

(2004) 03 AP CK 0066
In the Andhra Pradesh High Court
Case No : SA No. 414 of 2001

Y. Narasimhulu and Another	Vs	APPELLANT
Kurnool Municipal Corporation and Another		RESPONDENT

Date of Decision : 15-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2004) 3 ALD 302 : (2004) 3 ALT 625 : (2004) 2 APLJ 45

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : G. Ravi Mohan, for the Appellant; K. Sita Ram, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—Heard both sides.

2. The appellants are the unsuccessful plaintiffs and appellants in O.S. No. 283 of 1995 and A.S. No. 52 of 1999 respectively.

3. For the sake of convenience, the parties will be referred to as arrayed in the suit.

4. A few facts that are necessary are as under:

The plaintiffs herein filed O.S. No. 283 of 1995 for permanent injunction against the defendants. The defendants filed O.S. No. 548 of 1995 against the plaintiffs for mandatory injunction. So, both the parties herein are either the plaintiffs or defendants in the suits referred to above. In the above suits, common trial was conducted and a common judgment was rendered by the Trial Court on 5.4.1999, against which, the plaintiffs preferred A.S. No. 51 of 1999 challenging the common judgment and decree passed in both the suits. The said appeals were dismissed by the lower appellate Court by a common judgment. Now, the present Second Appeal is filed challenging the common judgment and decree only in respect of A.S. No. 52 of 1999, preferred as against the judgment and

decree in O.S. No. 283 of 1995. No Second Appeal was preferred challenging the common judgment and decree in respect of A.S. No. 51 of 1999, which corresponds to O.S. No. 548 of 1995. The result is that the judgment and decree passed by the Trial Court in O.S. No. 548 of 1995, which has been confirmed by the lower appellate Court, have attained the finality.

5. Now, without going into the merits of the case, the point that arises for consideration is whether the present Second Appeal is maintainable as it hit by the principles of res judicata?

6. The Supreme Court in Premier Tyres Limited Vs. Kerala State Road Transport Corporation, , held as under:

"Thus the finality of finding recorded in the connected suit, due to non filing appeal, precluded the Court from proceeding with appeal in other suit. In any view of the matter the order of the High Court is not liable to interference."

7. Before arriving at the said conclusion, the Supreme Court observed as under:

"Although none of these decisions were concerned with a situation where no appeal was filed against the decision in connected suit but it appears that where an appeal arising out of connected suits is dismissed on merits the other cannot be heard, and has to be dismissed. The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non filing of appeal against a judgment or decree is that it become final. This finality can be taken away only in accordance with law. Same consequences follows when a judgment or decree in a connected suit is not appealed from.

Mention may be made of a Constitution Bench decision in Badri Narayan Singh Vs. Kamdeo Prasad Singh and Another, . In an election petition filed by the respondent a declaration was sought to declare the election of appellant as invalid and to declare the respondent as the elected candidate. The Tribunal granted first relief only. Both appellant and respondent filed appeals in the High Court. The appellant's appeal was dismissed but that of respondent was allowed. The appellant challenged the order passed in favour of respondent in his appeal. It was dismissed and preliminary objection of the respondent was upheld. The Court observed, "We are therefore of opinion that so long as the order in the appellant's Appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, which is founded on the contention that finding is incorrect".

8. In similar circumstances, a Division Bench of this Court in Tangella Sesham Raju and Others Vs. APSRTC and Others, , relying on the judgment of the Supreme Court in Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu (Dead) by L. Rs., , held that in a Court where several suits were filed and a common judgment was rendered and only few appeals were filed

against the said common judgment, allowing the said common judgment and decree in the other suits to become final. In those circumstances, this Court held that the principles of res judicata would apply and the appeals filed in some suits, allowing the said common judgment and decree in other suits to become final, are hit by the principles of res judicata.

9. In Venkateswara Prabhu v. Krishna Prabhu (supra), the Apex Court held as under:

"One of the tests for deciding whether the doctrine of res judicata applies to a particular case or not is to determine whether two inconsistent decrees will come into existence if it is not applied."

10. From the above, it is abundantly clear that when the common judgment and decree, insofar as other suits are concerned, was allowed to become final, the other appeals, which were filed, if entertained and adjudicated, may result in a conflicting judgment, and it has to be avoided. Therefore, having regard to the settled principles laid down by the Supreme Court in the judgment, Venkateswara Prabhu v. Krishna Prabhu (supra), I am of the considered view that the present Second Appeal is not maintainable as having been hit by the principles of res judicata.

11. The Second Appeal is accordingly dismissed, at the stage of admission. However, there shall be no order as to costs.