

(1977) 09 AP CK 0002

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 113 of 1977

V. Appannammanayuralu

APPELLANT

Vs

B. Sreeramulu

RESPONDENT

Date of Decision : 07-09-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1978 AP 160 : (1978) 1 APLJ 63

Hon'ble Judges : Sambasiva Rao, J;Raghuvir, J

Bench : Division Bench

Advocate : N.V. Ranganadhan, for the Appellant; A. Surya Rao, for the Respondent

Judgement

Sambasiva Rao, J.—What is inherent lack of jurisdiction? This is the crucial question we will have to answer while deciding this Letters Patent Appeal.

2. It has arisen out of execution proceedings. The respondent has levied execution of a decree he had obtained in A. S. No. 198/73 in the District Court, Srikakulam. That appeal had been preferred by the plaintiff-decree-holder against the decision of the Subordinate Judge's Court, Srikakulam which partly decreed his suit O. S. 37/72. He filed that suit on 13th of July 1972 to recover a sum of Rs. 9,300/-. While the suit was pending the Civil Courts Act was amended with effect from 1-11-1972, conferring jurisdiction on District Courts to entertain appeals against suits upto the value of Rs. 15,000/-. Until then, that pecuniary limit was limited to Rs. 7,500/-. The Subordinate Judge's Court partly decreed the suit some time later i.e., on 3rd July, 1973. Seeking larger relief the plaintiff-decree-holder preferred A. S. No. 198/73 to the District Court, Srikakulam which modified the trial Court's decree and awarded a ;larger amount. The present appellant, who was the respondent in that appeal, did not object to the jurisdiction of the District Court to entertain the appeal. Later the respondent-decree-holder sought to execute the decree as enlarged by the District Court in A. S. 198/73. At that stage the judgment-debtor objected to the execution of the

decree for an amount over and above that which was decreed by the Subordinate Judge's Court on the ground that the District Court had no jurisdiction to entertain the appeal. His contention was that though during the pendency of the suit the District Court's appellate jurisdiction was enhanced upto Rs.15,000/-,The forum of appeal was pre-determined even at the time of the institution of the suit. Therefore, an appeal lay only to the High Court and not to the District Court. Consequently, the decree passed by the District Court was a nullity and could not be executed. This objection found favour with the Court of first instance. Our learned brother Gangadhara Rao, J., however, in C.M.A. No 653 of 1975 : (reported in 1977 ALT 159), overruled the decision of the trial Court and held that the decree of the District Court was not a nullity and therefore it could be executed. Our learned brother was of the opinion that the District Court did not suffer from inherent lack of jurisdiction to entertain the appeal when it was presented before it. The judgment-debtor, aggrieved by that decision, has filed this Letters Patent Appeal.

3. Sri Ranganadham appearing for the Appellant contended that it is undoubted that the forum of appeal is fixed with reference to the date of institution of the cause and that any change in the law would not affect the right of the aggrieved person to go to that forum. The value of the suit was Rs. 9,300/- and when it was instituted on 13th of July, 1972, the forum of appeal, as the law then stood, was the High Court. So, the decree-holders appeal to the District Court in A. S. 198/73 was wholly incompetent. He pointed out that if the law was not changed, the District Court would have had no jurisdiction at all to entertain an appeal against the decree since there was inherent lack of jurisdiction in it to entertain appeals arising out of suits of the value of more than Rs. 7,500/-. The same concept would continue to apply even if there was subsequent enhancement of the jurisdiction of the District Court. Therefore, the decree in A. S. 198/73 is a nullity as it was passed by a Court which suffered from inherent lack of jurisdiction to entertain it.

4. On the other hand, Sri A. Surya Rao for the decree-holder-respondent endeavoured to support the view taken by our learned brother by maintaining that by the time the appeal came to be filed, the District court had jurisdiction to entertain appeals arising out of suits of the value upto Rs. 15,000/- and so it could not be said that there was inherent lack of jurisdiction in it to entertain the appeal.

5. Even at the outset we would like to make it clear that the right to prefer an appeal to a particular forum is a substantive right. So held the supreme Court in, Mukund Deo (Dead) represented by his legal representatives Kasibai and Others Vs. Mahadu and Others, . As the law stood when the respondent instituted the suit on 13th of July, 1972 to recover a sum of Rs. 9,300/- any appeal that might be preferred against the decree in that suit lay not to the District Court but to the High Court. That is to say, the parties to the suit had a substantive right to prefer an appeal to the High Court if they were aggrieved by the decision of the trial

Court. However, it so happened that even when the suit was pending in the trial Court, the Civil Courts Act was amended with effect from 1-11-1972 conferring appellate jurisdiction on District Courts against decree passed in suits of the value upto Rs. 15,000/-. That was why the plaintiff seeking a larger relief than what had been granted by the trial Court preferred an appeal to the District Court and the present Appellant, who was the respondent to it, did not object to that Court's jurisdiction to entertain the appeal.

6. It is also well settled that an executing Court cannot go behind the decree passed by a Court and examine its validity. It can refuse to execute the decree only when it is established to its satisfaction that the decree, which is sought to be executed, is a nullity. In the present case, the Court of first instance, which is the executing Court, rejected execution of the decree of the District Court on the ground that it is a nullity. The vice of nullity in the decree is based on the supposition that the District Court, Srikakulam, suffered from inherent lack of jurisdiction while passing the decree in A. S. 198/73. Gangadhara Rao, J. rejected that plea and held that the District Court had jurisdiction and it did not suffer from inherent lack of jurisdiction and so its decree is not a nullity.

7. In the first place, it must be found out what is meant by inherent lack of jurisdiction. The adjective "inherent" has its origin in the verb "inhere". According to the Oxford Dictionary "inhere" means "exist, abide in, be vested in". Therefore, the adjective "inherent" indicates something which exists or abides or vests in a person or authority. When this adjective is applied to a court's jurisdiction, it means that a jurisdiction to dispose of a cause is vested in it or abides in it. Consequently, inherent lack of jurisdiction means a power or jurisdiction which does not at all exist or vest in a Court. To put it in other words, a Court can be said to lack inherent jurisdiction when the subject-matter before it is wholly foreign to its ambit and is totally unconnected with its recognised jurisdiction. If it has power to entertain causes of a particular category or nature, then it cannot be said that causes belonging to that category or nature are totally foreign to the jurisdiction of that Court for the reason that they could have been brought up before other Courts. It cannot be said that Court could not have seizin of a case when the subject-matter belongs to the nature of its jurisdiction.

8. In this connection we may usefully refer to Seth Hiralal Patni Vs. Sri Kali Nath, , where this aspect has been dealt with by the Supreme Court. Though that case was dealing with the question of territorial jurisdiction, the observations contained in Paragraph 4 relating to lack of inherent jurisdiction are quite apposite. Chief Justice Sinha clarified the position thus : (At p. 200)

"The validity of a decree can be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seizin of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the Court entirely lacking

in jurisdiction in respect of the subject-matter of the suit or over the parties to it."

9. Bearing the above clarification as to what is meant by inherent lack of jurisdiction in mind, we will now examine the statutory provisions in regard to jurisdiction of Courts in entertaining suits and appeals, both territorial as well as pecuniary.

10. Section 6 of the Civil P. C. Relates to pecuniary jurisdiction and it says:

"Save in so far as otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction."

Section 6 refers to the pecuniary limits of Court's ordinary jurisdiction and says that nothing contained in the Civil P. C. shall confer higher pecuniary jurisdiction on any Court than what is prescribed. The Civil P. C. by itself does not prescribe any pecuniary limits. At the same time, it should be remembered that S. 6 purports to deal only with the pecuniary limits of Court's ordinary jurisdiction to entertain suits. It does not purport to deal with appeals. Section 9, however, is the general provision which confers jurisdiction on Courts to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Sections 15 - 20 relate to the place of suing ,that is to say territorial jurisdiction. Like Ss. 16 to 20, there is no specific provision in the Civil P. C. which prescribes the pecuniary jurisdiction. Section 21 before its amendment in 1976, laid down that no objection as to the place of suing shall be allowed by the appellate or revisional court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. Before 1976 there was no corresponding provision in S. 21 in regard to the pecuniary limits of Court's jurisdiction. The Parliament thought it necessary to introduce an analogous provision in regard to the pecuniary limits of jurisdiction also in S. 21. In consequence, sub-sec. (2) has been added by the C. P. C. (Amendment) Act, 1976 which reads as follows:

"No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and , in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

Now by virtue of the insertion of sub-s. (2) also, no objection as to the place of suing or as to the pecuniary limits of Court's jurisdiction can be allowed by any Appellate or Revisional Court unless that objection was taken at the earliest possible opportunity in the Court of first instance. If that bar is applicable to appellate or Revisional Courts, it should apply with greater force to executing Courts.

11. It is true that sub-s. (2) of S. 21 has been introduced by the C. P. C. (Amendment) Act, 1976. But we find that the policy of saving the decrees of Courts despite lack of pecuniary jurisdiction if objections were not taken at the earliest opportunity and provided they did not cause any prejudice, has been in vogue all along.

12. We may, for instance, refer to s. 11 of the Suits Valuation Act of 1887. The section indicates that notwithstanding anything in s. 578 of the Civil P. C. an objection that a Court, which had no jurisdiction over a suit or appeal, had exercised it by reason of over-valuation or under-valuation, should not be entertained by an appellate Court unless the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits. It is immediately seen that though this provision of the law deals with over-valuation or under-valuation, it is concerned with the pecuniary jurisdiction of the Court. The principle behind the section is not far to seek. If the Court is vested with the jurisdiction to entertain a matter of a particular value, the change in that value on account of over-valuation or under-valuation shall not affect the validity of the decree passed by the Court, unless such over-valuation or under-valuation has prejudicially affected the disposal of the suit or appeal on its merits. This section is patently founded on the principle that a Court's decree shall not be affected on the ground of its lack of pecuniary jurisdiction if it had inherent jurisdiction to deal with such matters.

13. A Full Bench of the Madras High Court considered this question in *Kelu Achan and Others Vs. Cheriya Parvathi Nethiyar and Others*, Coutts Trotter, J. (as he then was) observed that the object of S. 11 is to provide a machinery for curing the original lack of jurisdiction in the circumstances mentioned therein. It was held that the clause in S. 11 of the Suits Valuation Act when referring to prejudicially affecting the disposal of a suit or appeal on its merits, is not considering at all the different rules of procedure that there may be an appeal from one Court to another.

14. The Supreme Court in *Kiran Singh and Others Vs. Chaman Paswan and Others*, considered this principle behind S.11. After pointing out that a defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the section, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties, Venkatarama Ayyar, J. Who spoke for the Court, proceeded to enunciate the principle behind S. 11 of the Suits Valuation Act of 1887 vis-a-vis Ss 21 and 99 of the Civil P.C. The learned Judge observed that the principle that underlies S.11 of the Suits Valuation Act , 1887 is that a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for over-valuation, is not to be treated as what it would be but for the section, null and void and that an objection to jurisdiction based on over-valuation or under-valuation, should be dealt with under that section and not otherwise. The same principle has been adopted in S. 21 of the Civil P.C., with reference to the objection relating to

territorial jurisdiction. The policy underlying S. 21 and S. 99, C.P.C. and S. 11 of the Suits Valuation Act, is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been a prejudice on the merits. This is an important pronouncement of the highest Court of the land on the proposition that the decision of a Court shall not be reversed purely on technical grounds like lack of territorial or pecuniary jurisdiction unless it has resulted in failure of justice of justice and the objection to the lack of jurisdiction was taken at the earliest possible time. The Supreme Court clearly explained the policy of the Legislature by stating that it is to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court unless there has been a prejudice on the merits. This decision also makes it clear that the principle of S.11 of the Suits Valuation Act relating to the pecuniary jurisdiction and that policy is further reiterated in S. 99 of the C.P.C. It is this view which has now been incorporated in sub-s (2) of S. 21 of the Civil P.C. by the 1976 C.P.C. (Amendment) Act.

15. In Seth Hiralal Patni Vs. Sri Kali Nath, the Supreme Court explained what is meant by inherent lack of jurisdiction. That case arose in regard to an objection to the local jurisdiction of a Court. The Supreme Court pointed out that the objection to the local jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try a case. Competence of a Court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. As we have already pointed out, it could be said that the Court, which has passed a decree, is lacking in inherent jurisdiction only when it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction, or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the Court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it.

16. The same principles were laid down by the Division Benches of this Court in Life Insurance Corporation of India Vs. Tada Tirupathayya, and Letters Patent Appeal 155 of 1974, D/- 21-12-1976 : ((1977) 2 An WR 270) consisting of one of us (Sambasiva Rao, J. Then Acting Chief Justice) and Muktadar, J. Both the cases related to the Civil P.C. which is now sub-s. (1) of that section.

17. Here we must consider 2 and 3 decisions cited by Sri. Ranganadham in support of his contention that the District Court, when it entertained the appeal of the respondent, totally lacked jurisdiction. The decision of the Privy Counsel in Ledgard v. Bull. (1885) 13 Ind App 134 is the first decision that was cited. There, a suit was instituted in the Court of the Subordinate Judge, who was incompetent to try it. However, by consent of parties it was transferred to the Court of the District Judge for convenience of trial. The Privy Council held that such transference was incompetent and that such consent did not operate as a

waiver of the plea to the jurisdiction which was taken in the defendant's written statement and subsequently insisted upon. This decision was relied on by the learned counsel for more than one purpose. Firstly it was cited for contending that mere absence of raising an objection to the jurisdiction of the District Court to entertain the appeal by the present appellant would not vest that Court with jurisdiction if it had suffered from inherent lack of jurisdiction. In the case before the Privy Council it was held that consent of the parties did not confer jurisdiction when there was total absence of it in the Court. There cannot be any doubt about the validity of this proposition since not only this Privy Council's decision but several other decisions including those of the Supreme Court have laid down this principle. But this decision does not help the learned appellant's Counsel's endeavour to show that the District Court in the present case had no jurisdiction at all to entertain the appeal and pass the decree. In the *Ledgard's case* (*supra*) which was before the Privy Council, the court before which the suit was originally instituted, was totally incompetent to entertain and try it. By virtue of S. 22 of Act XV of 1859 no action for infringement shall be maintained in any Court other than the principal Court of original jurisdiction in civil cases within the local limits of whose jurisdiction the cause of action shall accrue, or the defendant shall reside as a fixed inhabitant. It was common ground that the principal Court of original jurisdiction was the Court of the District Judge. Therefore, it was a case where there was a total prohibition against any Subordinate Court other than the District Judge's Court had suffered from inherent want of jurisdiction to entertain the suit. That is to say, the suit instituted therein was not legally instituted and therefore it was tantamount to that there was no suit at all. The Privy Council pointed out that the first and an essential step in the maintenance of a suit is its due institution. When it was not duly instituted, the transference of the suit to the District Court was equally incompetent. Thus, the *Ledgard's case* (*supra*) is one where the Court suffered from inherent lack of jurisdiction. The subsequent transfer of the suit by the consent of the parties was held to be invalid. But such is not the case here. By the time the appeal came to be filed before the District Court, that Court did have jurisdiction to entertain appeals against suits of the value upto Rs.15,000/-In this case, there is no bar as was contemplated by S. 22 of Act XV of 1859. Further, even in the original written statement in the *Ledgard's case* (*supra*), an objection was taken to the competence of the Subordinate Judge's Court to entertain the suit. For these reasons, we hold that the *Ledgard's case* (*supra*) does not advance the contention of the learned counsel for the appellant.

18. *Mukund Deo (Dead) represented by his legal representatives Kasibai and Others Vs. Mahadu and Others*, is the next case. It was held there that a right of Appeal to a particular forum is a substantive right and it is not lost by the alteration of the law. As we have pointed out, there is no quarrel about this proposition. The plaintiff could have certainly preferred an appeal to the High Court. The Supreme Court held in *Mahadu's case* that when the suit was filed, the lands were situate within the territory of the Hyderabad State and therefore

it had to be heard and disposed of according to the relevant provisions of the Civil P.C. in force in the State of Hyderabad. Consequently, the second appeal preferred to the High Court was governed by S. 602 of the Hyderabad Civil P.C. and the restriction contained in S. 100 of the Civil P.C. could not apply to such a second appeal. This proposition is unexceptional. The question as to the total lack of jurisdiction did not arise in that case and it does not throw any light on the problem.

19. A decision of this Court in *Saraswathula Kameswaramma and Another Vs. Radhakrishna and Co. and Others*, was also relied on. Our learned brother *Chennakesav Reddy, J.*, speaking for the Bench, said that any change in the law relating to appeals after the institution of original proceedings which adversely touches the vested right in a suitor, is presumed not to be retrospective in the absence of anything in the enactment that would compel Courts to hold otherwise. This view was expressed on the basis of the decisions in the *Colonial Sugar Refining Co., Ltd v. Irving* 1905 AC 369 and *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, . But that decision does not deal with the problem which arises in this case. So, it does not help in the present discussions.

20. Lastly, reference was made to a Bench decision of the Allahabad High Court in *Mt. Sunder Vs. Kandhayia Lal and Another*, In that case a suit was filed for a declaration that a gift deed was not binding and it was filed in the Munsif's Court valuing it at Rs. 2,000/-. At a later stage the plaint was amended by adding a prayer for injunction. When the value of the relief of injunction was added, the value of the suit went beyond the pecuniary jurisdiction of the Munsif's Court. All the same the Munsif proceeded to decide the suit. The Division Bench held that the facts of the case did not bring it within the ambit of S. 11 of the Suits Valuation Act, 1887 and the Munsif had no jurisdiction to proceed with the suit. Once again this is not a case which helps in answering the question as to the total lack of jurisdiction.

21. In the present case, the appeal could have been preferred to the High Court against the decision in O. S. 37/92, the value of which was Rs. 9,300/-. But even when the suit was pending, the District Court's Appellate Jurisdiction was enhanced to Rs. 15,000/-. Thereby the District Court was conferred with jurisdiction to entertain appeals against suits of the value upto. 15,000/-. Consequently it had inherent jurisdiction to entertain appeals against suits upto that value. It is no doubt true that the proper forum for the aggrieved plaintiff was to prefer an appeal to the High Court because he had a substantive right to prefer an appeal to that Court. But his preference of the appeal to the District Court and the District Court entertaining it and passing a decree thereon do not suffer from inherent lack of jurisdiction because by that time that Court did have pecuniary jurisdiction upto that limit. Going by the principles considered above, we are of the opinion that the District Court, while entertaining A. S. 198/73 and passing a decree therein, did not suffer from inherent want of jurisdiction. Further, the objection to it was not raised before the Appellate Court. Therefore,

it cannot be said that the decree passed by the District Court in A. S. 198/73 is a nullity. The Court of first instance went wrong in thinking that it was a nullity and could not, therefore, be executed.

22. There is neither a pleading nor proof nor any contention that disposal of the appeal by the District Court had caused any prejudice to the appellant or any party. There is not even a suggestion anywhere of any such prejudice. In its absence, it is not possible to say that the decree under execution is a nullity.

23. In the result, we uphold the view taken by our learned brother Gangadhara Rao, J., and dismiss the Letters Patent Appeal. In the circumstances of the case, we direct the parties to bear their own costs.

24. Appeal dismissed.