

(1995) 04 AP CK 0018

In the Andhra Pradesh High Court

Case No : Second Appeal S.R. No. 5119 of 1995

Venna Padda Kasireddy alias Kasi Reddy

APPELLANT

Vs

Yeruva Rami Reddy

RESPONDENT

Date of Decision : 20-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 102, 96(4)
Provincial Small Cause Courts Act, 1887 — Section 15, 27

Citation : AIR 1995 AP 332 : (1995) 2 ALT 375 : (1995) 2 APLJ 120

Hon'ble Judges : S. Parvatha Rao, J

Bench : Single Bench

Advocate : Mr. E.S. Ramachandra Murthy, for the Appellant;

Judgement

1. I am of the view that the office objection is well taken.

2. O.S. No. 128 of 1983 on the file of the learned district Munsifs Court at Markapur is for recovery of a sum of Rs. 1,528-81 ps. with subsequent interest and costs, on the foot of a hand-letter dated 6-5-1982. By judgment dated 9-3-1989 the learned District Munsif decreed the suit. The defendant's appeal A.S. No. 15 of 1989 before the learned Subordinate Judge at Markapur, against the said judgment and decree, was dismissed and now the defendant seeks to approach this Court by way of the present Second Appeal.

3. The office objects and points out that no second appeal is maintainable as the suit in question is of the nature cognizable by a Court of Small Causes and the value of the subject-matter of the original suit did not exceed Rs. 3,000/- and therefore Section 102 of the CPC (for short "C.P.C.") is a bar. Section 102, C.P.C. provides as follows:

"102. NO SECOND APPEAL IN CERTAIN SUITS -- No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees."

Section 15 of the Provincial Small Cause Courts Act, 1887, reads as follows:

"15. COGNIZANCE OF SUITS BY COURTS OF SMALL CAUSES--(1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the State Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order."

4. Mr. E.S. Sreeramachandra Murthy, the learned counsel for the appellant, contends that the present suit was entertained and decided as a regular civil suit and that the appeal also was made and decided as a regular appeal and not as one limited by subsection (4) of Section 96, C.P.C. and that, therefore, second appeal u/s 100, C.P.C. is maintainable.

5. I do not agree. The nature of the suit as disclosed by the plaint is the determining factor. Mr. Sreeramachandra Murthy does not dispute that the present suit is of civil nature and does not fall under any of the items in the second schedule to the Provincial Small Cause Courts Act, 1887 and that its value does not exceed Rs. 3,000/-. Then I have to hold that it is a suit of the nature cognizable by a Court of Small Causes. The language used in Section 102, C.P.C. is not that it should be a suit cognized or decided by a Court of Small Causes. It is enough if the suit is cognizable by a Court of Small Causes.

6. I am supported in this view by the authorities. In *Bokka Sreeramulu Vs. Kalipatnapu Venkateswar Rao and Another*, a Division Bench of this Court held as follows:

"..... it is the nature of the suit and not of appeal that is material for purposes of S. 102, C.P.C. It is the character of the suit as it was originally framed and presented to the Court and not which it may assume in the course of or after the trial by virtue of the findings of the Court or in the appeal that may eventually be brought that determines the nature of the suit for purposes of S. 102, C.P.C."

This was the consistent view of the Madras High Court. In *(Devarapalli Bulli) Bapyayya Vs. (Vadeevu) Viswa Sundara Rao and Others*, Odgers, J., held as follows:

"With respect it seems to me that the nature of a suit is to be decided on the plaint as pointed out by Innes, J., in the Full Bench decision and I think in other decisions of this Court."

That Full Bench case is *Manappa Mudali v. S.I. Me. Carthy* (1881) 3 Mad 192, wherein Innes, J., pointed out that, "it was difficult to understand how a suit, the

claim in which is cognizable by a Court of Small Causes can cease to be within the jurisdiction of the Court by reason merely of the issues raised by the defence."

In *The Digamber Parshwanath Jain Mandir Vs. Valubai*, , Shah, J., relying on the earlier decision of the Bombay High Court in *Narayan Raoji Ranade v. Gangaram Ratanchand* (1909) 11 Bom 187, held as follows:

"In my opinion the ratio of this case aptly applies to the facts of the present case, the only difference being that in the present case it was the consent of the parties to the suit that had led to the suit being registered and tried as a regular suit. The suit having been instituted as a small cause suit and being exclusively cognizable by the Small Causes Court could not be regarded in the circumstances of the case as having changed its nature by reason of its having been registered and tried as a regular suit. It is admitted that no provision for an appeal against a decree passed in a small cause suit is made in the Provincial Small Cause Courts Act and that, therefore, if the decree in the present suit is regarded as a decree passed in a Small Cause Suit, the appeal against that decree which was filed in the District Court was entirely incompetent."

In *Shah Vardhilal Amritlal v. Bhuralal* AIR 1987 Guj SO, A.M. Ahmadi, J., (as his Lordship then was) held as follows:

"Section 102 (as it is now) reproduced earlier clearly provides that no Second Appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject matter thereof does not exceed Rs. 3,000/-. The suit must, therefore, be of the nature cognizable by a Court of Small Causes, the value or subject matter whereof does not exceed Rs. 3,000/- to attract the provision of S. 102 of the Code. It is the nature of the suit that is decisive, no matter whether it is tried by the Court having jurisdiction as a regular suit. The key words are any suit of the nature cognizable by Courts of Small Causes" which clearly mean that the suit must be one of which the Court of Small Causes could take cognizance; it does not matter that it ultimately came to be tried as a regular suit and not in accordance with the procedure laid down for the disposal of such Small Cause Suits. Merely because the suit was tried in the ordinary manner as a regular suit, it will not cease to be a suit of the nature cognizable by the Courts of Small Causes, for what is important is the nature of the suit and not the procedure employed for the disposal thereof. (See *The Digamber Parshwanath Jain Mandir Vs. Valubai*, . There is no dispute before me that the suit in question being a money suit for a sum not exceeding Rs. 3,000/ - would be cognizable by a Court of Small Causes."

8. The meaning of the words "any suit of the nature cognizable in Courts of Small Causes" were used in the earlier Codes of Civil Procedure also. The same words were used in Section 27 of Act XXIII of 1861 and also in Section 586 of the Code of Civil Procedure, 1882. A Full Bench of five Judges of the Madras High Court considered the meaning of those words as they occurred in Section 586 of the

1882 Code in *Soundaram Ayyar v. Sennia Naickan* (1900) 23 Mad 547, which was the provision in that Code corresponding to Section 102 of the present Code. Sir Arnold White, C. J. observed in that case that the object of the said Section 586 was "to take away the right of second or special appeal where the value of the subject-matter of the original suit does not exceed Rs. 500 in the case of all suits which as regards their subject-matter would be within the jurisdiction of Courts of Small Causes but which are outside that jurisdiction by reason of the amount claimed being beyond the pecuniary limit of the Small Cause jurisdiction." This was elaborated further by the learned Chief Justice as follows:--

"By reason of the jurisdiction of a Small Cause Court being limited as regards amount, if the amount claimed exceed the limit, although the suit is "of a nature cognizable" by a Small Cause Court, it is not cognizable. If a suit is cognizable it must be of a nature cognizable. But if it is of a nature cognizable it does not follow that it is cognizable. When the claim is within the pecuniary limit, and the Court is within the terms of the notification, no restriction of the right of appeal is necessary, because under the Small Cause Courts Act itself the decision of the Small Cause Court is final. It seems to me that Section 586 of the Code applies to cases which as regards subject-matter would be within, but by reason of the amount claimed are without, the jurisdiction of a Court of Small Causes. The words "of a nature cognizable" seems to have reference to the subject-matter of the suit as distinguished from the amount of the claim..... The words "any suit of the nature cognizable" as used in Section 586 of the Code may be paraphrased thus:-- Any suit relating to a subject-matter over which a Court of Small Causes would have jurisdiction if the claim were within the pecuniary limits of its jurisdiction."

The learned Chief Justice further observed:

"The tendency of the Courts (.....) seems to have been to carry out the intention of Section 586 by declining to place a narrow construction on the words "of a nature cognizable." See, for instance, the case of *Harakh v. Ram Sarup* ILR (1890) All 579, the Full Bench decision of this Court in *Manappa Mudali v. Me. Carthy* (1881) 3 Mad 192 and the cases of *Muttukaruppan v. Sellan* (1892) 15 Mad 98 and *Kali Krishna Tagore v Izzatannissa Khatun* (1897) 24 Cal 557."

Shephard, J., agreed with the learned Chief Justice observing as follows:

"To my mind it is, in the legal sense of the term, absurd to say that a suit for Rs.400/-claimed as rent might, but for the fact that the District Munsif's jurisdiction under the Act. was limited to suits not exceeding Rs. 200 in value, be tried as a small cause, and at the same time to deny that such suit is of the nature of suits cognizable by Courts of Small Causes."

Benson, J., held as follows:

"When the legislature in this section speaks of suits "of a nature cognizable in Court of Small Causes VI think it means suits which the Legislature has

determined to be suits of such a character or nature that they are, or may be made, triable in a summary fashion in Courts of Small Causes without any further action on the part of the Legislature itself, though further action may be necessary by the local Government in establishing a Small Cause Court or by investing an existing regular Court with small cause powers, or by investing the Judge of the Small Cause Court with power to try suits for rent as small cause suits."

Benson, J., further observed:

"The jurisdiction may be limited as regards local area and the pecuniary value of the suits, and it may, or may not, be extended to suits for rent. These are all matters which depend on the will of the local Government, but do not affect the character or nature of the suits. That was determined by the Legislature when it enacted that such suits might be tried by Courts of Small Causes provided the local Government should take appropriate action to establish the Courts or to invest them with the necessary powers.

If such action be taken, then the suits are not only of a nature cognizable by Courts of Small Causes, but become actually cognizable by those Courts. If, however, such action is not taken, then the suits do not become actually cognizable by such Courts, but their nature or character as originally declared by the Legislature remains unaffected."

9. The only other requirement under S. 102, C.P.C. is that the value of the subject-matter of the suit not exceed Rs. 3,000/-. This requirement is also satisfied in the present suit. Thus the present suit is clearly attracted by S. 102 of the C.P.C. An appeal against the original decree in such a suit is obviously controlled by sub-section (4) of S. 96, C.P.C., wherein also the language used is "any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees." When subsection (4) of Section 96, C.P.C. provides that in the case of decrees in such suits no appeal would lie except on a question of law, as against decrees in such appeals no second appeals lie by virtue of Section 102, C.P.C.

10. I am, therefore, of the view that the present Second Appeal is not maintainable. In the circumstances, the office objection is upheld. It is open to the appellant to claim refund of the Court fee.

11. Order accordingly