

(2004) 06 AP CK 0017

In the Andhra Pradesh High Court

Case No : CMASR No. 27549 of 2004 and CMPSR No. 27551 of 2004

Sompalli Venkatarathnam and Others

APPELLANT

Vs

Kilari Lingaiah and Others

RESPONDENT

Date of Decision : 24-06-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 7 Rule 11, 104, 2(2), 96

Citation : (2004) 4 ALD 558 : (2008) 2 ALT 598 : (2004) 2 APLJ 477

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A. Chandraiah Naidu, for the Appellant;

Judgement

L. Narasimha Reddy, J.—This matter is placed before the Court on a note put up by the office, in relation to maintainability.

2. The appellants filed a suit claiming various amounts towards damages. The appellants are the owners of the lands in various survey numbers in Chellapanaidupalli Village of Nellore District. It is their case that the lands in neighbouring survey numbers, belonging to the defendants, were converted into fish and prawn tanks and thereby the lands of the appellants were rendered unfit for cultivation. The Trial Court rejected the plaint through its order dated 17-3-2004, on taking the view that the causes of action for the individual appellants herein are different, and single suit by all of them cannot be maintained. It was also pointed out in the order that, if individual claims are taken into account, the corresponding suits have to be filed in the Court of Junior Civil Judge, having territorial jurisdiction over the matter,

3. The appellants filed the C.M.A., under Order 43, Rule 1 C.P.C. against the order rejecting the plaint. The office raised an objection to the effect that appeal under Order 43, Rule 1, cannot be maintained, against such an order. Learned Counsel for the appellants re-presented the matter with an endorsement to the effect that the rejection of plaint is a deemed decree u/s 2(2) of CPC, and as

such CMA under Order 43, Rule 1 C.P.C., is maintainable.

4. Sri A. Chandraiah Naidu, learned Counsel for the appellants submits that though an order rejecting plaint is included in the definition of decree, under Sub-section (2) of Section 2 of C.P.C., it cannot be treated on par with a decree in the normal parlance, for the purpose of deciding the forum of appeal. Placing reliance upon a judgment of this Court, in Ragam Yellaiah and Ors. v. Chinta Shankamiah, 2003 (3) ALD 105, learned Counsel submits that a distinction has to be maintained in decrees as such, and deemed decrees, at least, in the context of deciding the appellate forum. He also contends that rejection of the plaint on the ground that separate suits are to have been filed, cannot be treated as a final pronouncement on the rights of the parties, and the order deserves to be treated as the one, of returning the plaint. On this premise, learned Counsel submits that the appeal is maintainable under Rule 1(a) of Order 43.

5. The Trial Court undertook extensive discussion after hearing the Counsel for the plaintiffs, rejected the plaint mainly on the ground of mis-joinder of parties. It was of the view that the causes of action for the individual appellants/plaintiffs are different. The extent and location of the lands of individual appellants varied from one another. It was also observed that the grievance of each plaintiff is against an identified defendant, and not collective against all the defendants.

6. It is not in dispute that the rejection of the plaint is under Rule 11 (d) of Order 7 C.P.C. An appeal is provided for under Order 43, Rule 1 (a) C.P.C., only against orders returning the plaint, and not rejecting the plaints. Though rejection of a plaint is a step taken at the threshold, it involves a semblance of adjudication of the rights of the plaintiffs. The adjudication may not be exhaustive, with reference to the defence that may be put forward by the defendants. All the same, the Court expresses its inability to undertake adjudication at the instance of the plaintiffs. In contradistinction to this, return of a plaint is a step, requiring the plaintiffs to comply with certain deficiencies. Indirectly, it indicates that on compliance with the deficiencies, point out by returning, the Court is willing to undertake adjudication of the dispute. Order 43, Rule 1(a) C.P.C., provides for a miscellaneous appeal against an order returning the plaint. Such a provision is not available, as regards an order rejecting the plaint.

7. If it were to be a case where no appeal is provided against an order rejecting the plaint, the aggrieved parties would be in a position to avail the remedy of revision u/s 115 C.P.C. It is in this context that the verification of the provisions relating to appeals other than those provided for under Order 43, Rule 1 read with Section 104 C.P.C., becomes relevant.

8. u/s 96 C.P.C., an appeal is provided from original decree. The corresponding provision in the schedule is Order 41. Since the appeals under these provisions are to be against decrees, the definition of decree become significant. Sub-section (2) of Section 2 C.P.C. defines decree as under:

"Decree" means the formal expression of an adjudication which, so far as regards

the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [x x x] Section 144, but shall not include--

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation :--A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

9. From a reading of the Section 2(2), it is evident that rejection of the plaint is brought within the fold of the definition of decree.

10. Learned Counsel submits that the appeals provided for u/s 96 read with Order 41 C.P.C., are only against the original decrees, and that the decree arising out of an order of rejection of plaint is not an original decree. He submits that, at the best, such orders can be treated as deemed decrees and an appeal u/s 104 read with Order 43, C.P.C., is maintainable. He has cited the judgment of this Court in Ragam Yellaiah and Ors. v. Chinta Shankaraiah (supra).

11. The facts of the present case are almost identical as those in Ragam Yellaiah's case. That was also a case arising out of rejection of a plaint under Order 7, Rule 11(d) of C.P.C. Relying upon the judgment of a Division Bench in B. Nookaraju Vs. M.S.N. Charities and others, , learned Brother Justice P.S. Narayana, held that an order passed under Order 7, Rule 11(d), falls within the inclusive portion of the definition of decree, and as such it has to be construed as a "deemed decree". C.M.A against such orders was held maintainable. Relevant portion of the judgment reads as under:

".....The commencing portion of the definition itself specifies "decree means the formal expression of an adjudication, which so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final." Hence from the definition itself it is clear that in the later portion while dealing with the inclusive orders, the rejection of the plaint also had been included, and hence I have no hesitation in holding that an order of rejection of plaint under Order 7, Rule 11 (d) of the Code is only a deemed decree and hence a C.M.A. is maintainable."

12. The basis for taking such a view appears to be the maintenance of distinction between the decree as such, and a deemed decree. In addition to relying upon the said judgment, learned Counsel submits that the expression "original decree" employed in Section 96 and Order 41 C.P.C., supports the view.

13. In this regard, it needs to be clarified that the term "original" in the expression "appeals from original decrees" employed in Section 96 or Order 41 signifies and refers to nature of proceedings than the nature of decrees. A plain reading of Sub-section (1) of Section 96 C.P.C, makes this aspect very clear. It reads as under:

"Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie, from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court."

14. The significance of the word "original" becomes relevant only in relation to the Court exercising jurisdiction. To avail the decree must emerge from a Court exercising original, in contradistinction to appellate jurisdiction. Therefore, the contention that the definition of the term "decree" maintains a distinction between original and deemed decrees, and that appeals u/s 96 and Order 41 are provided only against original decrees, cannot be accepted.

15. Reverting to the decision in Ragam Yellaiah's case (supra), it needs to be seen that the definition of the decree was treated as comprising of two separate kinds of decrees, viz., those which come within the ambit of the earlier portion of the definition, and those which are brought in its fold, in the subsequent inclusive portion. With due respect to my learned Brother, and notwithstanding my own admiration for his erudition on the subject, I am of the view that such a distinction is impermissible.

16. Definition, be it, in the field of law, science, or humanities is an exercise, to express or indicate phenomena, having common features; in precise, unambiguous, and universal terms. In our ancient literature, the scholars have indicated as to how a definition should be. The verse read as under:

"Alpaksharam Asandigdham

Saravadhwiswato Mukham

Asthobhamana Vadyancha

Sutram Sutravido vidhuhu".

17. Broadly, it means that a definition should be precise, unambiguous, meaningful and universal in its application. The exercise of defining a term of expression is a fraught with its own difficulties. By and large, the definitions, in fields other than law, are static and certain. The definition of specific heat in physics, inflation in economics, osmosis in biology etc., hardly undergo any change with the passage of time. However, in the field of law, the definition of a particular term keeps on changing, depending on the intention of the Legislature and the purpose in relation to which the term is defined. The best example is the term "taxable income", which keeps on changing with presentation of each budget, depending on the tax regime framed the Government of the day.

18. In defining a term, the endeavour of the Legislature would be to describe in precise terms, the things or events of similar nature. While over simplification is likely to result in excluding certain categories, which otherwise fall into the intended category, lack of precision is likely to bring into the fold of definition certain things. Verbosity is likely to bring about a situation which were otherwise outside its scope. It is for this reason, that in most of the cases, having coined a precise definition, the Legislature prefers to include or exclude certain items, depending on the exigency of a definition turning out to be description. In such a case, the definition needs to be taken as a whole, and cannot be read in parts. Such a course would defeat the very purpose of defining a term.

19. Wherever a definition provides for inclusion of certain other categories within it, the Legislature brings about a legal fiction. Once a particular category of things or events are brought within the fold of definition, through legal fiction, all such things or events, the distinction which hitherto persisted, disappears for the purpose of that legislation. In the process, they merge into the original definition and lose their separate identity. Thereafter, it would be impermissible to treat them separately. The legal fiction has to be taken to the logical end. It cannot be stopped at an intermediary stage. The classical formulation of the principle which constitute the basis for various pronouncements on the subject was made by Lord Asquith in *East End Dwelling Co., Ltd. v. Finsbury Borough Council* (1951) 2 All ER 587, as under:

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it-. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

20. In *The Dargah Committee, Ajmer Vs. State of Rajasthan*, , the Supreme Court held as under:

"If by the fiction introduced by Section 222(4) (*Ajmer Merwara Municipalities Regulation, 1925*), the amount in question is to be deemed as if it were a tax, it is obvious that full effect must be given to this legal fiction; and in consequence, just as a result of the said fiction the recovery procedure prescribed by Section 234 (for taxes) becomes available to the committee so would the right of making an appeal prescribed by Section 93(1) be available to the appellant."

21. In *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , the Supreme Court observed:

"It advised that the words used in the inclusive definition denote extension and cannot be treated as restricted in any sense where were dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms wider denotation. The authorities can be multiplied in any number.

22. If the definition of decree u/s 2(2) of C.P.C. is examined from this angle, it needs to be noticed that the distinction, maintained between a decree and a deemed decree, does not appear to be permissible. The occasion for including rejection of plaint within the definition is on account of the fact that the definition provided for in the first sentence speaks of conclusive determination of rights between parties; whereas at the stage of rejection of plaint, it is not necessary that both the parties shall be before the Court. However, the qualitative nature of outcome of a rejection of a plaint, accords with the actual purport of the definition. Once the rejection of plaint is brought within the purview of a decree, through a process of fiction, it can no longer be treated as different from the decree as such.

23. A contention was raised before the Allahabad High Court to the effect that rejection of a plaint does not entail in drawal of a formal decree. Therefore, an appeal u/s 96 of the C.P.C. cannot be maintained against orders of rejection of plaint. The contention was dealt with as under:

"It was also submitted by the learned Counsel for the respondents that only the judgment was filed and not the decree and so the civil appeal before the lower appellate Court was not competent u/s 96. The definition of "Decree", as given in the Code of Civil Procedure, indicates that rejection of a plaint is covered within the term "decree" and as such, in my view, there should not have been any further formal recording of the decree to enable the appellant to make an appeal." (See Purnmasi Yadav Vs. Narbedeshwar Tripathi and others,

24. In Ragam Yellaiah's case (supra), heavy reliance was placed on the judgment in B. Nookaraju's case (supra), in maintaining a distinction between a decree and a deemed decree. That case related to an appeal against an order passed under Rule 58 of Order 21. Such an order, is within the scope of Section 47 C.P.C. Any determination u/s 47 C.P.C. was originally included in the definition of decree. In 1976, Section 47 omitted from the purview of definition of decree. Rule 58 of Order 21 C.P.C., was suitably amended. Sub-rule (4) thereof provides for an appeal against the orders passed under the Rule. It reads as under:

Section 58(4):

"Where any claim or objection has been adjudicated upon under this rule, the order made hereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree".

25. It was in this context that the orders passed under Rule 58 were treated as a separate category, since such orders do not find any place in the definition. In Jose Thengumpillil Vs. Secretary, Peruvanthanam Service Co-operative Bank Ltd. and Another, , a Division Bench of the Kerala High Court struck a different note, and held that an order passed under Rule 58 of Order 21 C.P.C., has to be treated as a decree and a regular and not miscellaneous appeal maintains against it. That however is a different aspect. The fact remains that the analogy applied in relation to orders which do not fall within the definition of decree

cannot be extended to those, which squarely fall within the definition.

26. Another aspect of the matter is that Clause (a) of Rule 1 of Order 43 specifically provides for an appeal only against an order returning the plaint. To hold that an appeal would lie under Order 43 Rule 1, against an order rejecting the plaint, would amount to rewriting or amending (he corresponding provisions of Order 43. Such a course of action is impermissible.

27. In *Shamsher Singh Vs. Rajinder Prashad and Others*, , the Hon''ble Supreme Court categorically held that an order rejecting a plaint under Order 7, Rule 11(d) is an appealable decree. The reasons for rejection of a plaint hardly make any difference, as long as the result is the rejection of the plaint. Viewed from any angle, an appeal under Order 43, Rule 1 CPC., cannot be maintained against the order rejecting the plaint.

28. Hence, the objection raised by the office is sustained, and the Registry is directed to return the papers to the learned Counsel for presentation in appropriate forum, in accordance with law.