

(1993) 02 AP CK 0015

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 6451 of 1993

Smt. K. Anjamma and others

APPELLANT

Vs

Chanchal Danaiah and others

RESPONDENT

Date of Decision : 17-02-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115(1)

Citation : AIR 1994 AP 44 : (1993) 1 ALT 741

Hon'ble Judges : Jagannadha Raju, J

Bench : Single Bench

Advocate : S. Ramachandra Rao, for the Appellant;

Judgement

1. This matter has come up before me because an objection was raised by the office regarding the maintainability of the C.R.P. filed by the petitioners on the ground that there is no specific order in O.S. No. 6 of 1991 (corresponding to O.S. No. 553/89) on the file of the Additional District Judge, Ranga reddy District. When no specific order is passed by the lower court, the C.R.P., is not maintainable. The learned counsel represented the matter with the following endorsement:

"Our contention in the lower court is that the suit itself is not maintainable and the Addl. District Judge, ignoring the contents as once the suit is decreed in terms of compromise, admitted the suit. Against which this C.R.P. is filed and the same is maintainable as no other remedy is left."

When the matter came up before my learned brother Justice Motilal B. Naik on 8-2-1993, he directed that it may be posted before the regular court hearing C.R.Ps. Accordingly the matter has come up before me.

2. Prior to the matter coming before me, the matter appears to have been posted before my learned brother Justice N. D. Patnaik on 12-2-1993 and he directed that the matter may be posted before another learned Judge.

3. Sri S. Ramachandra Rao, learned counsel for the petitioners, contends that the power under S. 115, C.P.C. can be exercised suo motu and it is not necessary that there should be an order, before the power of the High Court can be invoked. He also contends that the popular notion that only an order or a decision can be agitated under S. 115, C.P.C., is not correct and it is always open to the party to bring to the notice of the Court the irregularity or impropriety in the jurisdiction and hence the C.R.P. is maintainable. He places strong reliance on certain observations reported in Major S.S. Khanna Vs. Brig. F.J. Dillon, .

4. The context, in which the present revision is filed, may be stated briefly. Originally O.S, No. 210 of 1988 was filed and it was decreed on 28-2-1989. Subsequently certain proceedings were taken in Revenue Courts. Then some of the parties, who were parties to the earlier suit, filed O.S, No. 6 of 1991 to set aside the decree passed in the earlier suit. The matter appears to have undergone several adjournments as can be seen from the docket orders available at pages 28 to 32 of the material papers. At that stage, the, present petitioners filed this revision on the ground that there is no justification or jurisdiction for the Court entertaining the subsequent suit. It may incidentally be mentioned that in O.S. No. 6 of 1991 issues were settled on 20-7-1992. I have to see whether, at this juncture, the revision filed by the petitioners is maintainable. The language of sub-sec.(1) of S. 115, C.P.C. is very very significant. Sub-section (1) of S. 115, C.P.C. reads as follows:--

"115(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears -

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where -

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made."

As can be seen from the wording of this section, the power of the High Court to call for the record of any case is contingent upon the fact that the case has been decided by any Court subordinate to such High Court and in which no appeal lies. Clauses (a), (b) and (c) of sub-section (1) of Section 115, C.P.C. stipulate in

what circumstances the Court can look into the matter and adjudicate. In my humble opinion, a lot of significance has to be attached to the words "any case", which has been decided by any Court. It is true the word "any case" has now been interpreted by various decisions to mean not only the final decision of the case but also the decision in interlocutory matters. There is no dispute about the fact that "any case" decided includes the decision in an interlocutory application.

5. Mr. S. Ramachandra Rao, learned counsel for the petitioners, contends that as the High Court has suo motu powers, it is open to a party to bring to the notice of the Court by an application under S. 115, C.P.C. that the lower court exercised its jurisdiction which is not vested in it. He maintains that the Court ought not to have entertained O.S. No. 6 of 1991 which was actually filed as O.S. No. 553 of 1989. He further contends that entertaining such suits almost amounts to putting parties to harassment. He relies very strongly on remarks in Major S.S. Khanna Vs. Brig. F.J. Dillon, in support of his arguments. That decision gives the history of the development of law and the law preceding the present S. 115, C.P.C. It also gives in a nut-shell various other remedies available under the English Law analogous to the powers exercised by the High Court under S. 115, C.P.C. It only refers to the Chancery jurisdiction and the powers to issue writs and, in what circumstances, various writs viz., certiorari, mandamus and prohibition are to be issued. Nobody disputes any of the propositions laid down in the above decision. The question that has to be considered at this stage is, whether the C.R.P. can be filed without a specific order or a decision of the Court.

6. I am unable to understand why the present revision petitioners have not chosen to file a petition before the lower court requesting the Court to decide the question of maintainability of the suit as a preliminary issue. Having participated in the suit from 1989 to 1993, I am unable to understand why no effort was made to raise this objection as a preliminary objection in the lower court. Even now it is not too late for the revision petitioners to request the trial court to try issues 4 and 5 as preliminary issues. As the language of Section 115, C.P.C. stands, there is no doubt about the fact that the High Court is competent to exercise suo motu powers. But such exercise should be in any case which has been decided by any Court subordinate to it and the Court should have decided it contravening the clauses (a) to (c) of subsection (1) of Section 115, C.P.C. Unless there is a decided matter, there is no necessity for the High Court to invoke this suo motu powers. The present C.R.P. filed not against any order or decision is not at all maintainable. The objection taken by the High Court office is perfectly justified. The C.R.P. is not maintainable and it shall stand rejected.

7. Considering the fact that the suit is pending from 1989, if any petition is filed for deciding issues 4 and 5 as preliminary issues, the Court shall decide it within six weeks from the date of filing of the petition. The trial of the suit shall also be expedited and the Court may endeavour to dispose of the suit within six months from this day.

8. Petition dismissed.