

(2005) 10 AP CK 0039
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2664 of 2003

State of Tamil Nadu and Others

APPELLANT

Vs

B. Anandaiah and Others

RESPONDENT

Date of Decision : 21-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 2, Order 14 Rule 2(1), Order 14 Rule 2(2), 115
Constitution of India, 1950 — Article 131

Citation : (2006) 1 ALD 580 : (2005) 6 ALT 824 : (2005) 3 APLJ 469

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : P. Sai Nath and D.G. Prabhakaran, Special Government Pleader, for the Appellant; A.G. for Respondent Nos. 32 and 33 and P.V. Vidyasagar and M. Venkata Ramana Reddy, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—Heard the learned Advocate General along with Sri D.G. Prabhakaran, appearing on behalf of the petitioners and Sri P.V. Vidya Sagar and Sri M. Venkat Ramana Reddy, learned Counsel for the respondents and at their request, the main revision itself is taken up for disposal.

2. In this revision filed u/s 115 C.P.C., the petitioners, the State of Tamil Nadu and two other Forest Officials of that State, who are defendants 1 to 3, seek to assail the order dated 20-2-2003 in O.S.No. 217 of 2001, on the file of the Principal Senior Civil Judge, Chittoor rejecting the request of the petitioners to decide the issue of jurisdiction as a preliminary issue.

3. Few facts, which are necessary for disposal of this revision are that the respondents/plaintiffs, who are residents of Kanathala tank and surrounding villages, filed a comprehensive suit seeking for declaration that the suit schedule property consisting of 2584 acres is part of Kanathala Cheruvu and part of Chittoor District of Andhra Pradesh and consequently for permanent injunction

restraining the defendants from interfering with the suit property. The District Collector, Chittoor and the concerned Mandal Revenue Officer are added as the defendants 4 and 5. Contesting the said claim, inter alia, a dispute has been raised from the Defendants 4 and 5 of the State of Andhra Pradesh and the petitioners from the State of Tamil Nadu by filing separate written statements claiming that the said area forms part of their respective States. In view of the same, it has been contended that the Civil Court has no jurisdiction to entertain the suit itself or go into such questions, in view of the bar as contemplated under the provisions of Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 and having regard to the special remedy available under Article 131 of the Constitution of India, since it raises an inter-State dispute.

4. On considering the submissions made on either side, the Court below refused to accede to the request of the petitioners to try the issue of jurisdiction as a preliminary issue on the ground that it can as well be tried along with other issues since it involves disputed questions of fact.

5. Having considered the submissions made and on perusal of the material, the only question, which falls for consideration in this revision, is as to whether the Court below was right in postponing the consideration of the issue as to jurisdiction along with other issues.

6. There is no dispute to the fact that even as per the plaint allegations, part of area claimed by the plaintiffs forms part of State of Tamil Nadu and the same has been claimed by the State of Andhra Pradesh. The case of the plaintiffs is that having regard to the fact that the very tank is situated within the State of Andhra Pradesh, Ayacut, which is the subject matter of the suit, belongs to them and it forms part of Chittoor District within the State of Andhra Pradesh.

7. On the face of it, a clear-cut dispute arises as to the exact boundary in between the two States and whether the subject matter which is admittedly outside the boundary of State of Andhra Pradesh forms part of State of Tamil Nadu. The plaintiffs claim the suit land as the ayacut of the tank, which falls in State of A.P. If that be so, necessarily, it involves the main question as to jurisdiction, especially in regard to the entertainment of the suit by common law Courts. It also involves the basic question as to whether the Courts in Andhra Pradesh can entertain any suit, in respect of subject matter, which is in other State. Further, having regard to the very nature of question involving two States, visa-vis, the boundaries, it squarely falls within mischief of Article 131 of Constitution of India. On a reading of the order of Court below, It is found that these questions have not been properly addressed or adverted to, except treating it as if, localization, which being a fact enquiry, needs an enquiry. Necessarily, these questions go to the very root affecting the jurisdiction of the Courts, than mere enquiry, as such, into a fact.

8. It is necessary to take note of Rule 2 of Order XIV of the Code of Civil Procedure, which reads as follows:

Order XIV, Rule 2(2) - Issues of law and of fact - Where the issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed on the issues of law only, it shall try those issues first and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined".

9. On a bare reading thereof and as it has been now well established that in all appealable cases, no doubt, all the issues should be tried together notwithstanding that it can be disposed of on a preliminary issue. However under Sub-rule (2) thereof if the issue touches on the jurisdiction of the Court or even a bar to the suit created by any law, necessarily, such issue should be tried first. Therefore, it cannot be advisable to postpone such issue to be tried and disposed of along with all other issues. Though, normally as pointed out under Sub-rule (1), it is felt desirable that there should be a comprehensive trial on all issues in spite of involvement of any such preliminary issue, however, on the facts of this case and even on admitted facts, the suit can be disposed of on preliminary issue. It necessarily follows that it should be so disposed of without following other procedure as held in *Abdul Rehman v. Parsony Bai*, wherein it has been held that:

"For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code of Civil procedure, a civil Court can dispose of a suit on preliminary issues of res judicata and/or constructive res judicata as, also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues".

10. In these circumstances, the matter requires fresh consideration and disposal. It has to be held that the issue of jurisdiction has necessarily to be taken up preliminarily. The revision is accordingly allowed. The matter is remitted to the Court below for fresh consideration and disposal after hearing both sides. No costs.