
(2007) 02 AP CK 0066
In the Andhra Pradesh High Court
Case No : CRP No. 308 of 2007

T. Venkatacharya and Another	Vs	APPELLANT
Deputy Commissioner of Endowments and Others		RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Section 115
Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 7 Rule 10, Order 7 Rule 10A, 104, 104(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2007) 3 ALD 136 : (2007) 3 ALT 622

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : T.P. Acharya, for the Appellant;

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The revision petitioners are plaintiffs in O.S. No. 161 of 2002 on the file of the Principal Junior Civil Judge, Warangal. The suit was filed for declaration and for perpetual injunction. The learned Judge framed the point for consideration as hereunder.

Whether this Court has jurisdiction to entertain the present suit.

Ultimately, the learned Judge returned the plaint under Order VII Rule 10 of the CPC (hereinafter in short referred to as "the Code" for the purpose of convenience) with a direction to file the plaint before the Senior Civil Judge's Court having jurisdiction and the intimation of the return of the plaint to be informed to the plaintiffs and the plaintiffs were directed to file an application before the Court to specify the Court in which the plaintiffs propose to present the plaint after its return.

2. Sri T.P. Acharya, learned Counsel representing the appellants would submit that the Andhra Pradesh Charitable and Hindu Religious Institutions and

Endowment Act, 1987, would apply only to the properties pertaining to the said institutions or endowed to them, but the said Act is not applicable to the private patta lands. The learned Counsel in all fairness would submit that though a civil miscellaneous appeal under Order XLIII Rule 1 of the Code has to be filed, that would not come in the way of this Court in exercising the supervisory jurisdiction under Article 227 of the Constitution of India. The learned Counsel placed strong reliance on the decisions in *Mallikarjuna Srinivasa Gupta Vs. K. Sheshirekha*, ; *Koripalli Ram Krishna Rao Vs. State Bank of Hyderabad and Others*, and *Surya Dev Rai v. Ram Chander Rai and Ors.* 2003 (5) ALD 36 (SC).

3. Heard the Counsel.

4. The facts in brief already had been narrated supra. In *Mallikarjuna Srinivasa Gupta v. K. Sheshirekha* (supra), the learned Judge of this Court while dealing with supervisory jurisdiction and scope thereof observed that the power of High Court under Article 227 of the Constitution is wider than one conferred on High Court by Article 226 and the power of superintendence of High Court is not subject to technicalities of procedural or traditional fetters, which may be found in certiorari jurisdiction. In *Koripalli Ram Krishna Rao v. State Bank of Hyderabad and Ors.* (supra), the learned Judge of this Court while dealing with supervisory jurisdiction of High Court under Article 227 of the Constitution of India observed that if the High Court finds that lower Court failed to exercise jurisdiction at appropriate and relevant time, it is always open for High Court to interfere and pass necessary orders in the interest of justice. The Apex Court in *Surya Dev Rai v. Ram Chander Rai and Ors.* (supra), while dealing with Section 115 of the Code (as amended by Act 46 of 1999) held that amendment does not curtail either the writ jurisdiction under Article 226 or the supervisory jurisdiction under Article 227 of the Constitution of India. But the exercise of such power being discretionary, the same would be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge and High Court cannot summarily refuse to exercise jurisdiction under Article 226 on the ground that no writ can be issued against private parties.

5. The settled principles of law in relation to the exercise of the power or jurisdiction under Article 227 of the Constitution of India need not be repeated at length. It is also needless to say that this Court on several occasions held that when a specific remedy by way of appeal is provided for under the Code, it would be always just and proper to exhaust the said remedy before approaching this Court.

6. Order XLIII Rule 1 deals with appeals from orders of the Code and Order XLIII(1)(a) specifies as hereunder.

An order under Rule 10 of Order VII returning a plaint to be presented to the proper Court (except where the procedure specified in Rule 10A of Order VII has been followed.).

Section 104 of the Code deals with orders from which appeal lies. Section 104(1)

(i) specifies that an appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders, any order made under rules from which an appeal is expressly allowed by rules.

7. This is not a case where the procedure specified in Rule 10A of Order VII had been followed. Hence, the civil miscellaneous appeal would lie as against the order impugned in the present civil revision petition. Hence, without exhausting the remedy by way of civil miscellaneous appeal the practice of the parties approaching this Court by filing a civil revision petition under Article 227 of the Constitution of India to be discouraged and deprecated. Hence, the civil revision petition deserves a dismissal as not maintainable.

8. But, however, the office is directed to return the papers so as to enable the petitioners to present the civil miscellaneous appeal before the appropriate Court. It is needless to say that the petitioners also are at liberty to move appropriate application for condonation of delay and the learned Judge to consider the aspect of pendency of the present civil revision petition in the event of petitioners being advised so in this regard.

9. With the above observations, the civil revision petition is dismissed at the stage of admission. No costs.