 1972 — Section 1(3)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4, Order 43 Rule 1
Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 18, 3
Scheduled Districts Act, 1874 — Section 6

Citation : (2007) 6 ALD 555 : (2007) 6 ALT 199 : (2007) 3 APLJ 102

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : Hari Sreedhar, for the Appellant; T.V. Ramana Rao, for the Respondent

Judgement

G. Rohini, J.—This Civil Revision Petition is directed against the order dated 7.9.2007 in I.A.No. 1026 of 2007 in O.S. No. 54 of 2007 on the file of the Court of IV Additional District Judge, Warangal, granting an ad interim injunction restraining the petitioner herein/defendant from interfering in any manner with the possession of the plaintiffs/respondents herein, in respect of the suit schedule land.

2. I have heard the learned Counsel for both the parties and perused the material on record.

3. At the outset, the learned senior counsel appearing for the respondents raised a preliminary objection as to the maintainability of the Revision Petition on the ground that the impugned order is appealable under Order 43, Rule 1 of Code of Civil Procedure. It is also contended that since the impugned order is only an ex parte ad-interim injunction granted for a limited period, the revision petitioner cannot invoke the jurisdiction of this Court without approaching the Court below

under Order 39 Rule 4 of C.P.C. for vacation of temporary injunction.

4. However, the learned Counsel for the revision petitioner vehemently contended that since the impugned order was passed without jurisdiction, the revision petitioner is entitled to invoke the supervisory jurisdiction under Article 227 of the Constitution of India, notwithstanding the remedy of Appeal provided under Order 43, Rule 1 of Code of Civil Procedure. Elaborating the contention, the learned Counsel submitted that since the suit schedule land is admittedly situated within agency area, to which the A.P. Civil Courts Act, 1972 (for short "the Act") is not applicable, the Court below is not vested with the Jurisdiction to entertain the suit and, consequently, the order under revision granting temporary injunction is liable to be declared as null and void. In support of his submission, the learned Counsel placed reliance upon the decision of this Court in Madakam Venkateswara Rao and others Vs. Subordinate Judge, Kothagudem, Khammam District and another, .

The learned Counsel for the petitioner also made it clear that the petitioner is not pressing any of the grounds raised on merits and that the challenge is only on the ground of maintainability of the suit.

5. There can be no dispute that the power of superintendence conferred upon the High Court by Article 227 of the Constitution of India, included the power of judicial revision. The language of Article 227 itself shows that the power under Article 227 is available to the High Court not only over the Tribunals, but also over Courts in relation to which it exercises jurisdiction. Though this Court while exercising the jurisdiction under Article 227, will not interfere merely to correct the wrong decisions on a question of fact or law committed by the Subordinate Courts, the interference is undoubtedly warranted in case of erroneous assumption of jurisdiction by the Tribunals as well as the Subordinate Courts.

6. Similarly, as held in The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others, , there is no bar on the High Court to interfere in exercise of its jurisdiction under Article 227 of the Constitution of India if the order under challenge is made without jurisdiction. In the case on hand, the specific contention of the petitioner is that the Court below lacks jurisdiction to entertain the suit since A.P. Civil Courts Act, 1972 is not applicable to the suit schedule land which is situated in an agency area. Since the said question goes to the root of the case, instead of rejecting the Revision Petition as not maintainable on the objections raised by the learned senior counsel for the respondents, I deem it appropriate to examine the tenability of the petitioner's contention that the suit itself is not maintainable since the provisions of A.P. Civil Courts Act, 1972 are not extended to the scheduled areas.

From the material placed before the Court, it is clear that the suit schedule land is situated in the village Pasra, which is a notified agency village. The Scheduled Areas (Part B States) Order, 1950, made in exercise of the powers conferred by paragraph-9(1) of V Schedule to the Constitution of India declared certain areas

specified therein to be scheduled areas. Pasranagaram village of Mulugu Taluq, Warangal district is one of the areas so declared under the Scheduled Areas (Part B States) Order, 1950.

The A.P. Civil Courts Act, 1972 under which the law relating to the civil Courts subordinate to the High Court in the State of Andhra Pradesh was consolidated, though extends to the whole of the State of Andhra Pradesh, as per Section 1(3) of the Act, it shall come into force only in such areas as may be notified by the Government. Such notification was issued under G.O.Ms. No. 1573, dated 30.10.1972, appointing the 1st day of November, 1972 as the date on which all the provisions of the Act shall come into force in the whole of the State of Andhra Pradesh, except in the scheduled areas of the State.

The learned Counsel for the petitioner submits that no further notification has been issued by the Government of Andhra Pradesh making the provisions of the Act applicable to the scheduled areas of the State. While relying upon the decision of this Court in M. Venkateswara Rao's case 2000(4) ALT 163(supra), wherein an identical question was considered basing on G.O.Ms. No. 1573, dated 30.10.1972, the learned Counsel contended that since the Court below lacks jurisdiction to entertain the suit, the order under Revision is liable to be declared as null and void.

The above decision was rendered by this Court after hearing a batch of Writ Petitions and Civil Revision Petitions together. Whereas the Writ Petitions were preferred against the orders passed by the Subordinate Judge, Kothagudem, declining to entertain the applications u/s 18 of the Land Acquisition Act, 1894 on the ground that the Civil Court has no jurisdiction over the matters in the scheduled area, the Civil Revision Petitions arose out of the execution proceedings for execution of money decrees passed by the Civil Court on the basis of the cause of action wholly arose in agency areas. The Judgment- debtors filed the Revision Petitions contending that the decrees are nullity since the Civil Courts have no jurisdiction.

After hearing both the parties, this Court allowed the Civil Revision Petitions and declared the Judgments and Decrees passed by the Civil Court as null and void and without jurisdiction.

However, the writ petitions were dismissed holding that if there is any notification u/s 3(d) of the Land Acquisition Act, 1894 appointing the Subordinate Judge of the Civil Court as a Special Judicial Officer, there cannot be any bar to entertain the O.Ps. and dispose of the same.

This Court having taken note of the fact that the Agency Courts are not able to dispose of the Civil Cases and excluding the scheduled areas from the purview of the A.P. Civil Courts Act, 1972 is totally detriment to the interest of the people residing in the agency areas observed as under:

...it is just and necessary to confer the civil jurisdiction over the Scheduled Areas

on the Civil Courts also. It is for the State Government to take expeditious steps as early as possible to issue any notification extending the provisions of the Civil Court Acts even with retrospective effect in the Scheduled Areas for the peace and good Government and for the speedy disposal of the civil cases in the Scheduled Areas.

Placing strong reliance upon Madakam Venkateswara Rao and others Vs. Subordinate Judge, Kothagudem, Khammam District and another, V, the learned Counsel for the Revision Petitioner contended that the order under Revision is liable to be declared as null and void since the Court below has inherent lack of jurisdiction.

However, it is brought to my notice by the learned senior counsel appearing for the respondents that that as against the Judgment in Madakam Venkateswara Rao and others Vs. Subordinate Judge, Kothagudem, Khammam District and another, , Appeals are pending before the Supreme Court (Civil Appeal Nos. 13380 to 13396 of 2000) and by order dated 4.9.2000, the Judgment of this Court has been stayed.

7. It is to be noted that u/s 6 of the Scheduled Districts Act, 1874, the Governor made A.P. Agency Rules, 1924 for the administration of the Agency Tracts of the State of Andhra Pradesh and for the regulation of the procedure of the Officers appointed to administer them. Rule 1 of the A.P. Agency Rules, 1924 provides for the Courts of Agency Divisional Officers and Agency Munsifs which are subordinate to the Agent to the State Government.

8. The Collector and District Magistrates of West Godavari, East Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahaboobnagar under the designation of the Agent to the State Government are empowered to be the Collectors, District Magistrates and District Judges, within the agency tracts included in their respective districts. An Agency Divisional Officer i.e., an Officer in-charge of a Revenue Sub-Division which is wholly or partly agency is empowered to exercise all the powers within the agency portion of his sub- division which under any enactment in force in the agency are exercised in the ordinary tracts of the State of Andhra Pradesh. Rule 1 also makes it clear that for the trial and determination of the suits coming before them, the Agent to the State Government and the Agency Divisional Officers are vested with the same powers as are vested in the District and Revenue Courts and the Subordinate and Revenue Courts respectively in the ordinary tracts of the State of Andhra Pradesh.

9. Rule 3 of the A.P. Agency Rules provides that such Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Rule 5 provides that Agency Munsif shall have cognizance of the suits for movable or immovable property not exceeding in value Rs. 500/-. Rule 7 provides that suits of value exceeding Rs. 5,000/- shall be instituted in the Court of the Agent to the State Government. As

per Rule 6, all other suits shall be instituted in the Court of the Agency Divisional Officer having jurisdiction. Rule 15 provides for the manner in which the trial of the Civil Suits shall be conducted. Rule 16 provides that the Rules prescribed by C.P.C. for examination of witnesses in appealable cases shall apply to all trials of original suits and proceedings of civil nature held before the Agency Courts.

10. Thus, it is clear that the civil jurisdiction has been conferred on the Agency Courts under the above Rules. There can also be no dispute about the fact that in the absence of any notification u/s 1 (3) of the A.P. Civil Courts Act, 1972 making the provisions of the said Act applicable to the scheduled areas, the Courts established under the A.P. Civil Courts Act, 1972 are not conferred with the jurisdiction to deal with the suits of civil nature arising in the agency areas.

However, the learned Senior Counsel appearing for the respondents submitted that by virtue of the interim stay granted by the Supreme Court in the appeals pending against Madakam Venkateswara Rao and others Vs. Subordinate Judge, Kothagudem, Khammam District and another, , the suits of civil nature arising in agency areas are being entertained by the Courts established under the A.P. Civil Courts Act, 1972 and the decrees are being enforced.

Since admittedly the Appeals against the decision of this Court in Madakam Venkateswara Rao and others Vs. Subordinate Judge, Kothagudem, Khammam District and another, are pending before the Supreme Court and the issue relating to the authority of the Civil Courts to entertain the suits of civil nature arising in agency areas is the subject matter of the said Appeals and particularly since the decision in Madakam Venkateswara Rao and others Vs. Subordinate Judge, Kothagudem, Khammam District and another, is stayed by the Supreme Court, no finding can be recorded at this stage that the Court below lacks jurisdiction to entertain and try the suit. Hence, I am not inclined to interfere with the order under Revision on the ground that the same is null and void for want of jurisdiction. So far as merits are concerned, it is not necessary for this Court to express any opinion and accordingly it is left open to the Revision petitioner to work out the appropriate remedy as available under law. The petitioner is also granted liberty to raise an objection before the Court below as to the maintainability of the suit, in which event, the Court below shall frame a specific issue and decide the same in accordance with law.

With the above observation, the Civil Revision Petition is disposed of. No costs.